

**THE GAUHATI HIGH COURT AT GUWAHATI**  
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

**CIRCULAR**

Dated: Guwahati, the 2<sup>nd</sup> August, 2021

The mandate of sub-section (1) of Section 143 of the Negotiable Instruments Act, 1881 ("the Act", for short), as amended by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002, is that notwithstanding anything contained in the Code of Criminal Procedure, 1973 ("the Code" and/or "CrPC", for short), all offences under the Chapter XVII (containing Section 138 to Section 148) shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the Code shall, as far as may be, apply to such trials.


The first proviso to sub-section (1) of Section 143 of the Act has prescribed that in the case of any conviction in a summary trial under Section 143, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees. By virtue of the power conferred by the first proviso to sub-section (1) of Section 143 of the Act, it is lawful for a Judicial Magistrate of first class to pass a sentence of fine exceeding five thousand rupees, notwithstanding anything to the contrary contained in sub-section (2) of Section 29 of the Code.

The second proviso to sub-section (1) of Section 143 of the Act has laid down that when at the commencement of, or in the course of, a summary trial under the said Section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the Code.

The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 came into force w.e.f. 06.02.2003 in order to address the situation created due to huge pendency of cases filed under Section 138 of the Act so as to enable the Courts to dispose of the cases in an expeditious manner.

A five-Judges Bench of the Hon'ble Supreme Court of India concerned with the pendency of large number of cases filed under Section 138 of the Act, decided to examine the reasons for the delay in disposal of these cases in ***Suo Motu Writ Petition (Crl.) No. 2 Of 2020*** titled as ***In Re : Expeditious Trial of Cases under Section 138 of N.I. Act 1881.***

The Hon'ble Supreme Court of India in ***Expeditious Trial of Cases under Section 138 of N.I. Act 1881*** (supra) has identified the conversion of complaints under Section 138 of the Act from summary trial to summons trial mechanically by the trial courts without recording reasons as one of the reasons for delay in disposal of the cases.

  
2/8/2021



The Hon'ble Supreme Court of India in ***Expeditious Trial of Cases under Section 138 of N.I. Act 1881*** (supra) has recorded its conclusions in its order dated 16.04.2021 and the High Courts have been requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial.

By the said order passed in ***Expeditious Trial of Cases under Section 138 of N.I. Act 1881*** (supra), the High Courts have also been requested to issue practice directions to the trial courts to treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques as part of the said transaction.

The Hon'ble Supreme Court of India in ***Writ Petition (C) No. 18 of 2013*** titled as ***Indian Bank Association and others vs. Union of India and others***, reported in ***(2014) 5 SCC 590***, had for the purpose of following a consistent procedure for speedy and expeditious disposal of the cases under Section 138 of the Act, issued the following set of directions to all the criminal courts in the country dealing with such cases : -

- (a) The Metropolitan Magistrate / Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.
- (b) The MM/JM 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 got from the complainant. The court, in appropriate cases, may take the assistance of the police or the nearby court to serve notice on the accused. For notice of appearance, a short date de fixed. If the summons is received back unserved, immediate follow-up action be taken.
- (c) The court may indicate in the summons that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, the court may pass appropriate orders at the earliest.
- (d) The 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, CrPC 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) for recalling a witness for cross-examination.
- (e) The court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The court has option of accepting affidavis of the witnesses instead of examining them in the court. The 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.

  
16/4/21



Chapter XXI of the Code titled "Summary Trials" contains Section 260 to Section 265. By virtue of Section 143 of the Act, Section 262 to Section 265 (both inclusive) of the Code have been, as far as may be, made applicable to a case under Section 138 of the Act.

