



DISTRICT JUDICIARY, DURG (CHHATTISGARH)

READING MATERIAL –PART 1

(Questionnaire with 97 Questions for Reference and Training Purposes)

Prepared for internal circulation among judicial officers and staff

District Court Complex, Durg, Chhattisgarh

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(Disclaimer: The paragraph numbers cited are taken from SCC copies of the judgments; numbering on other websites may differ. Although utmost care has been taken, no one is infallible—this questionnaire may contain inadvertent errors.)

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Question 1. What is the purpose of Section 138 of the Negotiable Instruments Act?

Relevant Case: Goa Plast (P) Ltd. v. Chico Ursula D'Souza, (2004) 2 SCC 235,

2nd last Para of judgement:

“The object and the ingredients under the provisions, in particular, Section 138 and 139 of the Act cannot be ignored. Proper and smooth functioning of all business transactions, particularly, of cheques as instruments, primarily depends upon the integrity and honesty of the parties. 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. Undoubtedly, dishonour of a cheque by the Bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious set back. 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 a Civil Court is a long drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee”

Analysis:

The Supreme Court made it clear that Section 138 was enacted to inculcate faith in the efficacy of banking transactions and penalize dishonest drawers who issue cheques without adequate balance, thereby protecting the integrity of the financial system.

Question 2. Can a cheque be revalidated after its validity has expired?

Answer: Yes

Relevang Case: Veera Exports v. T. Kalavathy, AIR 2002 SC 38

Para 6:

“party who consents to the alteration as well as the party who made the alteration are disentitled to complain against such alteration, e.g. if the drawer of the cheque himself altered the cheque for validating or revalidating the same instrument he cannot take advantage of it later by saying that the cheque became void as there is material alteration thereto. Further, even if the payee or the holder of the cheque made the alteration with the consent of the drawer thereof, such alteration also cannot be used as a ground to resist the right of the payee or the holder thereof. It is always a question of fact whether the alteration was made by the drawer himself or whether it was made with the consent of the drawer. It requires evidence to prove the aforesaid question whenever it is disputed”

Analysis:

The Court held that revalidation of a cheque after expiry is impermissible, as changing the date amounts to material alteration, destroying the instrument's validity. The only lawful way is to issue a fresh cheque.

Question 3. What is the effect of issuing a blank cheque?

Relevant Case: Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197

Para 36:

“Even a blank cheque leaf voluntarily signed and handed over by the accused towards some payment, would attract presumption under Section 139 of the Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt.”

Para 34:

“If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.”

Analysis:

A blank signed cheque, when voluntarily delivered, creates a presumption of liability under Section 139. The drawer cannot escape liability merely by saying it was blank unless he rebuts the presumption with credible evidence.

Question 4. Is a post-dated cheque a valid cheque under the Act?

Relevant Cases:

- (a) Ashok Yashwant Badave v. Surendra Madhavrao Nigojekar, AIR 2001 SC 1315
- (b) Goaplast (P) Ltd. v. Chico Ursula D'Souza, (2003) 3 SCC 232
- (c) Anil Kumar Sawhney vs Gulshan Rai (1993)4SCC424,

Extracts:

From Anil Kumar Sawhney Case

Para 14 line 5

“The post–dated cheque becomes a cheque under the Act of the date which is written on the said cheque and the six months period has to be reckoned for the purposes of [Section 138\(a\)](#) from the said date.”

From Ashok Yashwant Badave Case,

Para 19:

“A "post–dated cheque" is not payable till the date which is shown thereon arrives and will become cheque on the said date and prior to that date the same remains bill of exchange”

From Ashok Yashwant Badave, Para 13 to 16

Para13. In the case of Brien v. Dwyer!! the matter was considered by the High Court of Australia and it was laid down that a post–dated cheque was a bill of exchange payable at a future date.

Para 14. In Halsbury's Laws of England, 4th Edn. (Reissue) Vol. 3(1), at p. 143, procedure to be adopted by the bank in relation to post-dated cheque has been enumerated which reads thus: "Post-dated cheques are not invalid, but the banker should not pay such a cheque if presented before the date it bears. If, therefore, a cheque dated on a Sunday is presented on the previous business day, it should be returned with the answer 'post-dated. A post-dated cheque, however, if presented at or after its ostensible date, should be paid though the banker knows it to be post-dated, and even if it has been presented before the date and refused payment."

