NEGOTIABLE INSTRUMENTS AND THEIR
INDORSEMENTS IN INDIA

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ABSTRACT

The article begins with a general overview of legislation relating to negotiable instruments in India – Negotiable Instruments Act, 1881. The article deals with the transferability of negotiable instruments but the focus has been to highlight the position in regards to indorsement of such instruments.

The slightly less talked about but common issue with regards to indorsements negotiable instruments, i.e. forged indorsements, has also been dwelled upon. It covers within its ambit the liability and punishments in case of a forged indorsement. While the Negotiable Instruments Act covers the liability in case of forged indorsements, it has not dealt with the punishments in case of such an incident and reliance has to be placed on other legislations to make the same punishable.

Despite being a relatively old legislation, this aspect of the Act has not been in discussed often and thus the article aims to bring to the foreground all of the above mentioned points of discussion.

KEY WORDS

Negotiable Instruments, Transferability, Indorsement (Endorsement), Forgery, Liability

INTRODUCTION

“Mercantile usage is the raw material, mercantile law is the manufactured article”

- Sir McKenzie Chalmersⁱ said the above while speaking about the state of English law before the enactment of the Bills of Exchange Act, 1882 (the English counterpart of Negotiable Instruments Act).

The principal source dealing with negotiable instruments was the English common law of contracts. In India, it is contained in the Negotiable Instruments Act² (“Act”). The main object of the Act was to legalize the system by which instruments, contemplated by it, could pass from hand to hand by negotiation like any other goods. The purpose of the Act was to present orderly and authoritative rules relating to negotiable instruments. To achieve this objective, the legislature thought it proper to make provisions in the Act for conferring

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¹ SIR MCKENZIE CHALMERS, INTRODUCTION TO THE FIRST EDITION OF CHALMERS’ NEGOTIABLE INSTRUMENTS 9.
² Negotiable Instruments Act, 1881, No. 26 of 1881

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certain privileges to the mercantile instruments contemplated under it and provide special procedure in case the obligation under the instrument was not discharged.

Evolution of Mercantile law and law of negotiable instruments go hand in hand. The mercantile community found an easy mode of payment in such instruments. The law relating to negotiable instruments is the law of the commercial world in general and not of any one nation as it deals with certain principles of equity and usages of trade established to regulate the dealing of merchants in commercial scenarios. Even today, the laws of several countries are similar in many respects differing only on questions of detail and not principles. This similarity of law is the basis for the vast international transactions that are carried on among the different countries.

With the expansion of trade and commerce, negotiable instruments have assumed an international importance.

**METHODOLOGY**

In this Article, doctrinal research methodology has been used. Different legislations, judgments and books have been referred to in the conduct of the research.

**NEGOTIABLE INSTRUMENTS**

1. **Definition**

   The word ‘negotiable’ means transferable from one person to another in return for consideration and the word “instrument” means, a written document by virtue of which a right is created in favour of some person. A negotiable instrument is a document contemplated by or consisting of a contract, guaranteeing the payment of a specific amount of money, either on demand, or at a set time, with the payer named on the document.

   It may be defined as "an instrument, the property in which is acquired by anyone who takes it bona fide, and for value, notwithstanding any defect of title in the person from whom he took it, from which it follows that an instrument cannot be negotiable unless it is such and in such a state that the true owner could transfer the contract or engagement contained therein by simple delivery of instrument".  

   According to this definition the conditions of negotiability are that:

   (i) The instrument should be freely transferable.

   (ii) The person who takes it for value and in good faith is not affected by the defect in the title of the transferor.

   (iii) Such a person can sue upon the instrument in his own name.

The Act defines Negotiable Instrument to mean a promissory note, bill of exchange or cheque payable either to order or to bearer.⁴

The title of the Act is deceptive as the Act doesn’t deal with all kinds of negotiable instruments but only with three types of instruments viz., a promissory note, a bill of exchange and a cheque as negotiable instruments. However, this doesn’t mean that other instruments are not negotiable instruments provided that they satisfy the abovementioned conditions of negotiability.

