



**Judicial Administration Training Institute**

15, College Road, Dhaka

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**46<sup>th</sup> Special Foundation Training Course for the Assistant Judges/  
Equivalent Judicial Officers  
(19<sup>th</sup> June 2022 to 17<sup>th</sup> August 2022)**

**Oral Presentation on  
Case Study  
Case Study Number-32**

**Submitted by:**

**Name: Sudeepta Talukder**

Assistant Judge, Netrakona

Roll No: 28

And

**Name: Mostafizur Rahman**

Assistant Judge, Kishoreganj

Roll No: 29

**Submitted to:**

**Course Director**

**46<sup>th</sup> Special Foundation Training Course for the Assistant  
Judges/ Equivalent Judicial Officers**

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**Short Facts:**

"X" issues 11 cheques of Taka 50,00,000/- each on 27.06.2011 in favor of "A". After presentation of the cheque by "A" for encashment of the cheques were dishonored and as a result "A" published a legal notice in "The Daily Azadi". Though the notice was served on 14.07.2011 without taking any legal action "A" again presented the cheques for encashment which were again dishonored. Thereafter, "A" issued a second notice in "The daily Jugantor" but "X" did not pay off the dues. As a result, "A" filed several complaints on 21.11.2011 in the Court of Chief Metropolitan Magistrate. This proceeding is opposed by "X" on the ground that instead of taking any recourse after first notice, the complainant filed the case four months later after cause of action arose, which is barred by limitation. On the other hand, the complainant argued that as the first notice was published in a local daily the date of first notice doesn't constitute cause of action.

**Questions to be decided:**

Whether the beneficiary of a cheque, who does not lodge a complaint after issuing a legal notice upon dishonor of a cheque, can present the cheque for payment again and upon subsequent dishonor issue another legal notice and file a complaint thereafter.

**Relevant Laws:**

Section 138 of The Negotiable Instrument Act, 1881.

Section 141 of The Negotiable Instrument Act, 1881.

**Decision:**

There are two portions in this problem. The first one is whether the beneficiary of a cheque who does not lodge a complaint after issuing a legal notice upon dishonor of a cheque, can present the same for payment again. The answer of the question is that the beneficiary of a cheque can present the cheque for payment again.

The second part of the problem is that, whether upon subsequent dishonor issuing another legal notice and filing a complaint thereafter is valid or not. The answer of

the question is that upon subsequent dishonor one can not issue another legal notice and can not file a complaint on the basis of second notice as it was occurred in 2011. But according to the recent decision of honorable Appellate Division of Supreme Court of Bangladesh at present second notice served by “A” and complaint filed thereafter by him within the limitation period is valid .

**Reasoning:**

1) Before stating reason in favour of our answer, we should roll our eyes on the provision of section 138 and 141 of The Negotiable Instrument Act, 1881.

The proviso of section 138 of this Act runs as follows:

Nothing contained in this section shall apply unless-

- (a) The cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity whichever is earlier;
- (b) the payee or the holder in due course of the cheque as the case may be makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque, within thirty days of the receipt of the said notice.

On the other hand the provision of section 141 of The Negotiable Instrument Act runs as follows:

- a) No court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque:
- b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138.

In the aforesaid problem we can see that “A” has presented the cheque to the bank on 28.06.2011 which is within statutory limitation that is within six months from the date on which it is drawn. He re-presented the cheque on 01.11.2011 that is also within six months from the date of drawn up.

It is reported in **Ahsan Habib Chowdhury vs Multidrive Limited [14 BLC (2009) 66]** that “Law permits presenting of the cheque for as many times as the complainant desires.”

From the above discussion it is crystal clear that the representation of the cheque for payment by “A” was legal.

2) In the given problem we can see that on 14.07.2011 “A” served the legal notice on “The Daily Azadi” and subsequently he served second legal notice on 17.11.2011 in “The Daily Jugantor” and because of nonpayment “A” filed a complaint case on 21.12.2011 .

