A
Paper Presentation
in
Divisional Judicial Seminar of
Durg Division
(District Durg, Balod, Rajnandgaon,Bemetara & Kawardha)
27th April, 2025 (Sunday) at Durg
On the Subject

NAVIGATING LEGAL SHIFTS IN THE TRIAL OF CASES UNDER NEGOTIABLE INSTRUMENTS ACT: PROCEDURAL GUIDELINES AND BEST PRACTICES

Prepared & Presented by
Shri Kiran Kumar Jangde,
I District & Addl. Sessions Judge, Balod
Mrs. Sweta Upadhyay Gaur,
II District & Addl. Sessions Judge, Balod
Shri Sagar Chandrakar,
Addl. Judge to the Court of I Civil Judge Junior Division, Balod

In the patronage of
Shri Shyam Lal Nawaratna,
Principal District & Sessions Judge,
District - Balod (C.G.)

Index

NAVIGATING LEGAL SHIFTS IN THE TRIAL OF CASES UNDER NEGOTIABLE INSTRUMENTS ACT: PROCEDURAL GUIDELINES AND BEST PRACTICES

"A nation's progress and its financial integrity are closely linked to the rule of law."

-Nani Palkhivala

1. INTRODUCTION

The rule of law is the cornerstone of any nation's progress, and its significance extends deeply into the functioning of the financial system. In India, where the economy is growing rapidly and relies on trust in transactions, it's essential that people have confidence that the law will support them when things go wrong. The quote stated above resonates with this idea. It highlights that the strength of our economy is tied to the fairness and reliability of the legal system. In everyday life, whether we're receiving payments or issuing cheques, we need to know that there's a system in place that will ensure accountability. Strengthening laws around things like cheque dishonour cases helps protect that trust, ensuring that people and businesses aren't left waiting endlessly for justice, but can count on a timely and fair resolution. This is vital for the health of our financial system and the overall confidence that fuels economic growth.

The origin of the Negotiable Instruments Act dates back to 1866, but it was formally enacted in 1881 to provide a legal framework for the regulation of negotiable instruments in India. Interestingly, it wasn't until more than a century later, in 1988 that Chapter XVII, containing Sections 138 to 142, was inserted into the Act. This chapter marked a major shift in the treatment of cheque dishonour by introducing criminal liability for what was previously only a civil wrong. Prior to this legislative change, the only legal recourse available to a payee in cases of cheque dishonour was through civil litigation or alternate dispute resolution mechanisms. The 1988 amendment transformed this scenario, empowering the payee with both civil and criminal remedies.

2. NEGOTIABLE INSTRUMENT: A CRITICAL LEGAL ANALYSIS

Negotiable Instruments Act was enacted in 1881 to govern the provisions relating to negotiable instruments like Promissory Notes, Bills of Exchange, and Cheques. At the heart of the Act, Section 13 defines a "Negotiable Instrument" as a written document that guarantees the payment of a specific sum of money to the bearer or to the order of a particular individual. A distinguishing feature of negotiable instruments is their transferability, allowing the holder to claim the specified amount from another party. This unique characteristic makes negotiable instruments essential tools in both domestic and international trade.The most widely used provision in the Negotiable Instruments Act is Section 138 dealing with cheque bounce or dishonor of cheques. Cheque bounce cases are one of the most common types of financial disputes seen in Indian courts. A cheque is a widely accepted method of payment, but when a cheque is dishonored

or bounced, it can lead to legal complications under the Negotiable Instruments Act, 1881. The Supreme Court of India's landmark judgment in ***Sri Dattatraya v Sharanappa 2024 INSC 586*** has provided clarity on the legal requirements for cheque bounce cases, particularly emphasizing the importance of evidence and financial capacity in such disputes. This NI Act has been amended/altered time and again to make the law relating to dishonor of cheques even more stringent against the drawers of the cheque, who indulge in fraudulent practices, thus abusing their position.

