

nia s. 138 - In effect, its object appears to be both punitive as also compensatory and restitutive, in regard to cheque dishonour cases - Chapter XVII of the Act is a unique exercise which blurs the dividing line between civil and criminal jurisdictions - A stage has reached when most of the complainants, in particular the financing institutions (particularly private financiers) view the proceedings under Section 138 of the Act, as a proceeding for the recovery of the cheque amount, the punishment of the drawer of the cheque for the offence of dishonour, becoming secondary

R. Vijayan v. Baby, (2012) 1 SCC 260, this Court referred to the provisions of Chapter XVII of the Negotiable Instruments Act, observing that Chapter XVII is a unique exercise which blurs the dividing line between civil and criminal jurisdictions. The Court held:

“16. We propose to address an aspect of the cases under Section 138 of the Act, which is not dealt with in *Damodar S. Prabhu* [(2010) 5 SCC 663 : (2010) 2 SCC (Cri) 1328 : (2010)2 SCC (Civ) 520] . It is sometimes said that cases arising under Section 138 of the Act are really civil cases masquerading as criminal cases. The avowed object of Chapter XVII of the Act is to “encourage the culture of use of cheques and enhance the credibility of the instrument”. In effect, its object appears to be both punitive as also compensatory and restitutive, in regard to cheque dishonour cases. Chapter XVII of the Act is a unique exercise which blurs the dividing line between civil and criminal jurisdictions. It provides a single forum and single proceeding, for enforcement of criminal liability (for dishonouring the cheque) and for enforcement of the civil liability (for realisation of the cheque amount) thereby obviating the need for the creditor to move two different fora for relief. This is evident from the following provisions of Chapter XVII of the Act:

- (i) The provision for levy of fine which is linked to the cheque amount and may extend to twice the amount of the cheque (Section 138) thereby rendering Section 357(3) virtually infructuous insofar as cheque dishonour cases are concerned.
- (ii) The provision enabling a First Class Magistrate to levy fine exceeding Rs 5000 (Section 143) notwithstanding the ceiling to the fine, as Rs 5000 imposed by Section 29(2) of the Code.
- (iii) The provision relating to mode of [service](#) of summons (Section 144) as contrasted from the mode prescribed for criminal cases in Section 62 of the Code.
- (iv) The provision for taking [evidence](#) of the complainant by affidavit (Section 145) which is more prevalent in civil proceedings, as contrasted from the procedure for recording evidence in the Code.
- (v) The provision making all offences punishable under Section 138 of the Act compoundable.

17. The apparent intention is to ensure that not only the offender is punished, but also ensure that the complainant invariably receives the amount of the cheque by way of compensation under Section 357(1)(b) of the Code. Though a complaint under Section 138 of the Act is in regard to criminal liability for the offence of dishonouring the cheque and not for the recovery of the cheque amount (which strictly speaking, has to be enforced by a civil suit), in practice once the criminal complaint is lodged under Section 138 of the Act, a civil suit is seldom filed to recover the amount of the cheque. This is because of the provision enabling the court to levy a fine linked to the cheque amount and the usual direction in such cases is for payment as compensation, the cheque amount, as loss incurred by the complainant on account of dishonour of cheque, under Section 357(1)(b) of the Code and the provision for compounding the offences under Section 138 of the Act. Most of the cases (except those where liability is denied) get compounded at one stage or the other by payment of the cheque amount with or without [interest](#). Even where the offence is not compounded, the courts tend to direct payment of compensation equal to the cheque amount (or even something more towards interest) by levying a fine commensurate with the cheque amount. A stage has reached when most of the complainants, in particular the financing institutions (particularly private financiers) view the proceedings under Section 138 of the Act,



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as a proceeding for the recovery of the cheque amount, the punishment of the drawer of the cheque for the offence of dishonour, becoming secondary.”

(emphasis supplied)

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