



DISHONOUR OF CHEQUES, (2010). By S. N. Gupta, Universal Law Publishing Co. Ltd., C-FF-1A, Dilkush Industrial Estate, (Near Azadpur Metro Station), G.T. Karnal Road, Delhi-110033. Pp. 1+ 443, Price Rs. 395/-.

ADVENT OF cheque in the present market has given a new dimension to the commercial and corporate world in the era of globalization, privatization and technological world, which is quite evident when people generally prefer to do transactions through a piece of paper called 'cheque' instead of carrying the currency. The importance of cheque is not only for banking transactions purposes, but presently almost all the transactions are being executed by way of cheque. Moreover, present paradigm has also witnessed a sea change when significant changes in the mode and conveyance of money have already taken place. Today plastic money and electronic transfers have radically replaced the conventional financial dealings. Information Technology Act, 2000 and contemporary practices further envisage that legislature brings into force corresponding changes in the provisions related to dishonour of cheque in Negotiable Instrument Act 1881. Thus, considering the need for the update of legislations, the judiciary has the duty to use interpretative process to the fullest extent permissible by the enactment. It is further presumed that the Parliament intends the court to apply to an ongoing Act a construction that continuously updates its wording to allow for changes in the Act which was framed about a decade ago.

In the light of above facts and tremendous developments, the author has tried his best to do justice to the subject by incorporating the latest material and by making a reference to the latest judgments on the subject. The book under review illustrates the various instances of dishonour of cheques with supportive case law under the updated various legislations. The book is divided into eighteen chapters, each one of them independently dealing with the subject mentioned as title of the chapter. The introductory chapter is a general discourse on the importance of the cheque, which very aptly begins with the brief historical introspection. The chapter further deals with multifarious uses of cheques, liability thereof and subsequently followed by the concept of dishonour of cheque, conviction, and quantum and compounding of offence.

The second chapter gives a general analogy about the rightful dishonour along with cases when bank may refuse to honour cheques, effect of endorsement, forgery for the purpose of cheating and protection of bank and banker. The third chapter traces the instances of wrongful dishonour of cheque very meticulously. The matter of wrongful dishonour of cheque is not a minor issue for a bank. In the instant chapter for wrongful dishonour, customer's authority to claim compensation from



bank not only for breach but, its negative effect on him and in business are also discussed with illustrative instances (Indian cases). The very next chapter, chapter 4 titled as 'Summary Suits on Cheques Dishonoured' is on section 138 of the Negotiable Instrument Act, 1881 which deals with criminal proceedings against dishonour of cheques. Order 37 of the Code of Civil Procedure, 1908 deals with the summary procedure. The author in the present chapter has dealt with the concept in a very systematic manner.

Chapter 5 analyses and gives detailed account of offence and prosecution under Indian Penal Code, 1860. The author in the beginning mentions that the existence of a civil remedy would not necessarily exclude a trial by a criminal court of an offence. There are many transactions which result in civil as well as criminal liability. In this chapter detailed provisions with great relevancy are discussed with case law as well.

In Chapter 6 the author has discussed in detail the constitutional validity of the provisions of section 138 of the Negotiable Instrument Act. This chapter discusses in detail about the legal implications and different parameters to deal with the offence of dishonour and prosecution of drawer. Next chapter titled 'Notice' exposes the relevancy of notice in banking transaction. Notice means knowledge or information of a fact. Where a person has knowledge of any fact or it could be provided that under the circumstances he must have knowledge of that fact, he is said to have notice of that fact. In this part, various dimensions of notice have been discussed like validity of notice, period, presumption, different modes, *etc.* Chapter 8 entitled 'Statutory Presumption' refers to rule of evidence. Brief account of liability and presumption is also discussed.

Further analytical study with special reference to Negotiable Instrument Act, 1881, Indian Contract Act, 1872, Indian Evidence Act, 1872 with relevant case law also beautifies the concept of presumption.

Next part of the book *i.e.* chapter 9 underlines the checks and balances, dishonour on presentation, when does the offence become complete and ingredients of the offence of dishonour are discussed under the head, 'Defence which may not be allowed in any prosecution under section 138'. Keeping in view the commercial and corporate development, chapter 10 elaborates upon the offences of companies. Through this part, the author has discussed in detail overall development regarding dishonour of cheque with all the relevant provisions supported by case law. Chapter 11 is a unique account of cognizance of offences and discusses procedural requirements under the Code of Criminal Procedure, 1973.

Chapters 13 and 14 deal with the proceedings under the Negotiable Instruments Act, 1881 and discusses all essential requirements for adjudication and for the cure for dishonour. Keeping in view the pragmatic view the author incorporated a full chapter dealing with the precautionary steps that one should take in dealing with



cheque. For different categories of persons dealing with cheque, proper steps are discussed with relevant case law at appropriate place. Chapter 15 shows model form of a notice which may be used to deal a situation where there is dishonour of cheque. Chapter 16 deals with case law and functional dimensions of judicial activism in the area. The author considers the judicial function of a public trust and wants increased role of Indian judiciary in present scenario. At last, chapters 17 and 18 entitled 'Law of Payment and Settlement Systems' and 'Related Statutes' provides readily available provisions dealing with the topic in hand.

The book is informative, but lacks indepth analysis of the subject matter. With a little more analytical approach it could have become thought provoking and much more useful for researchers and practitioners in this area of law.. Moreover, in this book very less reference is given of e-banking, the concept has been superficially touched upon by the author. In today's technological development when e-banking and e-cheque concept have emerged and occupies control place in banking transactions, it becomes imperative to incorporate a detailed chapter relating to e-frauds and e-transactions.

This book has been moderately priced and comes at the time when there is need to deal with such situations. This book would be of immense value to bank employees, lawyers, judges, students, teachers and business world.

*Sanjay Sindhu\**

---

\* Associate Professor, Department of Laws, Himachal Pradesh University Summerhill, Shimla.