The Parliament in its wisdom had chosen to bring section 138 on the Statute book in order to introduce financial discipline in business dealings. Prior to insertion of section 138 of the Act, a dishonoured cheque left the person aggrieved with the only remedy of filing a claim. The object and purpose of bringing new provisions in the Act was to make the persons dealing in commercial transactions work with a sense of responsibility and for that reason, under the amended provisions of law, lapse on their part to honour their commitment renders the person liable for criminal prosecution. In our country, in a large number of commercial transactions, it was noted that the cheques were issued even merely as a device not only to stall but even to defraud the creditors. The sanctity and credibility of issuance of cheques in commercial transactions was eroded to a large extent. The Parliament, in order to restore the credibility of cheques as a trustworthy substitute for cash payment, enacted the aforesaid provisions. The remedy available in Civil Court is a long drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee ***Goa Plast (P) Ltd. v. Chico Urrsula D'souza, (2004) 2 SCC 235***

Section 138 of Negotiable Instruments Act, reflects the anxiety of the legislature to usher in a new healthy commercial morality through the

instrumentality of the penal law. Here is a classic example where, as part of an attempt to evolve a healthy norm of commercial behaviour, the principal of social engineering through the instrumentality of penal law is put into operation. What was,prior to the amendment of the Negotiable Instruments Act in 1988 only a moral or civil wrong, has been transformed and exalted to the position of a crime by a deft amendment of the Statute.

3. LEGAL PROVISIONS AND JUDICIAL RESPONSES PRIOR TO 2002 AMENDMENT ACT TO THE NI ACT

Section 138 was added in the Act by the 1988 Amendment Act which makes dishonoring of cheque an offence where cheque drawn by a person on any account maintained by him in a Bank for payment of any amount to other person is returned unpaid by the Bank for insufficiency of the deposit or for the amount payable exceeding such deposit.The essential requirements to attract section 138, Negotiable Instruments Act are:

a) Cheque from the account maintained by drawer: The cheque for an amount is issued by the drawer to the payee / complainant on a bank account maintained by him.

b) Cheque Drawn for a Legally Enforceable Debt or Liability: The cheque is issued in discharge of a legally enforceable debt or other liability, not for charity, gifts, or time-barred dues. ***(Kusum Ingots and Alloys Ltd. Vs Pennar Peterson Securities Ltd (2000)2 SCC 745)***

c) Return of the Cheque Unpaid: The cheque is returned by the bank unpaid on account of insufficient amount to honour the cheque or it exceeds the amount arranged to be paid from that account by an agreement made with the bank.

d) Presentation Within Validity Period: The cheque is presented to the bank within three months from the date of issue or within its validity period, whichever is earlier. As per the ***RBI Notification No. DBOD.AML BC.No.47/14.01.001/2011-12,*** effective from 01.04.2012, the maximum validity of a cheque is three months.

e) Issuance of Legal Notice: 30 days demand notice is issued by the payee or the holder in due course on receipt of information by him from the bank regarding the dishonour of the cheque.

f) Failure to Pay Within 15 Days: The drawer of said cheque fails to make payment of the said amount of the money to the payee or the holder in due course within 15 days of the said notice.

In ***MSR Leathers v. S. Palaniappan, (2013) 1 SCC 177***, it is stated that only upon the satisfaction of all the conditions mentioned above and enumerated under the proviso to Section 138 as clauses (a), (b) and (c) thereof that an offence under Section 138 can be said to have been committed by the person issuing the cheque.

In ***K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510,*** the Hon'ble Supreme Court summarized the five critical components required for attracting liability under Section 138:

1. Drawing of a cheque,
2. Presenting it to the bank,
3. Dishonour by the bank,
4. Demand notice served in writing,
5. Failure to pay within 15 days of receipt of the notice.

Hon'ble Supreme Court in ***Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129*** stated that an offence within the contemplation of Section 138 is complete with the dishonour of the cheque but taking cognizance of the same by any court is forbidden so long as the complainant does not have the cause of action to file a complaint in terms of clause (c) of the proviso read with Section 142 of the Act.