2. Promissory Note

A ‘promissory note’ is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instrument.⁵

Although possibly non-negotiable, a promissory note may be a negotiable instrument if it fulfills the criteria of being such an instrument. The definition of promissory note itself indicates that they may be of several types. Out of these various categories of promissory notes, some may be treated as 'negotiable instrument' within the meaning of Section 13 of the Negotiable Instruments Act and others may not be, but by that very fact, the nature of the document will not change, if it is otherwise a promissory note. In other words, if a document is a 'promissory note' within the meaning of Section 4 of the Act, it will continue to be 'promissory note', whether it comes or does not come within the definition of 'negotiable instrument' under Section 13 of the Act.⁶

3. Bill of Exchange

A ‘Bill of Exchange’ as an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.⁷

A bill of exchange is an order made by one person to another to pay money to a third person. In its inception, a bill of exchange requires three parties: the drawer, the drawee, and the payee. Drawer is the person or party who draws the bill i.e. gives the order to pay money to the third party. Drawee is a person or party upon whom the bill is drawn i.e. who is ordered to pay. He becomes an acceptor when he indicates his willingness to pay the bill. Payee is the person or party who is finally payable under the bill i.e. the party in whose favor the bill is drawn. All parties need not be distinct persons. Thus, the drawer may draw on himself payable to his own order.

4. Cheques

⁴ Section 13 of the Act.
⁵ Section 4 of the Act.
⁶ BolisettiBhavannarayana vs KommuruVullakki Cloth Merchant, 1996 (1) ALT 917.
⁷ Section 5 of the Act.
A cheque is a bill of exchange drawn on a specified banker, and not expressed to be payable otherwise than on demand.\(^8\)

Thus, a cheque is a bill of exchange with two additional qualifications, namely: (i) it is always drawn on a banker, and (ii) it is always payable on demand. A cheque, being a species of a bill of exchange, must satisfy all the requirements of a bill; it does not, however, require acceptance.

A cheque is the only instrument that can be payable to bearer on demand. No other bill of exchange or hundi can be made payable to bearer on demand and no promissory note or a bank draft can be made payable to bearer at all, whether on demand or after a specified time.\(^9\)

Cheques include within its purview the electronic image of a truncated cheques and cheques in the electronic form.

A ‘cheque in electronic form’ means a cheque which contains the exact mirror image of a paper cheque and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signatures and asymmetric crypto system; and a ‘truncated cheque’ means a cheque which is truncated during the course of a clearing cycle, either by the Clearing House or by the bank, whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.\(^10\)

Thus, cheque truncation involves the stoppage of the physical movement of the cheque and the replacement by the image(s) of the instrument and the corresponding data is contained in Magnetic Ink Character Recognition line.

The place where the exchange of instruments occurs and the claims are settled is known as the Clearing House. In India, the clearing system is local and confined to a defined jurisdiction covering all the banks and branches situated in the area. The clearing house is a voluntary association of banks under the management of a bank where the settlement accounts are maintained. The managing bank of the clearing house would be decided as mentioned in rules\(^11\) made by the Reserve Bank of India (“RBI”) in this respect.

5. **Demand Drafts**

A Demand Draft is a bill drawn either on demand or otherwise by one bank on another in favour of a third party or by one branch of a bank on another branch of the same bank or by the head office on a branch or vice versa.

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\(^8\) Section 6 of the Act.

\(^9\) Section 31 of the Reserve Bank of India Act, 1934, No. 2 of 1934.

\(^10\) Explanation I to Section 6 of the Act.

Earlier, there was a lot of confusion as to whether a Demand Draft constituted a negotiable instrument but analyzing the Act gives clarity on this issue.

On analyzing the definition of 'bill of exchange', it is clear that a demand draft is a bill of exchange and if it is a bill of exchange it becomes a negotiable instrument as per the Act.\(^\text{12}\)

The word ‘cheque’ hereinafter would also mean to include ‘demand drafts’ and vice versa.

**TRANSFERIBILITY OF NEGOTIABLE INSTRUMENTS**

A negotiable instrument can be transferred either by indorsement and delivery if it is an instrument payable to order or by mere delivery if it is a bearer instrument.

1. **Types of Instruments**

   From the above it can be seen that an instrument may be payable to the bearer or to a specified person or to his order.

   (i) **Instrument payable to Bearer**

       A negotiable instrument is payable to bearer which is expressed to be so payable or on which the only or last indorsement is an indorsement in blank.\(^\text{13}\)

       Bearer means a person in possession of an instrument which is payable to bearer.