From the plain reading of section 138 of this Act it is not clear whether there is a provision of serving second notice or not. So we have to rely on judicial precedence. In this regard, in the case of **Ahsan Habib Chowdhury vs Multidrive Ltd [14BLC (2009) 66]** it was decided that, “Law permits presenting of the cheque for as many times as the complainant desires, but the notice should be served only for once as per law, repeated notices can not be served as subsequent issuance of notice are nothing but a clever device to overcome the limitation prescribed under clauses 1 (b) and (c) of section 138 of the Act.”

Therefore, the second notice served by “A” was illegal. We can also find that first notice was served on 14.07.2011. As per law, he had to file the complaint within 14.09.2011 but he filed the complaint on 21.12.2011 Which is three months after the cause of action arose. Hence, the filing of the complaint by “A” is clearly barred by limitation prescribed in section 141(b) of the said Act.

On the other hand “A” argued that the first notice served on the “The Daily Azadi” was not a widely circulated daily as the paper was local one and that’s why he served the second notice on “The Daily Jugantor”. In this regard, the said Act is totally silent. So we have to rely on various case laws. In **Hasan zahangir Alam vs state [69 DLR (2017) 363,366]** it was held that “ Now, to the second branch of argument that the notice was not published in well circulated daily national newspaper as per mandatory provision of section 138 (c) of the Negotiable Instrument Act, and as such the continuation of the proceeding is abuse of the process of the court, the same is liable to be quashed, we have carefully examined the provision of section 138 of the Negotiable Instrument Act to the best of our ability and find the provision with regard to serve notice in a well circulated Bangla national news paper is merely directory in nature and not mandatory. Since there is no legal mandate or consequence to stop or dismiss the case or the accused shall stand discharged from the case proceeding, if notice is not served through Bangla national newspaper having wide circulation. The very correctness of fact whether a newspaper is a wide circulated newspaper or not can only be adjudicated at the trial.”

Moreover, in the case of **Mst. Nazma Akter v The state and other [ 39 BLD HCD (2019) 403, 407]** it is reported that, “service of notice in a local daily will be regarded as proper service.”

But the recent view of our apex court regarding second notice and cause of action is totally different. In this regard, in the case of **Nizamuddin Mahmud Hossain vs state and another [ 25BLC (AD) (2020) 81, 82]** it is reported that “There is nothing in section 141(b) to suggest that the cause of action can not arise more than once under clause (c) of the proviso to section 138(1). The procedural limitation provided in section 141(b) can not take away the substantive right accruing to the beneficiary of a cheque to prosecute any number of subsequent presentation of the cheque on its dishonor. Similarly each dishonor will give rise to a concomitant right to serve notice under proviso (b) to section 138(1) of the Act and demand payment failing which the bearer of the cheque will have the right to make a complaint in writing in accordance with section 141(a) of the Act.”

In the aforesaid reported case it was also held that “the intention of the legislature in enacting section 141(b) is to provide a time limit within which the complaint against the defaulting drawer of the cheque is to be made. This section does not preclude the holder of the cheque from presenting the cheque to the bank again for payment, subject only to the condition that the second and subsequent presentation of the cheque must be within six months from the date on which the cheque was drawn in order to be able to prosecute the drawer of the cheque criminally under section 138 of the Act.”

Therefore, on the basis of arguments and above mentioned case reference it is clear that in the given problem as it was in 2011 hence the second notice and complaint thereafter was not valid. But according to the recent decision of our honorable Appellate Division of Supreme Court of Bangladesh at present second notice and complaint filed thereafter within the limitation period is valid .

**References:**

➤ **Appellate Division:**

- **Nizamuddin Mahmud Hossain vs state and another [ 25BLC (AD) (2020) 81 and 82]**

➤ **High Court Division:**

- **Ahsan Habib Chowdhury vs Multidrive Limited [ 14BLC (2009)66]**
- **Mst. Nazma Akter v The state aand other [39BLD HCD (2019) 403, 407]**
- **Hasan zahangirAlam vs state [ 69 DLR (2017) 363,366]**

**Signature**

**Name: Sudeepta Talukder**  
Assistant Judge, Netrakona  
Roll No: 28

**Signature**

**Name: Mostafizur Rahman**  
Assistant Judge, Kishoreganj  
Roll No: 29

