**Format of Criminal Complaint u/s 138 of Negotiable Instruments Act against return of cheque.**

Draft format for filing criminal complaint under section 138 of Negotiable Instruments Act is given below to get idea to prepare the complaint.

Draft Format of Criminal Complaint against return of Cheque

**IN THE COURT OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

COMPLAINT NO \_\_\_\_\_\_\_\_\_\_\_ OF\_\_\_\_

**IN THE MATTER OF:**

Mr.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_                                                        COMPLAINANT

VERSUS

Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_                                                                 ACCUSED

**POLICE STATION:\_\_\_\_\_\_\_\_\_\_\_\_**

**COMPLAINT UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881 (AS AMENDED UPTO DATE) FOR THE SUM OF RS. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (RUPEES \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ONLY)**

**MOST RESPECTFULLY SHOWETH:**

1. That the Complainant is working as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and is residing at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. That the present complaint is being field by the complainant Mr.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to cause appearance in this Hon'ble Court and to depose and conduct the proceedings.
3. That on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ the accused namely Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ had approached the complainant personally and asked for a friendly loan of Rs. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
4. That on \_\_\_\_\_\_\_\_\_\_ complainant paid Rs. \_\_\_\_\_\_\_\_\_\_\_ (Rupees \_\_\_\_\_\_\_\_\_\_\_\_\_ as friendly loan repayable on demand.
5. That towards payment of amount of loan the accused issued Cheque No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dated \_\_\_\_\_\_\_\_\_\_\_\_for Rs. \_\_\_\_\_\_\_\_\_\_\_to the complainant. That in order to discharge their above said liability and in accordance with the agreed terms and conditions, the accused had issued Cheque No. \_\_\_\_\_\_\_\_\_\_\_\_\_ Dated \_\_\_\_\_\_\_\_\_\_\_for Rs. \_\_\_\_\_\_\_\_\_\_\_/- drawn on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The said cheque was issued from Account No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_which is held in the name of the accused. That the present complaint is based on the dishonor of the above said cheque which was issued in discharge of a lawful debt.
6. That at the time of handing over the above said cheque the accused had assured the complainant that the said cheque will be honored/encashed on presentation. Taking the above assurance/representation as true, the complainant had accepted the above said cheque.
That on the basis of the assurances given by the accused, the complainant presented the above said cheque with its bankers namely \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and was dishonored vide cheque return advice dated \_\_\_\_\_ issued by the complainants bank. The aforesaid cheque was returned unpaid vide returning memo dated \_\_\_\_\_\_\_\_\_\_\_\_with the remarks "FUNDS INSUFFICIENT".
7. That the dishonor of the cheque clearly shows and establishes that the accused did not intend to honor the amount under the said cheque.
8. That on account of the dishonor of the said cheque, the complainant had served a legal notice dated \_\_\_\_\_\_\_\_\_\_\_\_upon the Accused by way of Registered Post vide Receipt No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_\_\_\_However, despite service of notice, the accused has not taken any steps to liquidate his liability and has failed to make balance payments to the complainant towards the amount covered under the said cheque, within the statutory period of 15 days or thereafter. Thus, the Accused has, therefore committed an offence within the meaning of Section 138 and other sections of the amended provisions of the Negotiable Instruments Act, 1881, for which he is liable to be prosecuted and punished.

That the accused have failed to make payment against the said cheque which has been done by them malafidely, intentionally and deliberately and knowingly. That at the time of issuing the said cheques the accused were fully aware that the said cheques will not be honored on presentation. Therefore, the accused has dishonestly induced the complainant to advance a sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ /- (Rupees \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Only) fully knowing that he cannot repay the said amount to the complainant.
9. That the accused is guilty offence under Section 138, Negotiable Instruments Act and is also liable to be prosecuted under Section 420 of the Indian Penal Code.
10. That in view of the facts and circumstances, the complainant has a cause of action and right to file the present complaint. The cause of actions has arisen in favour of the complainant when, on the expiry of the notice period, the Accused has not come forward to pay the amount relating to the dishonored cheques. The cause of action is still subsisting and continuing in nature.
11. That the cause of action has arisen at \_\_\_\_\_\_\_\_\_\_ as the cheques was issued at \_\_\_\_\_\_\_\_\_, and the same was payable at \_\_\_\_\_\_\_\_\_\_ and was also dishonored at \_\_\_\_\_\_\_\_\_. Therefore this Hon'ble Court has jurisdiction to try and adjudicate upon the present complaint.
12. That the complaint is well within limitation period prescribed under the Act:
i. Date of Dishonor \_\_\_\_\_\_
ii. Date of Notice \_\_\_\_\_\_
iii. Date of filing Complaint \_\_\_\_\_\_\_
13. That a list of documents and list of witnesses are annexed with this complaint.

**PRAYER**It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

1. Summon, prosecute and punish the Accused and also direct the accused to pay the amount as double to the amount covered under the said dishonored cheques, under the provisions of Section 138 read with Section 142 of the Negotiable Instruments Act,1881 as amended by the Negotiable Instrument laws (Amended and Miscellaneous Provisions) Act, 2002. In accordance with Section 357 of Code of Criminal Procedure 1974, out of the penalty imposed, the Accused be ordered to compensate the Complainant to the extent of Rs.\_\_\_\_\_\_\_ /- (Rupees \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Only) and
2. Such other and further orders may be passed as may be deemed fit and proper by this Hon'ble Court.

It is prayed accordingly.

PLACE:

DATED:

COMPLAINANT

THROUGH :

ADVOCATES