   (ii) **Instrument payable to order**

       A negotiable instrument is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable. Where an instrument either originally or by indorsement, is expressed to be payable to the order of a specified person and not to him or his order, it is nevertheless payable to him or his order at his option.\(^\text{14}\)

2. **Negotiation**

   When a negotiable instrument is transferred to any person, so as to constitute the person the holder thereof, the instrument is said to be negotiated.\(^\text{15}\)

3. **Crossing of Cheques/Drafts**

   A cheque is either ‘open’ or ‘crossed’. An open cheque can be presented by the payee to the paying banker and is paid over the counter. A crossed cheque cannot be paid across the counter but must be collected through a banker.

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\(^\text{13}\) Explanation II to Section 13 of the Act.

\(^\text{14}\) Explanation I and III to Section 13 of the Act.

\(^\text{15}\) Section 14 of the Act.
A crossing is a direction to the paying banker to pay the money generally to a banker or to a particular banker, and not to pay otherwise. A crossed cheque is a cheque that has been marked to specify an instruction about the way it is to be redeemed. It is payable only through a collecting banker and not directly at the counter of the bank. Crossing ensures security to the holder of the cheque as only the collecting banker credits the proceeds to the account of the payee of the cheque. The format and wording varies between countries, but generally two parallel lines and/or the words 'Account Payee' may be placed. By using crossed cheques, cheque writers can effectively protect the cheques they write from being stolen and cashed.

To restrain negotiability, addition of words "Not Negotiable" or "Account Payee Only" is necessary. A crossed bearer cheque can be negotiated by delivery and crossed order cheque by endorsement and delivery. Crossing affords security and protection to the holder of the cheque.

4. Not Negotiable Crossing

A person taking a cheque generally or specifically, bearing in either case the words “Not Negotiable”, shall not have, and shall not be capable of giving a better title to the cheque than that which the person from he took it had.16

The words “not negotiable” do not affect the transferability of an instrument. It only restricts the negotiability of the instrument. A cheque so crossed is capable of passing freely from one person to another. But the transferee will not acquire a better title than his transferor and therefore the true owner can always reclaim it or the amount of it irrespective of the fact whether the banker paying it is protected or not. Such crossing of the cheque does not render the instrument non-transferable, it only deprives the instrument of any further negotiability.17

A cheque bearing such crossing can be transferred but the transferee gets it subject to the defect of the transferor. Therefore, in such cases there cannot be a holder in due course. Holder in due course means any person who for consideration became the possessor of a negotiable instrument, if payable to bearer, or the payee or indorsee thereof, if it was payable to order.18 This should happen before the amount mentioned in it becomes payable and there shouldn’t be any sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

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16 Section 130 of the Act.
17 Tailors Priya vs. Gulabchand Dhanraj, AIR 1963 Cal 36; H.R. GUPTA, PRACTICAL BANKING IN INDIA 152; RAM NAresh CHAUDHARY, LAWS RELATING TO CHEQUES 231; SATISH B MATHUR, BUSINESS LAWS BY TATA MCGRAW HILL 344.
18 Section 9 of the Act.
The Banker who is presented with the “non negotiable” cheque should be cautious. He cannot avail the defense that he dealt with the cheque pending revocation of the voidable title in the customer.\textsuperscript{19}

This also applies to Drafts.\textsuperscript{20}

5. **Indorsement**

Indorsement is one of the most common ways to negotiate/ transfer a negotiable instrument. It has been dealt with in detail below.

**INDORSEMENT OF NEGOTIABLE INSTRUMENTS**

1. **Indorsement of a negotiable instrument**

When the maker or holder of a negotiable instrument signs the instrument, otherwise than as such maker, but for the purpose of negotiation, either on the back or face thereof or on a slip of paper annexed thereto, or for the same purpose signs a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the negotiable instrument. Such maker or holder is called the "indorser".\textsuperscript{21}

An Indorsement can be of two types: Indorsement in Blank and Indorsement in Full.\textsuperscript{22}

(i) **Indorsement in Blank:**

An indorsement is said to be "in blank" if while indorsing the instrument, the indorser signs only his name on the negotiable instrument.