The phrase “amount of money … is insufficient” used in Section 138 of the Negotiable Instruments Act has been interpreted by the courts not in a narrow, literal sense, but as a broad category (genus) that includes multiple reasons for dishonour. In the landmark case of ***M/s Laxmi Deyechem Vs. State of Gujarat(2012) 13 SCC 375*** –overruling ***Vinod Tawa & others vs. Zahir & Ors. 2002 (7) SCC 541,*** Hon'ble Supreme Court held that dishonour of cheque on the ground of non-resemblance of signature will also attract offence u/s 138 N.I. Act. Subject to rebuttal evidence of defence against presumption u/s. 139 N.I. Act. It was held that the reasons for dishonour like “as account closed“,”payment” “stopped” ,”referred to drawer”, “signature do not match” or “image is not found “are only the genus of the species “ either because of the amount of money standing to the credit of that account is insufficient to honour the cheque”

One of the most significant aspects of Section 138 of the Negotiable Instruments Act is that the presence of mens rea, or a guilty mind, is not a necessary element to constitute the offence. This departure from traditional criminal jurisprudence is intentional and driven by a specific legislative objective.

The Parliament, while crafting this provision, intended to give cheques a unique status among negotiable instruments and thus elevating their

reliability and acceptability in commercial transactions. To ensure this, the offence under Section 138 was deliberately structured as a strict liability offence, where the focus is on the act of dishonour itself, not the intention behind it.

This approach is supported by Sections 139 and 140 of the Act wherby Section 139 introduces a presumption in favour of the cheque holder, stating that it shall be presumed that the cheque was received in discharge of a debt or other liability and Section 140 further strengthens this strict liability by excluding certain defences, such as the drawer claiming that they had no reason to believe the cheque would bounce at the time of issuance.

The Supreme Court clearly articulated this position in ***Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129***, where it observed that the intention of the legislature was to bolster the credibility of cheques and, as such, excluded the requirement of proving a guilty mind under Sections 138, 139, and 140. This framework ensures that the drawer cannot escape liability merely by pleading ignorance or lack of malice, thereby reinforcing the integrity and trust essential to cheque-based transactions.

a 'civil sheep in criminal wolf's clothing,'.. *The proceedings under Section 138 of the Negotiable Instruments Act are often described as quasi-criminal in nature. The Court has in* ***P. Mohanraj & Ors. Vs. M/S. Shah Brothers Ispat Pvt. Ltd. (2021) 6 SCC 258*** *metaphorically referred to them as a 'civil sheep in criminal wolf's clothing,' highlighting that, at its core, the offence is primarily a civil wrong, albeit with criminal overtones. The rationale behind this interpretation is that Section 138 serves both punitive and*

compensatory purposes, providing a unique blend of criminal sanction and civil remedy.

In ***Sumeti Vij vs Paramount Tech Fab Industries (2021) (1) TVT 445 SC,*** Hon'ble Supreme Court ruled that when someone presents a cheque issued by another person for consideration, a presumption of consideration applies under section 138 of the Negotiable Instrument Act, 1881. Accordingly, the prosecution must prove that a cheque was dishonored, showing an unpaid debt cleared by cheque payment. Once proven, the accused must provide evidence of cancellation or non-payment to avoid liability for fraud or related civil wrongdoings. In this case, the ruling clarifies that if not all key elements proving check dishonor are definitively established, the accused can be presumed guilty under section 138 of the NI Act based on filed evidence. The burden of proving innocence rests with the accused unless proven otherwise through mediation or affirmative defense. This decision in Sumeti Vij vs Paramount Tech Fab Industries (2021) serves as a significant precedent for future cases involving similar allegations.

In ***M/s TRL Krosaki Refractories Ltd. vs M/s SMS Asia Private Limited & Anr. (2022) Crl 270***, Hon'ble Supreme Court ruled that an authorized employee can represent a company as the complainant or payee in court. This allows companies to take legal action without procedural hindrances. The key requirement is to show the complaint is filed on behalf of the company and the person prosecuting it has proper authorization and knowledge of its contents. According to this ruling, you can use an official document or letter of authority as evidence if needed. This decision clarifies who can represent a legal entity in proceedings, making it simpler for companies to seek justice

without complex procedures. It ensures consistency across India's various jurisdictions and simplifies future company settlements.