Para15. In Chalmers & Guest on Bills of Exchange, Cheques and Promissory Notes, 15th Edn., at p. 74, the concept of "post-dated cheques" has been explained as under: "Post-dated cheques. Cheques are often issued post-dated, that is to say, bearing a date later than that on which they are in fact issued. The purpose of issuing a post-dated cheque is to prevent the drawee banker from paying the cheque to the payee or a holder before the date written on the cheque. It is clear that the instrument is a cheque once the date written on it arrives. But its status is unclear prior to that date. It is arguable that, between the date of its issue and the date written on the cheque, it is not payable on demand and so cannot be a cheque but an instrument of a different kind. The view has been expressed that: so far as regards its practical effect, a post-dated cheque is the same thing as a bill of exchange at so many days' date as intervene between the day of delivering the cheque and the date marked upon the cheque'. It has also been stated that the effect of issuing a post dated cheque is equivalent to giving a promissory note not payable until the date written on the cheque."

Para 16. In Thomson's Dictionary of Banking, 12th Edn., at p. 463 "post-dated" has been defined as follows:

"Post-dated—A cheque which is dated subsequent to the actual date on which it is drawn, and which is issued before the date it bears, is called a post-dated cheque

From Goaplast (P) Ltd., Para 3:(last 10 lines of para)

"The post-dated cheque is not a worthless piece of paper; it represents a deferred payment. The object of Section 138 would be defeated if the contention that a post-dated cheque is not covered were accepted."

Analysis:

A post-dated cheque becomes operative on the date it bears, and upon dishonour after presentation, Section 138 is fully attracted. Its deferred character does not exempt it from penal liability.

Question 5. If a cheque is issued only as security, does dishonour still attract Section 138?

Relevant Case: Sripati Singh v. State of Jharkhand and Anr, 2021 SCC Online SC 1002.

Answer :—yes subject to conditions

Relevant Extracts:

Para 21

A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified timeframe and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.

Para 22

"When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as 'security' cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented."

Analysis:

The Court drew a clear distinction between 'security' and 'payment' cheques. Dishonour of a cheque given merely as security does not constitute an offence unless a debt or liability had arisen at the time of presentation.

Question 6. What is the scope of the presumption under Section 139?

Relevant Case: M.M.T.C. Ltd. v. Medchl Chemicals & Pharma (P) Ltd.: AIR 2002 SC 182

Para 19

"19.... The authority shows that even when the cheque is dishonoured by reason of stop-payment instructions by virtue of Section 139 the court has to presume that the cheque was received by the holder for the discharge, in whole or in part, of any debt or liability. Of course this is a rebuttable presumption. The accused can thus show that the 'stop-payment' instructions were not issued because of insufficiency or paucity of funds. If the accused shows that in his account there were sufficient funds to clear the amount of the cheque at the time of presentation of the cheque for encashment at the drawer bank and that the stop-payment notice had been issued because of other valid causes including that there was no existing debt or liability at the time of presentation of cheque for encashment, then offence under Section 138 would not be made out. The important thing is that the burden of so proving would be on the accused."

Analysis:

Section 139 creates a presumption both of issuance and of the existence of a debt or

liability. The burden then shifts to the accused, who must rebut it by a probable and credible defence, not necessarily beyond reasonable doubt.

Question 7. Whether 138 NI Act will be attracted if cheque is dishonoured for reasons such "as account closed", "payment stopped", "referred to the drawer" and "signatures do not match" or that the "image is not found"?

Answer : Yes.

Relevant Case Law: Laxmi Dyechem v. State of Gujarat, (2012) 13 SCC 375

Para 16–

“The expression "amount of money... is insufficient" appearing in Section 138 of the Act is a genus and dishonour for reasons such "as account closed", "payment stopped", "referred to the drawer" are only species of that genus. Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138, so also dishonour on the ground that the "signatures do not match" or that the "image is not found", which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of Section 138 of the Act.”

