

**A withdrawal slip drawn on a co-operative society partakes the character of a 'cheque' and the society falls within the definition of a 'banker', rendering the complaint under Section 138 of the N.I. Act maintainable in law**

The **Kerala High Court** in the case of **Clara Dominic vs Tomy Eapen [Criminal MC No. 1782 of 2026]** dated **March 26, 2026**, has held that if the instrument operates as a mandate for payment drawn on an account maintained with an institution carrying on banking functions, it would fall within the ambit of the Negotiable Instruments Act, 1881 (N.I. Act). Hence, a withdrawal slip drawn on a co-operative society partakes the character of a 'cheque' and the society falls within the definition of a 'banker', rendering the complaint under Section 138 of the N.I. Act maintainable in law.

The High Court observed that the expression 'banker' under Section 3 of the N.I. Act is of wide amplitude, is inclusive in nature, and extends to any person or institution acting as a banker. Co-operative societies carrying on banking business, notwithstanding the absence of a profit motive or formal licensing under the Regulation Act, fall within the ambit of a 'banker' for the purposes of the N.I. Act. Hence, instruments drawn on such institutions, including withdrawal slips operating as payment mandates, cannot be excluded from the sweep of the NI Act merely on technical nomenclature.

The Court noted that the essence of 'banking' lies in the acceptance of deposits from the public repayable on demand or otherwise, coupled with the facility of withdrawal by instruments such as cheques, drafts, or orders. Thus, the mere absence of a licence under Section 22 of the Regulation Act does not detract from the character of the activity as banking business, nor can such absence be invoked as a defence to evade legal obligations arising therefrom. The Court clarified that the substance of the transaction, and not its form or nomenclature, is determinative.