The Hon'ble Supreme Court of India in **S*uo Motu Writ Petition (Cri) No. 2 of 2020 titled In Re: Expeditious Trial of Cases under Section 138 of N.I. Act, 1881 (2021 SCC Online SC 325),*** on 16.04.2021 has issued practice directions for early disposal of cases under section 138 of NI Act.

Filing of complaint and scrutiny thereof:— On the day when a complaint under Section 138 of the Act is presented, it shall be scrutinized and, if the complaint is accompanied by an affidavit, and the affidavit and documents, if any, are found to be in order, may take cognizance and direct issuance of summons. ***(Indian Bank Assn. v. Union of India (2014) 5 SCC 590).***

Averment that no other complaint filed:— It is mandatory for the complainant todisclose that no other complaint has been filed in any other court in respect of the same transaction. Such a disclosure should be made on a sworn affidavit which should accompany the complaint filed under Section 200, Cr.P.C/ Section 223, BNSS ***(Damodar S. Prabhu v. Sayed Babalal H. (2010)5 SCC 663).***

Physical presence of complainant or witnesses in court not mandatory to decide whether or not to issue process:— It is open to Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the Act and the Magistrate is neither mandatorily obliged to call upon the. complainant to remain present before the Court, nor to examine the complainant or his witness upon oath for taking decision whether or not

to issue process on the complaint. ***(A.C. Narayanan v. State of Maharashtra (2014) 11 SCC 790).***

Complaint may be filed by power-of-attorney holder:— Filing a complaint underSection 138 of 'the Act' through power of attorney is perfectly legal and competent. (***A.C Narayanan v. State of Maharashtra (2014) 11 SCC 790).***

Power-of-attorney holder can prove the contents of the complaint: — A power-of-attorney holder can depose and verify on oath before the court in order to prove the contents of the complaint. However, the power-of-attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the transaction. ***(A.C. Narayanan v. State of Maharashtra, (2014) 11 SCC 790).***

Specific assertion as to the knowledge of the power-of-attorney to be made:—Complainant is required to make a specific assertion as to the knowledge of the power-of-attorney holder in the transaction explicitly in the complaint and the power-of-attorney holder who has no knowledge regarding the transactions cannot be examined as a witness in the case. ***(A.C. Narayanan v. State of Maharashtra (2014) 11 SCC 790).***

Power-of-attorney cannot delegate functions under the GPA:— The functions under the general power of attorney cannot be delegated to another person without a specific clause permitting the same in the power of attorney. Nevertheless, the general power of attorney itself can be cancelled and be given to another person. ***(A.C. Narayanan v. State of Maharashtra, (2014) 11 SCC 790).***

Inquiry under Section 202(1),Cr.P.C./ Section 225(1),BNSS , mandatory where accused resides beyond territorial jurisdiction:— Where an accused resides beyond the territorial jurisdiction of the Court, it shall follow Section 202(1),Cr.P.C./ Section 225(1), BNSS which mandates inquiry for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused. ***(In Re: Expeditious Trial of Cases under Section 138 N.I. Act 2021 SCC OnLine SC 325)***

For such inquiry, evidence may be given by affidavit:— For the purpose of such inquiry, evidence of the complainant may be given by affidavit, and evidence of witnesses on behalf of the complainant by affidavits shall be permitted. However, if the Magistrate himself holds such an inquiry, it is not compulsory that the Magistrate should examine witnesses. In suitable cases, Magistrate can examine documents for satisfaction as to the sufficiency of grounds for proceeding against the accused under Section 202,Cr.P.C./ Section 225, BNSS ***(In Re: Expeditious Trial of Cases under Section 138 N.f. Act 2021 SCC OnLine SC 325).***

Complainant to give his bank account number and e-mail ID of accused:— In every complaint under Section 138 of 'the Act', it may be desirable that the complainant gives his bank account number and if possible e-mail ID of the accused. If e-mail ID is available with the bank where the accused has an account, such bank, on being required, should furnish such e-mail ID to the payee of the cheque. ***(Meters and Instruments (P) Ltd. v. Kanchan Mehta (2018) 1 SCC 560).***

While Section 138 lays the foundation for penal consequences in cheque dishonour cases, Chapter XVII of the Negotiable Instruments

Act, 1881 incorporates several complementary provisions that support and strengthen the adjudicatory process.