To negotiate a cheque indorsed in blank, even simple delivery is sufficient. An instrument endorsed in blank is payable to the bearer thereof even though it was originally payable to order.\textsuperscript{23}

(ii) **Indorsement in Full:**

For an indorsement to be “in full”, while indorsing the instrument, the indorser also has to add a direction to pay the amount mentioned in the instrument to, or to the order of, a specified person. The person so specified in the indorsement is called the "indorsee" of the instrument.

It is possible for a cheque indorsed in blank to be converted into indorsement in full. This can be done by any holder of the instrument. In order to do so, the holder may write above the indorser's signature a direction to pay the cheque to, or to the order of, himself or some other person.

To negotiate a cheque indorsed in full, delivery and indorsement is necessary.

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\textsuperscript{19}Tate vs. Wilts and Dorset Ban, (1899) 1 Legal Decisions Affecting Bankers 286 (United States).
\textsuperscript{20}Section 131-A of the Act.
\textsuperscript{21}Section 15 of the Act.
\textsuperscript{22}Section 16 of the Act.
\textsuperscript{23}Section 54 of the Act.
Indorsement of a negotiable instrument followed by delivery transfers to the indorsee the right therein. Such indorsement also transfers the right of further negotiation. An indorsement may restrict or exclude such right but this restriction/exclusion has to be by express words.\(^{24}\)

There may be two other kinds of indorsements:

(iii) Partial Indorsement:

If only a part of the amount of the instrument is endorsed, it is a case of partial indorsement. An endorsement which purports to transfer to the indorsee only a part of the amount payable, or which purports to transfer the instrument to two or more endorsees severally, is not valid.

(iv) Conditional Indorsement:

If the endorser of a negotiable instrument, by express words in the endorsement, makes his liability or the right of the endorsee to receive the amount due thereon, dependent on the happening of a specified event, although such event may never happen, such endorsement is called a conditional endorsement.\(^{25}\)

2. Forged Indorsement

Denning, L.J. observed that, an indorsement may be forged or unauthorized and therefore invalid but nevertheless there may be nothing about it to give rise to any suspicion. Instruments, despite not being complete and regular on the face, may be valid to pass the titles in the instruments to the plaintiff bank. But due to irregularity in the indorsements, the plaintiff bank cannot become the holder in due course thereof.\(^{26}\)

An instrument which contains forged signature of the drawer or indorser is a nullity, even if the holder obtains the genuine signature of the concerned part later. A forged signature on a bill of exchange is wholly inoperative. The bank does not get protection where the indorsement is a forgery.\(^{27}\)

Also, an acceptor of a bill of exchange already indorsed is not relieved from liability by reason that such indorsement is forged, if he knows or had reason to believe the endorsement to be forged when he accepted the bill.\(^{28}\)

The indorsement on a negotiable instrument through which a holder in due course lays his claim must be genuine, and, consequently, a forged indorsement creates no title in favour of the holder in due course.\(^{29}\) A forged indorsement is a nullity and conveys no title to the indorsee. It is as much a nullity as a forged cheque, provided

\(^{24}\) Section 50 of the Act.
\(^{25}\) Section 52 of the Act.
\(^{26}\) Arab Bank Ltd. V. Ross, (1952) 2 QB 216 (UK).
\(^{27}\) Kredit Bank Cassel GmbH vs. Sehenkers, 1927 All ER 421 (UK).
\(^{28}\) Section 41 of the Act.
there has been no negligence on the part of the true owner in allowing the instrument to come into the hands of the forger.\(^\text{30}\)

3. **Forgery**

Forgery or forged indorsement has not been defined in the Act. For the same, reliance has to be placed on the India Penal Code\(^\text{31}\) (“IPC”).

Whoever makes any false documents or electronic record, in full or in part with the intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.\(^\text{32}\)

A person is said to make a false document or false electronic record in following three cases\(^\text{33}\):

Firstly, who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document or makes or transmits any electronic record or part of any electronic record, affixes any digital signature on any electronic record, or makes any mark denoting the execution of a document or the authenticity of the digital signature, with the intention of causing it to be believed that such document or part of document, electronic record or digital signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed;

Secondly, who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alteration;

Thirdly, who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alterations.

\(^{30}\)KodumlKahimal v. Karachi Bank Ltd., AIR 1921 Sind. 172.