Question 8. Can action be taken under Section 138 for dishonour of one's own "self-cheque"?

Relevant Case:

(1) Mahesh Goyal v. S.K. Sharma, (1997 Cri LJ 2868 (P&H),

(2) Case: B. Sarvothama v. S.M. Haneef, 2013 (5) Kar LJ 89

Extract from Mahesh Goyal v. S.K. Sharma, (1997 Cri LJ 2868 (P&H),

Para 8–

“The expression "holder in due course" is clear and unambiguous. The words are plain and meaning clear. A holder in due course is a person who is possessor of an instrument even when it is payable to bearer. He must be in possession on it. If the bill is payable to holder then he has to be a payee or indorsee of the same.”

Para 9–

“In the present case in hand perusal of the cheque indicates that it was addressed as payable to "self" and that the word bearer has not been deleted. It is not even scored off. There were certain transactions alleged and the money was claimed to be due. The respondent was in possession of the same and presented it before the bank, but it was dishonoured. He was obviously holder in due course. When other conditions were satisfied, there was no question of holding that merely because the cheque was addressed to self, S. 138 in the facts would not be attracted. Once the cheque had been given for valid consideration, the respondent must be taken to be holder in due course.”

Relevant Extract: B. Sarvothama v. S.M. Haneef, 2013 (5) Kar LJ 89

Last Para–

“In the present case on hand, it was established that the complainant had received a bearer cheque for consideration and in discharge of a legal liability and was a holder in due course, of the same. The dishonour of the cheque was for the reason that the account of the petitioner did not carry sufficient funds—the bank had also issued a memo in this regard to the complainant, which is produced and marked as a document at the trial. The burden was heavy on the petitioner to establish that the cheque was not

issued in discharge of a legal liability. The petitioner has failed to do so. The plea that the cheque being a self cheque would not attract S. 138 of the NI Act, is not tenable. Hence the petition is dismissed.”

Analysis:

If a self–cheque is voluntarily handed to another person in repayment of a debt, the complainant becomes a holder in due course, and dishonour of such cheque invokes Section 138. The drawer cannot escape liability by pleading that the cheque was written “for self.”

Issues pertaining to Company

Question 9: Whether all the directors of a company are liable for cheque bounce?

Answer–No

Relevant Case Law: P.J. Agro Tech Limited and Others vs. Water Base Limited, (2010) 12 SCC 146,

Para13–

“From a reading of the said section, it is very clear that in order to attract the provisions thereof a cheque which is dishonoured will have to be drawn by a person on an account maintained by him with the banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part of any debt or other liability. It is only such a cheque which is dishonoured which would attract the provisions of Section 138 of the above Act against the drawer of the cheque. ”

Para 14–

“In the instant case, the cheque which had been dishonoured may have been issued by Respondent 11 for discharging the dues of Appellant 1 Company and its Directors to Respondent 1 Company and the respondent Company may have a good case against Appellant 1 Company for recovery of its dues before other fora, but it would not be sufficient to attract the provisions of Section 138 of the 1881 Act. The appellant Company and its Directors cannot be made liable under Section 138 of the 1881 Act for a default committed by Respondent 11. An action in respect of a criminal or a quasi–criminal provision has to be strictly construed in keeping with the provisions alleged to have been violated. The proceedings in such matters are in personam and cannot be used to foist an offence on some other person, who under the statute was not liable for the commission of such offence.”

Question 10. Can a cheque issued as security for repayment of loan be brought under Section 138?

Answer: Yes

Relevant Case: Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd., (2016) 10 SCC 458

Para 12–

“If on the date of the cheque, the liability or debt exists or the amount has become legally recoverable, Section 138 is attracted. The cheque cannot be treated as a mere security, if the liability had already crystallised.”

Question 11. How many times can a cheque be presented within its validity period?

Relevant Case Law:

(i) Richard Samson Sherrat v. Sudhir Kumar Sanghi & Another, reported in 1992(2)

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(ii) Ravindranathan v. Hussain, (1992) CCR 2129,

Richard, page 150–

“where the statute has not laid down limitation, on the number of times that a cheque may be presented within the period of six months or any shorter period under Clause (a) of Proviso to Section 138, it will not be desirable to read into the said clause any such restriction as to number of times a cheque may be presented.”