Presumption in Favour of the Holder: Section 139 provides a significant relief to the payee of the dishonoured cheque. Once the execution of cheque is admitted, Section 139 creates a presumption that the holder of a cheque receives the cheque in discharge, in whole or in part, of any debt or other liability, ***Basalingappa v. Mudibassapa, 2019 SCC OnLine SC 491.*** This presumption is no doubt rebuttable at trial, as held in ***Laxmi Dyechem Case (Supra).***

When it comes to challenging the presumption under Section 139 of the Negotiable Instruments Act, the accused is not required to prove their defence beyond a reasonable doubt. Instead, the law only expects them to rebut the presumption on preponderance of probabilities, a standard significantly lighter than what is expected of the prosecution.

This principle was authoritatively laid down by Hon'ble Supreme Court in ***Rangappa v. Sri Mohan, (2010) 11 SCC 441***, where the Court clarified that if the accused can raise a probable defence, sufficient to create doubt about the existence of a legally enforceable debt or liability, then the presumption in favour of the complainant can stand rebutted. The accused does not necessarily need to lead evidence in their own defence. They are well within their rights to rely on the material already placed on record by the complainant to establish a probable defence.

Offences Committed by Companies: Section 141 extends the liability for offences under Section 138 to companies. Where an offence is committed by a company, both the company itself and every person

who was in charge of, and responsible for, its conduct at the time of the offence will be deemed guilty.

It's crucial to note that individuals cannot escape liability merely by arguing that the company acted alone. The usual defences of good faith or due diligence are not easily entertained unless supported by strong, specific evidence.

4. LEGAL LANDSCAPE AND JUDICIAL PRONOUNCEMENT ON PROVISIONS INSERTED BY 2002 AMENDMENT ACT TO THE NI ACT

Mode of Trial - Section 143 **Complaint to be initially registered as Summary Trial Case:—** Every complaint filed under Section 138 of 'the Act' shall initially be registered as a Summary Trial Case. ***(Indian Bank Assn. v. Union of India, (2014) 5 SCC 590 and In Re: Expeditious Trial of Cases under Section 138 N.I. Act 2021 SCC OnLine SC 325)***.

Mode of Service of Summons: Section 144 This section simplifies the process of delivering summons. It permits the service of summons at the place of residence or workplace of the accused or witness, ensuring efficiency in securing attendance during trial proceedings.

Evidence by Affidavit: Section 145 allows the complainant to submit their evidence through an affidavit, which speeds up the judicial process by avoiding lengthy oral examination at the outset. However, the court retains discretion to summon the deponent for cross-examination, thereby balancing procedural convenience with the rights of the accused. As clarified in the case of ***Mandvi Cooperative***

Bank Ltd. v. Nimesh B. Thakore, (2010) 3 SCC 83, Section 145(2) uses both the words, "may" (with reference to the court) and "shall" (with reference to the prosecution or the accused). Thus it is clear that in the event an application is made by the accused, the court would be obliged to summon the person giving evidence on affidavit in terms of Section 145(1) without having any discretion in the matter. The affidavit of the person so summoned that is already on the record is obviously in the nature of examination-in-chief. Hence, on being summoned on the application made by the accused the deponent of the affidavit (the complainant or any of his witnesses) can only be subjected to cross-examination as to the facts stated in the affidavit.

Offences to Be Compoundable – Section 147 makes all offences under the NI Act compoundable, allowing parties to settle the matter amicably at any stage of the legal proceedings. Hon'ble Supreme Court in the case of ***Damodar S. Prabhu v. Sayed Babalal H. (2010) 5 SCC 663*** emphasized that the compounding of such offences should be encouraged at the earliest possible stage to facilitate amicable settlements. To give teeth to this direction, it proposed a graded cost-based framework for late-stage compounding:

- At the trial court stage (first or second hearing): If the accused opts to compound the offence early, the Court may allow compounding without imposing any cost.
- At later stages before the Magistrate: Compounding may still be permitted, but the accused would need to deposit 10% of the cheque amount with the Legal Services Authority or a similar authority designated by the court.
- Before Sessions Court or High Court (in appeal or revision): The cost rises to 15% of the cheque amount.