\(^{31}\)India Penal Code, 1860, No. 45 of 1860

\(^{32}\)Section 463 of IPC.

\(^{33}\)Section 464 of IPC.
It has been clarified that even a man’s signature of his own name may amount to forgery. Even making a false document in the name of a fictitious person or a deceased person, may also amount to forgery.

**PUNISHMENT AND LIABILITY**

1. **Liability of the Bank**

1.1. **When not liable**

It is the duty of the banker to verify the prima facie genuineness of the cheque and any fraud, forgery or tampering apparent on the face of the instrument that can be verified with due diligence and ordinary care. A banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment. Section 131-A makes the same applicable to drafts.

The protection under Sections 131 and 131A is afforded only if the banker has received the payment on behalf of a customer in good faith and with due diligence. If the collecting bank did not act with due care and caution expected of it, the protection under sections 131 and 131A is not available to such bank.

Section 131 makes it clear that when a banker receives from its customer a cheque crossed in its customer's behalf, the fact that the customer's title to the cheque is defective does not render the banker liable to the true owner. But the protection under the section is afforded only if the banker has received payment in good faith and without negligence, otherwise the bank which receives payment on a forged cheque or a cheque to which the customer has a defective title is liable in action of conversion to the true owner.

A banker is discharged from the liability only if he has acted in good faith and without negligence. Whether a bank is guilty of negligence depends on the particular facts of each case and the onus of proving “good faith” and “absence of negligence” is on the banker claiming protection under Section 131.

Despite the fact that negligence depends on the facts of each case, tests for determining negligence have been laid down in various judgments. The test of negligence is whether the transaction of paying in any given cheque coupled with the

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34 Section 131 of the Act.
35 Central Bank of India Ltd., Bombay-1 vs. Gopinathan Nair, AIR 1970 Ker 74; BapulalPremchand vs. Nath Bank Ltd., AIR 1946 Bom 482.
38 Commissioner of Taxation v. English, Scottish and Australian Bank Ltd., AIR 1920 PC 88; Brahma Bahadur v. Chartered Bank of India, infra note 36.
circumstances antecedent and present was so out of the ordinary course that is ought to have aroused doubts in the banker's mind and caused him to make enquiries.\textsuperscript{40} The banker is bound to make inquiries when there is anything to rouse suspicion that the cheque is being wrongfully dealt with in being paid into the customer's account. However, the banker is not called upon to be abnormally suspicious.\textsuperscript{41}

Banker has an option of reducing the liability by proving negligence on the part of the owner/holder of the instrument. If contributory negligence on the part of the true owner is established, he will also have to bear a portion of the loss and the entire loss may not fall on the Banker even if he may be held to be negligent.\textsuperscript{42}

The Supreme Court summed up all the above mentioned principles governing the liability of a collecting banker in Kerala State Co-operative Marketing Federation v. State Bank of India &Ors.\textsuperscript{43}

1.2. Procedure to be followed at the bank

RBI has issued Procedural Guidelines\textsuperscript{44} to lay down the proper process to be followed when an indorsed negotiable instrument is presented at the bank for clearing.

Cheque Truncation System (CTS) is presently operated on grid basis. The entire cheque volume in the country is consolidated into the three grids and managed through the Bankers’ Clearing House at New Delhi, the Chennai Bankers’ Clearing House and the Western Grid Bankers’ Clearing House.

Since the payment processing is done on the basis of images, the onus of verifying the prima facie genuineness, and any fraud, forgery, tampering that is apparent on the face and can be verified with due diligence and ordinary care is on the Presenting Bank.\textsuperscript{45}

Know Your Customer Norms have to be enforced by the member banks in letter and spirit. The member banks have to observe all precautions which a prudent banker does under normal circumstances, including employing suitable risk management techniques. The presenting bank is fully responsible for collecting on behalf of the intended payee and exercising due diligence as per the conditions laid down in the Act.

When an indorsed instrument is presented at a bank, it is scanned and at the time of scanning, a single line indorsement is to be printed on the back of each instrument by the reader sorter/ scanner which shall be the unique identifier for the instrument. The printing of the indorsement implies that the collecting bank undertakes to credit the

\textsuperscript{40} CIT v. English, Scottish and Australian Bank, supra note 37; Bapulal v. Nath Bank, supra note 34; MaturiSanyasilingam v. Exchange Bank of India and Africa Ltd., AIR 1948 Bom 1; Morison v. London County and Westminster Bank, Limited, (1914) 3 K.B. 356 (UK).

