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Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala. He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and diploma in Public

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Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

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Dr. Navtika Singh Nautiyal

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Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

NEGOTIABLE INSTRUMENTS ACT AND DEBT RECOVERY

AUTHORED BY: SUYASH R. AGRAWAL
& DR. MRS. HEMA V. MENON

NEGOTIABLE INSTRUMENTS ACT AND DEBT RECOVERY

When India was experiencing a serious economic crisis in 1991, then-Finance Minister Manmohan Singh liberalised the economy to attract foreign capital and boost investor confidence. The companies' capital, or money, became stranded as a result of the slow recovery of the commercial debt from the defaulting purchasers, discouraging them and causing a financial catastrophe.

Hon'ble Chief Justice of India at that time in his speech on 26.11.2021 at the Inaugural Ceremony of the Constitution Day Celebration organised by Registry of Supreme Court of India has stated that "Pendency in lower judiciary is particularly alarming. It calls for a multi prolonged approach involving all the stake holders."

The Negotiable Instruments Act stipulates that dishonouring negotiable instruments, such as demand drafts, promissory notes, and checks, carries a two-time maximum penalty of jail and restitution. Although the aforementioned laws were initially believed to be adequate to address the needs of the companies and encourage business dealings, as the economy opened up and the number of companies increased, the courts became overworked and the processing of cases slowed down.

The reason behind the enactment of the Negotiable Instruments Act, 1881: to guarantee that negotiable instruments are valued fairly. The statute defines the term "negotiable instruments" to encompass the cheque, bill of exchange, and promissory note. However, the individual who wrote the cheque is referred to as the drawer, and the person who received it is known as the drawee.

That the purpose of the statute was to give negotiable instruments legitimacy. The Act's section 139 states as follows: Presumption in favour of holder. A cheque of the kind mentioned in section 138 is deemed to have been received by the bearer for the full or partial payment of any debt or other duty, unless the opposite is demonstrated.

That Hon'ble Supreme Court in Rangappa vs Sri Mohan (2010 11 SCC 441) has held:-

14. In light of these extracts, we are in agreement with the respondent-claimant that the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability. To that extent, the impugned observations in Krishna Janardhan Bhat (supra) may not be correct. However, this does not in any way cast doubt on the correctness of the decision in that case since it was based on the specific facts and circumstances therein. As noted in the citations, this is of course in the nature of a rebuttable presumption and it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested.

Thus, Hon'ble Supreme Court has clearly held that the presumption under the act is of legally enforceable debt and that the presumption under the said enactment is rebuttable presumption and is based on preponderance of probability.

To bring more credibility to the act and to help in expeditious disposal of the the complaint even the act was amended to provide for interim compensation:-

143A. Power to direct interim compensation.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant—

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent. of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under subsection (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973 (2 of 1974).

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section.]

It is evident from this that the statute offered interim compensation in order to facilitate the fastest possible recovery of funds. According to the Honourable Supreme Court, the interim compensation that must be paid is just directory in nature and is not required. However, this is only applicable during the trial; interim compensation must be deposited throughout the appeal.

The fundamental process for negotiable instruments consists of the court's need to be persuaded that a prima facie case has been presented. In order to issue process outside of the court's jurisdiction, the issuing body must first ensure that the case is made out. This requires the issuing body to wait and enquire as to whether the case is made out, in accordance with section 202 of the Criminal Procedure Code.

That the Hon'ble Supreme Court in **Sunil Todi vs State of Gujarat (LL 2021 SC 706)** and held that the Magistrate has adverted to: (i) The complaint; (ii) The affidavit filed by the complainant; (iii) The evidence as per evidence list and; and (iv) The submissions of the complainant. The order passed by the Magistrate cannot be held to be invalid as betraying a non-application of mind, the court held.

Thus the court has explained what constitutes application of mind under section 202 of Criminal Procedure Code.

