



## MAJESTY LEGAL

Advocates & Solicitors

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### NI ACT: - STOLEN/ LOST/THEFT CHEQUES DOES NOT FALL UNDER THE AMBIT OF SECTION 138 OF NI ACT

**(BOBBY ANAND @ YOGESH ANAND vs. STATE OF UP<sup>1</sup>)**

The Hon'ble Allahabad High Court while quashing the entire proceedings of the case of *Dina Nath Chaturvedi vs. Maa Sherwali Production And ors*<sup>2</sup> under Section 138 of NI Act pending before the Judicial Magistrate, Mathura, held that the complainant has concealed the material facts and has not approached the Hon'ble Court with clean hands. Thus, the complaint is liable to be rejected as well as punished with exemplary cost. Further, it was held that the applicant is malicious in its actions which amounts to abuse of process law and the petition is liable to be quashed.

#### **KEY FUTURE OF THE CASE:**

- In the abovementioned case, the applicant had given a complaint letter to Oshiwara Police Station, Mumbai as well as to his bank wherein the applicant informed that two cheques were stolen from his office. Thereafter, upon receiving information from the bank that one of the mentioned cheque was presented before the bank for clearance. Thus, the Applicant immediately registered an FIR against the respondents under Section 381<sup>3</sup>, 420<sup>4</sup> read with Section 34<sup>5</sup> I.P.C. Further, a complaint letter was also filed by the Respondent no. 2 against the applicant alleging that the applicant borrowed Rs. 30 lacs about 10 year ago and the applicant gave the cheque for the settlement which was bounced.
- The Hon'ble High Court considering the judgment of the Apex Court in *Raj Kumar Khurana Vs. State of NCT of Delhi & Another*<sup>6</sup>, held that the essential ingredients of Section 138 are lacking as the case of Stolen/lost/theft cheque does not fall under the ambit of Section 138 of N.I. Act, Therefore Section 138 will not be applicable in such cases.

#### **TEAM MAJESTY LEGAL<sup>7</sup>**

OFFICE : B-87, Alaknanda Apartment, G-1, Ganesh Marg/Moti Marg,  
Bapu Nagar, Jaipur, Rajasthan-302015.  
[https://maps.app.goo.gl/BsUvY9RWyvUt6JcB9?g\\_st=iw](https://maps.app.goo.gl/BsUvY9RWyvUt6JcB9?g_st=iw)

CHAMBER: 204, E-Block, Rajasthan High Court, Jaipur.

MOBILE No. : 9785461395

E-MAIL : mahi@majestylegal.in

WEBSITE : [www.majestylegal.in](http://www.majestylegal.in)

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<sup>1</sup>Case No. – 7631 of 2008 dated 17.05.2023

<sup>2</sup> No. 235/IX of 2003.

<sup>3</sup> Theft by clerk or servant of property in possession of master.

<sup>4</sup> Cheating and dishonestly inducing delivery of property.

<sup>5</sup> Acts done by several person with common intention

<sup>6</sup> (2009) 6 SCC 7

<sup>7</sup> Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of the above legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.