In view of the above and in deference to the order dated 16.04.2021 of the Hon'ble Supreme Court of India passed in SMW (Crl.) No. 2/2020 [In. Re.: **Expeditious Trial of Cases under Section 138 of N.I. Act 1881** (supra)], the Hon'ble Gauhati high Court has been pleased to issue the following practice directions for observance by Magistrates and trial Courts while dealing and deciding with cases u/s 138 of the Negotiable Instrument Act, 1881:

### **PRACTICE DIRECTIONS**

- I. When the accused person appears or is brought before the trial court, the particulars of the offence of which he is accused shall be stated to him, in conformity with the procedure laid down in Section 251 read with Section 262(1) of the Code and Section 143 of the Act.
- II. It shall be explained to the accused person that if he intends to make any application expressing his desire to remit payment against the dishonoured cheque in terms of the guidelines stated by the Hon'ble Supreme Court of India in **Criminal Appeals No. 963 of 2010 with Nos. 964-66 of 2010** titled as **Damodar S. Prabhu vs. Sayed Babalal H.**, reported in **(2010) 5 SCC 663**, he can do so by making an application. If such an application is made by the accused person, the Court shall, in presence of the complainant, consider the same in terms of the said guidelines and shall dispose of the case, if the application is found in conformity with those guidelines.
- III. Section 375 of the Code *inter alia* provides that when an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal if the conviction is by a Court of Metropolitan Magistrate or Judicial Magistrate of first class, except as to the extent or legality of the sentence. The Court while stating the particulars of the offence, shall also inform the accused person the consequence of his pleading guilty of the offence in terms of the provision contained in Section 375 of the Code.
- IV. If no application, as indicated in clause II above, is made by the accused on his appearance before the Court, then the Court after observance of the above procedure, shall ask the accused whether he pleads guilty or has any defence to make, in conformity with the procedure laid down in Section 251 read with Section 262(1) of the Code and Section 143 of the Act.
- V. Apart from entering the particulars mentioned in clause (a) to clause (f) thereof, Section 263 (g) of the Code has enjoined the Court to enter the particulars of the plea of the accused and his examination (if any). Thus, it is obligatory for the Court to record the particulars of the plea of the accused and his examination (if any).
- VI. If after the particulars of the offence are stated to him the accused person pleads guilty, the Court shall record the plea as nearly as possible in the words used by the accused and may, in his discretion, convict him thereon and complete the procedure prescribed in clause (h) to clause (j) of Section 263 of the Code.

  
Sd/-  
28/2/21

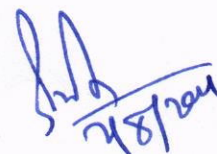


- VII. If after the particulars of the offence are stated to him the accused person does not plead guilty, Section 264 of the Code enjoins upon the Magistrate that he shall, *firstly*, record the substance of the evidence; and *secondly*, a judgment containing a brief statement of the reasons for the finding.
- VIII. If the record in summary trials register does not disclose the substance of the accusations put to the accused persons and the words in which the plea of guilt the accused has entered into difficulties would be encountered by the appellate court at the time of consideration of an appeal, if any, preferred under Section 375 of the Code, as regards the extent or legality of the sentence.
- IX. Notwithstanding the above, if the Magistrate either at the commencement of, or in the course of, a summary trial under Section 143 of the Act, is of the view that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to convert the trial of the complaint from summary trial to summons trial.
- X. Such an order whereby the Magistrate converts the trial of the complaint from summary trial to summons trial must contain reasons justifying such conversion after due and proper application of mind to the materials on record before him, including the facts and circumstances obtaining in the case and after taking into consideration the directions mentioned above.
- XI. The trial court shall treat service of summons in one complaint under Section 138 of the Act forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques as part of the said transaction.

Illustration – **A** has taken a loan from a bank, **B** and the loan is to be repaid by a number of equated monthly instalments over a period of time. In that connection, **A** had issued a number of dated cheques for each monthly instalment. When a few of such cheques were dishonoured a number of complaints have been instituted before the same Court by **B** against **A**. After taking cognizance of the offence, summons have been issued for appearance of **A** for his appearance to stand the trials as accused in those cases. If summons issued in respect of any of those complaint cases has been found served upon **A** the Court shall treat service of summons in that complaint case as deemed service upon **A** in respect of all the complaint cases instituted before the said Court under Section 138 of the Act.