- Before the Supreme Court: The compounding may be allowed subject to a cost of 20% of the cheque amount.

The Hon'ble Supreme Court of India in S***uo Motu Writ Petition (Cri) No. 2 of 2020 titled In Re: Expeditious Trial of Cases under Section 138 of N.I. Act, 1881 (2021 SCC Online SC 325),*** on 16.04.2021 has issued practice directions

Service of summons:— Magistrate should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address given by the complainant. Court, in appropriate cases, may take the assistance of the police or the nearby court to serve summons on the accused. For appearance, a short date be fixed. If the summons is received back unserved, immediate follow-up action be taken. ***(Indian Bank Assn. v. Union of India (2014) 5 SCC 590).***

Summons to indicate compounding of offence:— It is to be indicated in the summons to the accused that the accused may make an application for compounding of the offence at the first hearing of the case and, if such an application is made, court may pass appropriate orders at the earliest. ***(Indian Bank Assn. v. Union of India (2014) 5 SCC 590).***

Summons to contain amount to be deposited for closure of proceedings even without appearance of accused:— In every summons issued to the accused, it may beindicated that if the accused deposits the amount, which should be assessed by the court having regard to the cheque amount and interest/cost, specified in the summons by the date specified therein, the accused need not appear unless required, and proceedings may be closed subject to any valid objection

of the complainant. If the accused complies with such summons and informs the court and the complainant by e-mail, court can ascertain objections, if any, of the complainant and close the proceedings unless it becomes necessary to proceed with the case. In such a situation, presence of the accused can be required, unless presence is otherwise exempted subject to such conditions as may be considered appropriate. ***(Meters and Instruments (P) Ltd. v. Kanchan Mehta (2018) 1 SCC 560).***

Service of summons in one complaint forming part of a transaction to be deemed service in other complaints relating to the same transaction:— Court shall treat the service of summons in one complaint under Section 138 of 'the Act' forming part of a translation as deemed service in respect of all the complaints filed before the same court relating to dishonor of cheques issued as part of the said transaction. ***(In Re. Expeditious Trial of Cases under Section 138 N.I. Act 2021 SCC OnLine SC 325).***

Court to direct accused to furnish bail bond:— Court should direct the accused, when he appears, to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251,Cr.P.C./ Section 274, BNSS to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) of 'the Act' for recalling a witness for cross-examination. ***(Indian Bank Assn. v.Union of India (2014) 5 SCC 590).***

Magistrate has no power to review or recall process:— Trial Court is not conferred with power either to review or recall the order of issuance

of process. ***(In Re: Expeditious Trial of Cases under Section 138 N.I. Act 2021 SCC OnLine SC 325).***

Where trial court lacks jurisdiction to try the case, proceedings to be stayed and case to be submitted to the Chief Judicial Magistrate or to the Magistrate having jurisdiction:— In case the Trial Court lacks jurisdiction to issue process for the complaint, proceedings shall be stayed and the case shall be submitted to the Chief Judicial Magistrate or such other Magistrate having jurisdiction, in exercise of the power under Section 322,Cr.P.C./ Section 361, BNSS ***(In Re: Expeditious Trial of Cases under Section 138 N.I, Act 2021 SCC OnLine SC 325).***

Accused to disclose specific defence if contests the case:— The accused, who wants to contest the case, must be required to disclose specific defence for such contest. ***(Meters and Instruments (P) Ltd. v. Kanchan Mehta (2018) 1 SCC 560).***

Trial shall normally be summary:— Procedure for trial of cases undebr Chapter XVII of 'the Act' has normally to be summary. Discretion of the Magistrate under the second proviso to Section 143 of 'the Act' to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the fact that apart from the sentence of imprisonment, court has jurisdiction under Section 357(3),Cr.P.C./ Section 395(3), BNSS, to award suitable compensation with default sentence under Section 64 of the IPC with further power of recovery under Section 431,Cr.P.C./ Section 471, BNSS , and having regard to the amount of the cheque, financial capacity and conduct of the accused or any other circumstances. With this approach, prison sentence of more

than one year may not be required in all cases. ***(Meters and Instruments (P) Ltd. v. Kanchan Mehta (2018) 1 SCC 560).***

