



DISHONOUR OF CHEQUES – LIABILITY CIVIL AND CRIMINAL  
(2001). By S.N. Gupta. Universal Law Publishing Co. Pvt. Ltd.,  
Delhi. Pp. 410. Price Rs. 250.

PRIOR TO the amendment of the Negotiable Instruments Act, 1881, there prevailed inconsistent views of different courts as regards dishonour of cheques *vis-à-vis* insufficiency of funds. Thus an effective and efficacious recourse to criminal action was not possible. The drawer of the cheque could not successfully be prosecuted unless dishonest intention was proved. As far as section 420 and 415 of IPC were concerned there was always a conflict of opinion. As a result for a person to escape punishment was very easy.

Nonetheless, the then prevalent view required two things to be fulfilled. Firstly, it had to be established that an express representation is made so as to prove that the drawer has requisite amount in the bank. Secondly, there had to be an express allegation in the complaint that the bouncing of cheque has resulted in the harm to the complainant *vis-à-vis* body, mind, reputation or property. The mere fact that the cheque stood dishonoured would not make the accused liable for cheating.

This resulted in the dishonouring of cheque attracting no criminal liability even when the drawer knew for certain that he had not sufficient balance so as to honour the cheque. By the passing of the Banking, Public Financial Institutions and Negotiable Instrument Laws (Amendment) Act, 1988 (66 of 1988), the chapter comprising sections 138 to 142 were inserted in the Negotiable Instruments Act, 1881. This amendment was a need of the time and rectified all the existing anomalies and loopholes.

It is noteworthy that the book under review is in its fourth edition within a span of a decade and thus speaks volumes about its worthiness. The author, in a simple and lucid style, has very exhaustively dealt with the subject running into 13 chapters. A detailed synopsis at the beginning facilitates easy location of topics by the author. Emphasis and focus of the author has throughout been on the dishonour of cheques therefore the aspects of the Negotiable Instruments Act, 1881 have been given a go-by for the better.

In the very first chapter the author discusses the fundamentals relating to cheques like its requisites, characteristics, parties to the cheque etc. Moreover, in this chapter the author has rightly settled the prevailing controversy as regards the date of drawing the post-dated cheques. There were inconsistent views on the point wherein one view was that drawing date of a cheque is the date which it bears whereas the other view was that



it is the date on which the drawer signed the cheque. The author after discussing various case laws has come to the conclusion that cheque is drawn on the date which it bears. Furthermore the author has given the specimen of a return memo mentioning a series of reasons for the dishonour of cheque.

The second and third chapters are devoted to the discussion of rightful and wrongful dishonour of cheques respectively. If for instance there are reasons for the bank to dishonour a cheque it is called a 'rightful dishonour' and if there is negligence on the part of the bank it is 'wrongful dishonour'. The author mentions that when there is a rightful dishonour, holder in due course has remedy both civil and criminal against the drawer and endorser of cheque.

In chapter IV the civil liability of the drawer in case of dishonour of the cheque is discussed. Further the commentary on special procedure provided for summary suits and when leave to defend is to be granted to the drawer of a dishonoured cheque are important features.

Similarly chapter V covers penal liability under the Indian Penal Code. Concept of dishonour of cheque and punishment before the amendment and subsequent to the amendment has been discussed at length. This is the longest chapter having discussed each minute point very intricately and exhaustively.

Chapter VI speaks about the concept of 'holder in due course'. Chapter VII discusses the various defences which may not be allowed in any prosecution under section 138. The author observes that absence of *mens rea* at time of issuance of cheque will not be accepted as a defence in case of prosecution under section 138. This reviewer thinks that adequate attention has not been paid by the author *vis-à-vis* the defences which can be taken under section 138, as only a passing reference was made to the same.

A separate chapter i.e. chapter VIII is devoted to the offences by companies. Chapter IX is rather technical in nature. It deals with the various details regarding the cognizance of offences, ingredients for taking cognizance etc. Chapter X deals with quashing the proceeding initiated under section 138.

In chapter XI the author opines that to search a cure for dishonour of cheque, the battle is not to be fought on the legal field alone. A change is also needed in the moral and psychological approach to the subject to establish a convention that "dishonour of a cheque never pays" and it should be condemned unless warranted by serious consideration to prevent some positive wrong. The reviewer totally agrees with this proposition of the author.

The title of chapter XII "All That You Must Know To Escape Dishonour Of Cheque" itself suggests that the author gives importance tips through this chapter. Chapter XIII gives 23 useful proforma. This



chapter is very helpful from practitioners point of view.

Case law ready-referencer given at the end of book facilitates quick location of cases on particular points. Moreover, the provisions of the Negotiable Instruments Act, 1881 at the end of the book only adds to its usefulness.

The reviewer must admit to having enjoyed reading the book immensely. However, it must be confessed that throughout the reading he had a feeling that the book is more a compilation of case law than a commentary. It is therefore suggested that the author must pour more attention towards expressing his views on the various topics and must healthily discuss and also critically analyze the latest judgements.

All said and done the book is definitely a great contribution of the author on the subject and so the reviewer must congratulate him for his achievements. The print of the book and the paper quality are absolutely flawless and upto the mark. Moreover, the book is very handy and at an affordable price.

*Satyajit A. Desai\**  
*Anadha P. Shete\*\**

---

\*Advocate, Supreme Court of India.

\*\*Advocate.



**BOOKS RECEIVED FOR REVIEW**

K. VEERASWAMI, *The Perils to Justice – A Judge Thinks Aloud* (2001). Eastern Law House Pvt. Ltd., 54 Ganesh Chunder Avenue, Kolkota 700 013. Pp. xxix+420. Price Rs. 60/-.

H.L. KUMAR, *Employees' State Insurance – Act, Rules & Regulations* (2001). Universal Law Publishing Co. Pvt. Ltd. C-FF-1A, Ansal's Dilkhush Industrial Estate, G.T. Karnal Road, Delhi-110 033. Pp. xxxiv+276. Price Rs. 225/-.

MANISH ARORA, *Career In Law* (2001). Universal Law Publishing Co. Pvt. Ltd. C-FF-1A, Ansal's Dilkhush Industrial Estate, G.T. Karnal Road, Delhi-110 033. Pp. viii+126. Price Rs. 95/-.

A. E. CHELLIAH, *Don't-s & Do-s for the Bench, Bar & Other Areas* (2001). Decent Publications, 29, Bharathiar Colony, Ashok Nagar, Chennai-600 083. Pp. 187. Price Rs. 295/-.

PREM SHANKAR KHARE, *Manvadhikar Ke Mool Aadhar* (2001). Roopa Pratyush, 108 A, Patel Nagar, Allahabad-211 003. Pp. 144. Price Rs. 160/-.