The above illustration is not exhaustive. The trial court shall consider the issue whether the cheques dishonoured and involved in the complaint cases are part of one transaction or not, on the basis of the particular facts of each of such case. It shall be obligatory on the part of the complainant as well as the accused to disclose about pendency of any other complaint case(s) under Section 138 of the Act before **the same court**, which cases, according to either of them, relate to the same transaction.

The trial courts dealing with cases under Section 138 of the Act shall strictly adhere to the above practice directions.

Handwritten signature and date: 2/8/2011



By order,

Sd/- Raktim Duarah  
**REGISTRAR GENERAL**

**Memo No. HC.III-12/2021/ 3966-3998 /G dated Guwahati, the 2<sup>nd</sup> August, 2021.**  
**Copy to:**

1. The Registrar (Vigilance / Judicial/ Administration/ Estt.), Gauhati High Court, Guwahati.
2. The Registrar, Gauhati High Court, Kohima Bench, Kohima / Aizawl Bench, Aizawl/ Itanagar Permanent Bench, Naharlagun.
3. The Registrar-cum-Principal Secretary to Hon'ble the Chief Justice, Gauhati High Court, Guwahati. Guwahati.
4. The L.R. & Secretary to the Govt. of Assam, Judicial Department, Dispur, Guwahati, Assam.
5. The District & Sessions Judge, \_\_\_\_\_ Assam. He / She is requested to circulate this Notification amongst the Judicial Officers under his/her jurisdiction.
6. The Principal Judge, Family Court, \_\_\_\_\_ Assam.
7. The Member, MACT, \_\_\_\_\_, Assam.
8. The Special Judge, Assam
9. The Special Judge, CBI, Assam.
10. The Special Judge, CBI, Assam, Addl. CBI Court No. 1,2 & 3, Guwahati.
11. The Presiding Officer, Labour Court/Industrial Tribunal, Kamrup (M), Guwahati/Dibrugarh, Assam
12. The Presiding Officer, Industrial Tribunal, Cachar, Silchar, Assam..
13. The President/Secretary General, Gauhati High Court Bar Association, Guwahati.
14. The President/General Secretary, Gauhati High Court Advocates' Association, Guwahati.
15. The Chairman, Bar Council of Assam, Nagaland, Mizoram, Arunachal Pradesh and Sikkim.
16. The President/Secretary, All Assam Lawyers' Association, Guwahati.
17. The President/Secretary, Lawyers' Association, Guwahati.
18. The Joint Registrar ( \_\_\_\_\_ ), Gauhati High Court, Guwahati.
19. The Director, Law Research Institute, Gauhati High Court, Guwahati.
20. The Deputy Registrar ( \_\_\_\_\_ ), Gauhati High Court, Guwahati.
21. The Librarian-cum-Research Officer, Gauhati High Court, Guwahati.
22. The Asstt. Registrar ( \_\_\_\_\_ ), Gauhati High Court, Guwahati.
23. The Court Manager, Gauhati High Court, Guwahati.
24. The Special Officer, Translation Wing, Gauhati High Court, Guwahati.
25. The Project Manager, Gauhati High Court, Guwahati. *He is requested to upload this Notification in the website of the Gauhati High Court.*
26. The P.S. to Hon'ble Mr. /Mrs. Justice \_\_\_\_\_, Gauhati High Court, Guwahati.
27. The Administrative Officer, Judicial Academy, Assam, Hajo Road, Amingaon, Guwahati-31.
28. The A.O. (Judicial), \_\_\_\_\_ Section, Gauhati High Court, Guwahati.
29. The Court Masters, Court No. \_\_\_\_\_, Gauhati High Court, Guwahati.
30. The Court Officer Nos. 1 & 2, Gauhati High Court, Guwahati.
31. The Chief Security Officer, Gauhati High Court, Guwahati.
32. The C.A. to the Registrar General, Gauhati High Court, Guwahati.
33. The Gauhati High Court Notice Board, (Old Block & New Block).

  
**REGISTRAR GENERAL**

*Handwritten date: 28.8.21*