Finally, it should be noted that although the Negotiable Instruments Act is a comprehensive law that establishes penalties, it is subject to the rules of criminal procedure. That under the Negotiable Instruments Act, the following procedure must be followed:

- A) Filing a complaint on an affidavit with supporting documentation and proof.
- B) Process issuance;
- C) Notice service;
- D) Bailable warrant issuance for failure to show;
- E) Non-bailable warrant issuance for failure to appear
- F) Plea Recording;
- G) Complainant's Evidence;
- H) Recording of Accused's 313 Crpc and Evidence
- I) The arguments made by each side
- J) Judgment

I. Filing a complaint on an affidavit with supporting documentation and proof.

A notice asking the accused to pay the outstanding balance within 15 days of receiving the notice must be sent to him as soon as the cheque is dishonoured. that the complainant may pursue a new cause of action to submit a complaint under section 138 of the Negotiable Instruments Act if the accused does not make payment within 15 days of receiving notice. Fifteen days are calculated from the date of, among other things, acceptance of service, unclaimed, insufficient address, and address not located. After then, a complaint must be submitted within a month of the date of the comment. It is important to emphasise that one month, not thirty or thirty-one, is the term used in this section. Therefore, the limitation begins on the day after the remark's next date and expires one day early on the date of the next month, regardless of the day of the month. Therefore it is necessary to see the judgment of the honourable Supreme Court in Saketh India Ltd. v. India Securities Limited, (1999) 3 SCC 1 which has held that one day has to be excluded for counting the one month limitation period and therefore, excluding the day, the limitation period started from next day and the limitation period expired with the day in the succeeding month immediately preceding the day corresponding to the date upon which the period started. Thus it can be seen limitation starts from the next date and hence has to be calculated as such.

No complaint under section 138 of the Negotiable Instruments Act may be maintained without the notice, cheque and return memo that are required to be filed with the complaint.

II. Process issuance;

That when the complaint and supporting materials are submitted, they are brought before the Honourable Special Court, which then considers them and follows protocol. The Honourable Special Court considers all relevant factors, forms a preliminary conclusion, and issues process against the accused. The accused are then given notice, which includes an invitation to appear before the honourable court and the ability to compound the charge if they so want.

III. Notice service

The accused must get notice from the complainant via a variety of channels, such as a police station, bailiff, and rpad. The accused must show up as soon as they get such a summons. Delivered, declined, unclaimed, locked door, and recipient not located are all considered forms of legitimate service.

IV. Bailable warrant issuance for failure to show

The court may issue a bailable warrant to compel the accused's appearance if, after service or considered service, the accused does not show up. In order to ensure the accused's appearance, the police station with authority must serve the bailable warrant. Following the issuance of a bailable warrant, the accused must appear in court to provide bail and a surety as instructed by the Honourable Court.

V. Non-bailable warrant issuance for failure to appear

If, following service or considered service, the accused does not attend, the court may issue a non-bailable warrant to force the accused's appearance. The non-bailable warrant must be served by the appropriate police station in order to guarantee the accused's appearance. The offender must appear in court to furnish bail and a surety as directed by the Honourable Court when a non-bailable warrant is issued.

VI. Plea Recording

That the accused may enter a guilty or not-guilty plea after appearing in person before the Honourable Court and having their plea recorded. The accused may be found guilty and given the proper penalty by the court if he enters a guilty plea. If the defendant enters a not guilty plea, the court may call witnesses to testify after recording the plea.

VII. Complainant's Evidence

The complainant may examine himself and any additional witnesses he may need to call in order to support his case in order to introduce evidence. The complaint must present proof to the court proving the contents of the documents, and the court will then exhibit the aforementioned documents. Following the conclusion of the main examination, the accused may go on the defensive and attempt to discredit the complainant and its witnesses. that following the same, the complainant may conclude his testimony and set the stage for the accused's and any necessary witnesses' testimony to be recorded.

VIII. Recording of Accused's 313 Crpc and Evidence

That the accused is required to record a statement in accordance with section 313 of the Criminal Procedure Code following the conclusion of the complainant's testimony. The accused is asked questions by the court on the evidence used against him under section 313 of the Criminal Procedure Code, and he is required to respond. Subsequently, in accordance with section 315 of the Criminal Procedure Code, the accused may, if he so chooses, proceed to the witness box, where he will face chief and cross examination. To demonstrate his innocence and the fact that he has been unfairly charged in the case, the accused may even call his own witnesses.

IX. The arguments made by each side

Following the accused's conclusion of his testimony, the next stage is arguments wherein each of the parties themselves or through there advocates present there respective sides by referring to citations and fact and evidence.

X. Judgment

Depending on the specifics of each case and governed by the rules and guidelines established by the Superior Court, the court may find the accused guilty or not. If the accused is found guilty, he may immediately request bail. If the accused has no past criminal history and his sentence is not more than three years, the court may also grant the accused bail so that he may file an appeal. Following the accused's initial bail request, the appellate court considers whether to issue a grand bill based on the specific facts of each case.