Ravindranathan v. Hussain, II (1992) CCR 2129

“The Act does not compel the petitioner to issue a notice immediately upon dishonour. Subject to the outer limit prescribed, there can be representation of the cheque and the cause of the action for the complaint would arise only when pursuant to the dishonor, notice was issued and there was refusal/failure to pay.”

Analysis

The Supreme Court confirmed that multiple presentations of the same cheque are permissible within its validity period. Each dishonour, followed by statutory notice, creates a fresh and independent cause of action.

Question 12. Does issuing 'stop-payment' instructions absolve the drawer from liability?

Cases:

- (a) Modi Cements Ltd. v. Kuchil Kumar Nandi, (1998) 3 SCC 249
- (b) M.M.T.C. Ltd. v. Medchl Chemicals, (2002) 1 SCC 234
- (c) Goa Plast (P) Ltd. v. Chico Ursula D'Souza, (2004) 2 SCC 235

Relevant Extracts:

From Modi Cements Ltd., Para 18:

"Even if a cheque is dishonoured because of stop-payment instructions to the bank, Section 138 is attracted. The presumption under Section 139 operates once issuance of cheque is proved."

From M.M.T.C. Ltd., Para 19:

"The reason for dishonour is immaterial once the cheque is drawn for discharge of debt or liability. The burden to rebut the presumption lies on the drawer."

From Goa Plast (P) Ltd., Para 8:

“The legislative intent is to ensure credibility of commercial transactions. Dishonour of cheque on the ground of stop–payment would equally attract the penal consequences under Section 138.”

Analysis:

The drawer cannot escape liability by issuing stop–payment instructions. Once a cheque is issued towards a debt, dishonour for any reason including stop–payment triggers Section 138, unless the drawer rebuts the presumption by proving absence of liability.

Question 13. What if the drawer closes the account before presentation of the cheque?

Relevant Case: NEPC Micon Ltd. v. Magma Leasing Ltd., (1999) 4 SCC 253

Relevant Extract:

Para 7:

“The expression ‘account closed’ would mean that the account had ceased to exist and such situation would be covered by the expression ‘the amount of money standing to the credit of that account is insufficient to honour the cheque’. The closure of the account would be a species of that genus and would attract Section 138 of the Act.”

Analysis:

Dishonour due to “account closed” is treated as dishonour for insufficiency of funds.

The closure of the account is equivalent to non-availability of funds, hence Section 138 applies.

Question 14. Does mismatch of signatures or incomplete signatures amount to dishonour?

Relevant Case: Laxmi Dyechem v. State of Gujarat, (2012) 13 SCC 375

Para 15:

“There is no qualitative difference between a situation where the dishonour takes place on account of the substitution, absence or insufficiency of funds and a situation where the dishonour takes place on account of the stop-payment instructions or mismatch of signatures. So long as the cheque is dishonoured on presentation, the penal consequences under Section 138 must follow.”

Para 16:

“We are, therefore, of the opinion that dishonour of a cheque on the ground that the ‘signature of the drawer differs’ or ‘image of signature missing’ would constitute dishonour within the meaning of Section 138.”

Analysis:

A signature mismatch or missing signature image is treated at par with insufficiency of funds. Dishonour for such reasons still attracts Section 138 liability.

Question 15. Can a joint account holder be prosecuted if they have not signed the cheque?

Relevant Case: Aparna A. Shah v. Sheth Developers Pvt. Ltd., (2013) 8 SCC 71

Para 23:

“It is only the drawer of the cheque who can be prosecuted under Section 138 of the Act. In case of joint accounts, a joint account holder cannot be prosecuted unless he has signed the cheque.”

Para 24:

“The concept of vicarious liability has no application to a case where a person is not a signatory to the cheque.”

Analysis:

Only the signatory drawer of the cheque can be prosecuted. Other joint account holders, even if jointly maintaining the account, are not liable under Section 138 unless they have signed the cheque.

Question 16. Who bears the burden of proving whether a cheque was issued for consideration?