\textsuperscript{41} Indian Overseas Bank v. Industrial Chain Concern, (1990) 1 SCC 484.


\textsuperscript{43} Second explanation to Section 131 of the Act.

\textsuperscript{44} Procedural Guidelines for Grid-based Cheque Truncation System (CTS).

\textsuperscript{45} Second explanation to Section 131 of the Act.
payee’s account on realisation of the cheque and that the instrument deposited is a genuine one and is being collected for a bonafide customer of the bank.

2. Discharge of Banker’s Liability

2.1. Discharge from liability

A negotiable instrument is said to be discharged when all the rights of action on it are extinguished. The bill, then, ceases to be negotiable. The maker, acceptor or indorser respectively of a negotiable instrument is discharged from the liability thereon either by cancellation or by release or by payment of the instrument thereof.  

(i) Cancellation:

When the holder of an instrument cancels the name of the acceptor or indorser from such instrument with the intent to discharge him; the maker, acceptor or indorser of a negotiable instrument is discharged from the liability to the holder (and all other parties claiming under such holder).

(ii) Release:

When the holder of an instrument otherwise discharges such maker, acceptor or indorser; the maker, acceptor or indorser of a negotiable instrument is discharged from the liability to the holder (and all other parties claiming under such holder).

(iii) Payment:

If an instrument is payable to bearer, or has been indorsed in blank, and such maker, acceptor or indorser makes payment in due course of the amount due thereon, the maker, acceptor or indorser of a negotiable instrument is discharged from the liability to all parties thereto.

2.2. Payment in due course

Payment in due course means payment in accordance with the apparent tenor of the instrument in good faith and without negligence, to any person in possession thereof, under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned.

One of the requisites for payment in due course is that the banker should have made payment of the cheque in good faith. Despite the mention of the term ‘good faith’ repeatedly in the Act, the Act doesn’t describe what exactly is it means. However, Section 3(22) of the General Clauses Act states that for a thing to be done in good faith, it must be done honestly. Even Section 52 of the IPC provides that nothing is said to be done in good faith if it is done without due care and attention. Therefore,

46 Section 82 of the Act.
47 Section 10 of the Act.
48 General Clauses Act, 1987, No. 10 of 1987
Banker will not be deemed to have made payment in good faith if he makes payment without enquiry into the suspicious circumstances, if any.

3. Punishment

Not only has forging an indorsement not been made punishable under the Act, but the Act does not even particularly deal with such a situation or its consequences. The Act is a special legislation for negotiable instruments and states the punishments for offences under the Act such as Dishonor of cheques but does not deal with forged indorsements and reliance has to be placed on the general legislation i.e., IPC for making the same punishable.

Accordingly, whoever forges an indorsement, in accordance with the provisions of IPC as discussed in Part 3 above, shall be punishable either with imprisonment for a term which may extend to two years or with fine or with both.

Whoever, fraudulently or dishonestly, uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

CONCLUSION

Analysed above are all the main provisions dealing with negotiable instruments and indorsements. The main focus has been forgery of such indorsements, the punishments and liability in such cases. The plethora of cases have provided clarity on the position of law in this respect. It is abundantly clear that such a forged instrument is null and void. Provisions have been made not only regarding the liability of persons involved in the transaction in case the indorsement is not valid but also protection has been given to such persons in certain cases. The protection given under the Act was being misused but as seen above, the courts have played an active role in analysing these provisions related to the protection and have laid down various tests to see that these provisions are not misused and the protection is granted only in deserving cases.

Apart from this, even RBI has laid guidelines which are to be followed by the banks when an indorsed instrument is presented before them for clearing. Failure to do so is prima facie proof of negligence on part of the bank and hence it will not get protection under the Act.

But there is no punishment laid down in the Act and reliance has to be placed on IPC if a person wishes to prosecute the person guilty of forgery.

The increase of commercial activities has been accompanied by the rise in forged and fraudulent use of negotiable instruments. The aim has been to clarify and discuss the legal position as to forgery of negotiable instruments.

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49 Section 138 of the Act.
50 Section 465 of IPC.
51 Section 471 of IPC.