In the event that the accused is found not guilty, the court will ask him to post a bail bond committing him to appear in court if the appeal court so requests.

The accused's right to a fair trial and the complainant's right to a prompt resolution of his case must be balanced by the courts. In order to do this, the courts must make sure that the natural justice precepts are upheld and that each side is given an equal and sufficient chance to present their case. This is in accordance with the constitutional presumption of innocence until proven guilty as well as the fact.

The purpose of the provisions under the Negotiable Instruments Act is to guarantee that the instruments receive the proper legal standing. Even though the legal process can take some time, this is not always the case because the accused must be given a fair trial; rather, it is due to the overcrowding in the courts and the large volume of cases that judges must handle, making it impractical for them to expeditiously resolve every matter. Furthermore, it is not just because there are fewer judges available; it is also because other parties involved in the legal system, like advocates, must strive for success because they are occasionally too busy to take on all the cases at once or are absent because of personal issues. The shortcomings of the clientele who are disconnected from its advocates are also to blame. There are occasions when even prisoners flee, and when police officers are overworked and unable to execute warrants on time, the proceedings are delayed. Negotiable instruments The act is attempting to accomplish its goal by quickly resolving the issues, but due to uncontrollable conditions and practical implementation challenges, it can occasionally be challenging to carry out the act's slogan.

In Re: EXPEDITIOUS TRIAL OF CASES UNDER SECTION 138 OF N.I. ACT 1881 (SUO MOTU WRIT PETITION (CRL.) NO.2 OF 2020) Hon'ble Supreme Court has held that:-

The reasons for the backlog of cases, according to the learned Amici Curiae, is that while there is a steady increase in the institution of complaints every year, the rate of disposal does not match the rate of institution of complaints. Delay in disposal of the complaints under Section 138 of the Act has been due to reasons which we shall deal with in this order. To reduce the burden on the docket of the criminal courts, we recommend that a provision be made in the Act to the effect that a person can be tried in one trial for offences of the same kind under Section 138 in the space of 12 months, notwithstanding the restriction in Section 219 of the Code.

15. Offences that are committed as part of the same transaction can be tried jointly as per Section 220 of the Code. What is meant by "same transaction" is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined.

Some important citations are as under: -

The Apex Court, reiterated its view rendered in the case of Gooplast (P) Ltd. V. Chico Ursula D'Souza- 2003(3) SCC 232. Negotiable Instruments Act, 1881 to the effect that the said provision will not be applicable when the cheque is issued from an already closed account cannot be upheld on the wordings of Section 138.

There is no bar under that to revalidate a cheque. The drawer after six months' time can strike of the date and write another date on the cheque voluntarily thereafter, the cheque is valid for another six months from the changed date. In this regard, the decision reported in AIR 2002 SC page 38- in the case of Veera Expert Vs T. Kalavathy is relevant.

In Bir Singh Vs Mukesh Kumar, reported in (2019)4 SCC 197, wherein it is held that "the cheque duly signed and voluntarily made over to payee, was in discharge of debt or liability arises irrespective of whether cheque was post dated or blank cheque for filling by payer or any other

person, in absence of evidence of undue influence or coercion”.

In 2008(1) Crimes 167(Kar)- Nagaraja Upadhyaya Vs Sanjeevan, wherein, it is held that-
“Account of the accused was closed not on the intimation given by the accused, but the account was closed as per the rules of the bank and therefore, the accused is entitled to acquittal”

In Trimbak S Hegde Vs Sripad reported in (2022) 1 SCC 742. It is held further that rebuttal of presumption must be made before the Trial Court and not before the High Court.

in AIR 2008 SC 278 in the case of John K John Vs. Tom Verghees & another, it is held that the presumption U/S 139 could be raised in respect of some consideration and burden is on the complainant to show that he had paid amount shown in the cheque.

Regarding the presumption, the latest in the case of Uttam Ram Vs Devinder Singh Hudan, reported in (2019) 10 SCC 287 wherein the Hon’ble Supreme Court has referred to other decisions.

In the latest decision of the Apex Court in the case of A.C. Narayan Vs State of Maharashtra, has reiterated its earlier view with some modification. It is held that however, it is expected that such power of attorney holder or legal representative(s) should have knowledge about transaction in question so as to able to bring on record truth of grievance/offence—If complaint is filed for and on behalf of payee or holder in due course, that is good enough compliance with Section 142 of N.I. Act.

As a result, it is evident that the Negotiable Instruments Act is needed in order to validate negotiable instruments and support the maintenance of trust in them.