Case: Vijay v. Laxman, (2013) 3 SCC 86

Para 14:

"Once the issuance of the cheque is admitted, the presumption under Sections 118(a) and 139 of the Act would operate. The burden shifts to the accused to rebut the same by adducing evidence that the cheque was not issued for consideration or for discharge of any debt or liability."

Para 15:

"The presumption is rebuttable. The accused can discharge the burden by showing preponderance of probabilities, either by adducing direct evidence or by showing that the complainant's case is improbable."

Analysis:

The complainant must initially show that the cheque was issued by the accused. Thereafter, Sections 118(a) and 139 presume consideration and liability, and the burden shifts to the accused to rebut by probable defence.

Question 17. Whether Gurantor is liable for signing a cheque in regard to liability of principal debtor?

Answer: yes

Relevant Case: I.C.D.S. Ltd. v. Beena Shabbir & Anr. reported in AIR 2002 SC 3014.

Relevant Extract:

"The language, however, has been rather specific as regards the intent of the legislature. The commencement of the Section stands with the words "Where any cheque". The above noted three words are of extreme significance, in particular, by reason of the user of the word "any" the first three words suggest

that in fact for whatever reason if a cheque is drawn on an account maintained by him with a banker in favour of another person for the discharge of any debt or other liability, the highlighted words if read with the first three words at the commencement of Section 138, leave no manner of doubt that for whatever reason it may be, the liability under this provision cannot be avoided in the event the same stands returned by the banker unpaid. The legislature has been careful enough to record not only discharge in whole or in part of any debt but the same includes other liability as well. This aspect of the matter has not been appreciated by the High Court, neither been dealt with or even referred to in the impugned judgment.”

“The issue as regards the co-extensive liability of the guarantor and the principal debtor, in our view, is totally out of the purview of Section 138 of the Act, neither the same calls for any discussion therein. The language of the Statute depicts the intent of the law-makers to the effect that wherever there is a default on the part of one in favour of another and in the event a cheque is issued in discharge of any debt or other liability there cannot be any restriction or embargo in the matter of application of the provisions of Section 138 of the Act: 'Any cheque' and 'other liability' are the two key expressions which stands as clarifying the legislative intent so as to bring the factual context within the ambit of the provisions of the Statute. Any contra interpretation would defeat the intent of the legislature.”

Question 18. When does the statutory presumption under Sections 118 and 139 operate?

Relevant Case:

(i) K. Bhaskaran v. Sankaran Vaidhyan Balan (1999) 7 SCC 510

(ii) Reiterated in Triyambak S. Hegde v. Sripad, (2022) 1 SCC 742

Para 9–

" As the signature in the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the Act enjoins on the Court to presume that the holder of the cheque received it for the discharge of any debt or liability. The burden was on the accused to rebut the aforesaid presumption. The trial court was not persuaded to rely on the interested testimony of DW 1 to rebut the presumption. The said finding was upheld by the High Court. It is not now open to the accused to contend differently on that aspect."

Triyambak case : Para 14:

"Once the signature on the cheque is admitted, the presumption under Sections 118 and 139 of the NI Act operates in favour of the complainant. The onus then shifts on the accused to rebut the presumption by raising a probable defence."

Para 17:

“Unless such presumption is rebutted, the court shall presume that the cheque was issued for discharge of a legally enforceable debt or liability.”

Analysis:

When the accused admits his signature on the cheque, the presumption of debt and liability automatically arises. It is then upon the accused to rebut by showing probability of non-existence of debt.

Question 19. What is the nature of the presumption under Section 139 and the standard of rebuttal?

Relevant Case: Basalingappa v. Mudibasappa, (2019) 5 SCC 418

Para 25(i to v):

“We having noticed the ratio laid down by this Court in above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:–

(i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

(ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of

preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section

139 imposed an evidentiary burden and not a persuasive burden.

(v) It is not necessary for the accused to come in the witness box to support his defence. "

Analysis:

Section 139 raises a rebuttable presumption that the cheque was issued for a legally enforceable debt. The accused can rebut it by probabilities, without proving innocence beyond reasonable doubt or entering the witness box.