Discretion to convert to summons trial to be exercised with due care and caution and mechanical conversion shall be avoided:— Discretion conferred by the second proviso to sub-section (1) of Section 143 of 'the Act' to convert summary trial to summons trial is to be exercised with due care and caution and cogent and sufficient reasons shall be recorded before such conversion. Mechanical conversion shall be avoided. ***(In Re: Expeditious Trial of Cases under Section 138 N.I. Act 2021 SCC OnLine SC 325).***

Court has no power to discharge the accused under Section 258 of the Cr.P.C:— The judgment in Meters and Instruments Private Limited Vs. Kanchan Mehta {(2018) 1 SCC 560} in so far as it conferred power on the trial Court to discharge an accused is not good law as held in In Re: Expeditious Trail of Cases Under Section 138 Negotiable Instruments Act. The words "as far as may be" in Section 143(1) of 'the Act' are used only in respect of applicability of Sections 262 to 265 Cr.P.C./ Section 285 to 288, BNSS, for summary procedure to be followed for trials under Chapter XVII of the Act but do not confer power to discharge the accused. Hence, Magistrate has no power to discharge the accused either in a summary trial or a summons trial. ***(In Re: Expeditious Trial of Cases under Section 138 N.I. Act).***

Affidavits in lieu of chief-examination:— Court has option of accepting affidavits of witnesses instead of examining them in the court. Witnesses to the complaint and the accused must be available for cross-examination as and when there is direction to this effect by the court. ***(Indian Bank Assn. v. Union of India (2014) 5 SCC 590).***

Appellate Court to make effort to settle dispute through mediation: — Court before which appeals against judgments in complaints under Section 138 of 'the Act' are pending shall make efforts to settle the disputes through mediation. ***(In Re: Expeditious Trial of Cases under Section 138 N.I, Act).***

Compounding to be encouraged at initial stage:— The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged, but compounding at a later stage is not debarred subject to appropriate compensation as may be found acceptable to the parties or the court. ***(Meters and Instruments (P) Ltd. v. Kanchan Mehta (2018) 1 SCC 560)***

Plea bargaining to be considered:— It will also be open to the court to consider the provisions of plea bargaining. ***(Meters and Instruments (P) Ltd. v. Kanchan Mehta, (2018) 1 SCC 560).***

Even in the absence of consent, compounding may be permitted:— Though compounding requires consent of both parties, even in the absence of such consent, court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused, in exercise of its powers under Section 143 of 'the Act' read with Section 258,Cr.P.C./ Section 281, BNSS, where the cheque amount with interest and costs as assessed by the court is paid by a specified date. ***(Meters and Instruments (P) Ltd. v. Kanchan Mehta, (2018) 1 SCC 560)***

Trial to be on day-to-day basis and endeavour to conclude it within six months:— Trial can be on day-to-day basis and endeavour must be to conclude it within six months. ***(Meters and Instruments (P) Ltd. v. Kanchan Mehta (2018) 1 SCC 560).***

5. STATUTORY FRAMEWORK AND JUDICIAL INTERPRETATION AFTER 2002 AMENDMENT ACT TO THE NIA ACT

The 2018 Amendment to the Negotiable Instruments Act, 1881 brought significant changes by introducing Sections 143A and 148, primarily aimed at addressing delays in cheque bounce cases. These provisions empower courts to grant interim compensation and mandate deposits during appeals—providing immediate relief to the complainant and discouraging delay tactics by unscrupulous drawers.

According to the Statement of Objects and Reasons, the amendment seeks to address the hardship faced by payees of dishonoured cheques. Such individuals often spend time, effort, and money pursuing legal remedies—only to face procedural delays and misuse of appeal provisions. The Amendment aims to reduce these hardships and deter frivolous litigation.