Question 20. Are minor discrepancies, like variation in ink or issuance before account closure, sufficient to rebut presumptions?

Answer: No.

Relevant Case: Ravi Chopra v. State, 2008 SCC OnLine Del 351

Para 20–

"There is no provision in the NI Act which either defines the difference in the handwriting or the ink pertaining to the material particulars filled up in comparison with the signature thereon as constituting a 'material alteration' for the purposes of Section 87 NI Act. What however is essential is that the cheque must have been signed by the drawer. If the signature is altered or does not tally with the normal signature of the maker, that would be a material alteration. Therefore as long as the cheque has been signed by the drawer, the fact that the ink in which the name and figures are written or the date is filled

up is different from the ink of the signature is not a material alteration for the purposes of Section 87 NI Act.”

Analysis:

The presumption of consideration continues unless the accused establishes, on a preponderance of probabilities, that the cheque was not issued for a legally enforceable debt.

Question 21. Can a power of attorney (POA) holder be liable for dishonour of cheque?

Relevant Case: G.N. Gurappa Reddy v. A.S. Finance & Investments, ILR 1999 Kar 1655

Answer: No.

When a cheque is signed by a duly authorised POA holder, the liability remains that of the account holder. The POA holder does not become personally liable under Section 138.

Relevant Extract:

Para 6—“The petitioner had issued the cheques and those cheques were dishonoured when presented to the Bank which is punishable under Section 138 of N.I. Act which is a criminal liability. The petitioner admittedly issued cheques in question representing that he has issued the cheques in repayment of the due and legally enforceable debt as against his mother and in addition to that he claims to be her P.A. holder which representation was believed by the respondent and accepted by it.

Para 6– As far as the criminal liability is concerned, when once a person issues a cheque and if that cheque is dishonoured by the Bank when presented, the drawer of the cheque fails to pay the amount after the receipt of the statutory notice within the stipulated time; is liable to be prosecuted under that Act. Therefore, the learned Sessions Judge has rightly held that the dismissal order passed by the Court below is contrary to the provisions of law.”

Question 22. Can a complaint under Section 138 be filed through a power of attorney holder?

Case: A.C. Narayanan v. State of Maharashtra (2013) 11 SCC 790

Answer: Yes.

Relevant Extract (para 26):

“Keeping in mind various situations like inability as a result of sickness, old age or death or staying abroad of the payee or holder in due course to appear and depose before the Court in order to prove the complaint, it is permissible for the Power of Attorney holder or for the legal representative(s) to file a complaint and/or continue with the pending criminal complaint for and on behalf of payee or holder in due course. However, it is expected that such power of attorney holder or legal representative(s) should have knowledge about the transaction in question

so as to be able to bring on record the truth of the grievance/offence, otherwise, no criminal justice could be achieved in case payee or holder in due course, is unable to sign, appear or depose as complainant due to above quoted reasons. Keeping these aspects in mind, in MMTC (supra), this Court had taken the view that if complaint is filed for and on behalf of payee or holder in due course, that is good enough compliance with [Section 142](#) of N.I. Act. .”

Question:23 What basic averment is required in a complaint to summon non-signatory directors under Section 141 NI Act?

Relevant Case:

- (i) Gunmala Sales (P) Ltd. v. Anu Mehta & Ors.m AIR 2015 1072
- (ii) S.M.S. Pharmaceuticals v neeta bhalla AIR 2005 SUPREME COURT 3512,

Gunmala Sales (P) Ltd. v. Anu Mehta & Ors.m AIR 2015 1072

Para 34.1.

“ Once in a complaint filed under Section 138 read with Section 141 of the NI Act the basic averment is made that the Director was in charge of and responsible for the conduct of the business of the company at the relevant time

when the offence was committed, the Magistrate can issue process against such Director.”