The following are the changes that were introduced by the said amendments:

A. Interim Compensation to the Complainant under Section 143A

1. Interim Compensation: Under this new section, the Courts have the power to order the drawer of the cheque to pay interim compensation to the complainant.
2. Order by the Court: The compensation has to be ordered by the Court to be paid by the drawer of the cheque, where the drawer pleads not guilty to the allegations made in the complaint, in a summary trial or summons case. In any other case, compensation has to be ordered upon the framing of the charges.
3. Amount of Compensation: The compensation to be paid by the

drawer of the cheque should not be more than 20% of the amount of the bounced cheque.

4. If the Drawer is Acquitted: When and if the drawer is acquitted/held not guilty, then the payee may also be ordered to refund to the drawer, the interim compensation along with the amount of interest (at RBI's prevailing interest rate)**.**

5. Time Frame to Pay Interim Compensation: It should be paid within 60 days, starting from the date of the order by the Court. This period can be extended by another 30 days if sufficient reasons for delay can be shown to the Court.

Hon'ble Supreme Court in the case ***G. J. Raja v. Tejraj Surana, (2019) 19 SCC 469*** in ***para 23*** stated that Section 143A is prospective and applies only to cases instituted after 01.09.2018.

In the landmark judgment of ***Rakesh Ranjan Shrivastava v. State of Jharkhand, (2024) 4 SCC 419*** Hon'ble Supreme Court in ***para 19*** clarified that Section 143A will have to be held as directory and not mandatory. The word "may" used in Section 143-A, cannot be construed or interpreted as "shall". Therefore, the power under sub-section (1) of Section 143-A is discretionary.

B. Payment Pending the Appeal against Conviction under Section 148

1. Deposit of Amount by Appellant: Under this new section, the Appellate Court has the power to order the appellant to deposit an amount which shall be in addition to the amount already paid by the appellant by way of Section 143A.

2. Amount of Compensation: The amount ordered by the appellate court should be a minimum of 20% of the compensation or fine which was

awarded/ordered to be paid by the trial/lower court.

3. Deposit may be Released to Complainant: This deposit by the appellant can be released to the complainant by an order, during the pendency of the appeal.

4. If the Appellant is Acquitted: In case the appellant is acquitted, the Court has to direct the complainant to refund the entire deposit amount and in addition to that, he/she shall also pay interest at RBI's prevailing interest rate.

5. Time Frame to Deposit Amount: It should be paid within 60 days, starting from the date of the order by the Court. This period can be extended by another 30 days if sufficient reasons for delay can be shown to the Court.

Hon'ble Supreme Court in the landmark judgment of ***Surinder Singh Deswal v. Virender Gandhi, (2019) 11 SCC 341*** in ***para 7.1*** stated that Section 148 is retrospective in effect. Section 148 of the NI Act as amended, shall be applicable in respect of the appeals against the order of conviction and sentence for the offence under Section 138 of the NI Act, even in a case where the criminal complaints for the offence under Section 138 of the NI Act were filed prior to Amendment Act 20 of 2018 i.e. prior to 1-9-2018. Further in ***Para 8*** it was stated that in the amended Section 148 of the NI Act, the word used is "may", but it is generally to be construed as a "rule" or "shall" and not to direct to deposit by the appellate court is an exception for which special reasons are to be assigned.

In the case of ***Jamboo Bhandari v. M.P. SIDC Ltd., (2023) 10 SCC 446*** in ***para 6*** it was held in a case where the appellate court is satisfied that the condition of deposit of 20% will be unjust or imposing such a

condition will amount to deprivation of the right of appeal of the appellant, exception can be made for the reasons specifically recorded.

6. CONCLUSION

Section 138 of the Negotiable Insrument Act 1881, has proven to be a cornerstone in maintaining the sanctity of cheque-based transtactions in India. Legislative reforms spanning from 1988 to 2018, coupled with judicial interventions, have progressively refined the procedural framework - from the introduction of summary trials in 2002, the narrowing of jurisdiction in 2015, to the safeguard against frivolous litigation in 2018, by merging penal consequences with compensantory remedies, the provision carefully balances the interests of creditors and the need to deter fraudulent conduct. Although debates around its decriminalisation reflect a push towards enhancing business convenience, the provision's deterrent impact remains critical. Thus, Section 138 continues to play a pivotal role in preserving the trust and discipline that underpin the financial system.