S.M.S. Pharmaceuticals v neeta bhallal AIR 2005 SUPREME COURT 3512,

Para 18 and 19

“To sum up, there is almost unanimous judicial opinion that necessary averments ought to be contained in a complaint before a person can be subjected to criminal process. A liability under section 141 of the Act is sought to be fastened vicariously on a person connected with a company, the principal accused being the company itself. It is a departure from the rule in criminal law against vicarious liability. A clear case should be spelled out in the complaint against the person sought to be made liable. section 141 of the Act contains the requirements for making a person liable under the said provision. That the respondent falls within the parameters of section 141 has to be spelled out. A complaint has to be examined by the Magistrate in the first instance on the basis of averments contained therein. If the Magistrate is satisfied that there are averments which bring the case within section 141, he would issue the process. We have seen that merely being described as a director in a company is not sufficient to satisfy the requirement of section 141. Even a non-director can be liable under section 141 of the Act. The averments in the complaint would also serve the purpose that the person sought to be made liable would know what is the case which is alleged against him. This will enable him to meet the case at the trial.”

Analysis:

Therefore, a bald statement that "X is a director" is insufficient; there must be a clear allegation that the director was in charge of, and responsible for, the conduct of the business at the material time.

Question 24 : Whether Section 202(2) CrPC can be made applicable to complaints under Section 138 of the N Act, 1881 in respect of examination of witnesses on oath?

Relevant Case: EXPEDITIOUS TRIAL OF CASES UNDER SECTION 138 OF NI ACT 1881, IN RE (2021) 16 Supreme Court Cases 116

Para 12/Page 127 –

"Section 202(2) of the Code is inapplicable to complaints under Section 138 in respect of examination of witnesses on oath. The evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses. In suitable cases, the Magistrate can examine documents for satisfaction as to the sufficiency of grounds for proceeding under Section 202."

Question 25 : Whether joint trial in cases of cheque dishonour is permissible?

Answer: Yes

Relevant Case:EXPEDITIOUS TRIAL OF CASES UNDER SECTION 138 OF NI ACT 1881, IN RE (2021) 16 Supreme Court Cases 116

Para 15/page 128 –

“Several cheques issued as a part of the same transaction can be the subject-matter of one trial.”

Question 26– Whether mechanical conversion of summary trial to summons trial in disposal of cases in complaints under Section 138 of the NI Act, 1881 is permissible?

Relevant Case: EXPEDITIOUS TRIAL OF CASES UNDER SECTION 138 OF NI ACT 1881, IN RE (2021) 16 Supreme Court Cases 116

Para 20/Page 130–

“Section 143 of the Act mandates that the provisions of summary trial of the Code shall apply "as far as may be" to trials of complaints under Section 138. Section 258 of the Code empowers the Magistrate to stop the proceedings at any stage for reasons to be recorded in writing and pronounce a judgment of acquittal in any summons case instituted otherwise than upon complaint. Section 258 of the Code is not applicable to a summons case instituted on a complaint. Therefore, Section 258 cannot come into play in respect of the complaints filed under Section 138 of the Act.”

Question 27. Is an offence under Section 138 compoundable?

Answer: Yes.

Relevant Case: (i) Damodar S. Prabhu v. Sayed Babalal H. (2010) 5 SCC 663

(ii) Sanjabij Tari vs Kishore S.Borcar, 2025 Supreme(Online)(SC) 9843, dated 25 September, 2025

Para 12–

“Section 147 of the Negotiable Instruments Act, 1881 is in the nature of an enabling provision which provides for the compounding of offences prescribed under the same Act, thereby serving as an exception to the general rule incorporated in sub–section (9) of Section 320 of the CrPC which states that ‘No offence shall be compounded except as provided by this Section’. A bare reading of this provision would lead us to the inference that offences punishable under laws other than the Indian Penal Code also cannot be compounded. However, since Section 147 was inserted by way of an amendment to a special law, the same will override the effect of Section 320 (9) of the CrPC, especially keeping in mind that Section carries a non–obstante clause ”

Para 21–

THE GUIDELINES

(i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made,

compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.

The matter was revisited by the Hon'ble Apex Court in the matter of Sanjabij Tari vs Kishore S.Borcar, 2025 Supreme(Online)(SC) 9843, dated 25 September, 2025

Para 38 –

Since a very large number of cheque bouncing cases are still pending and interest rates have fallen in the last few years, this Court is of the view that it is time to 'revisit and tweak the guidelines'. Accordingly, the aforesaid guidelines of compounding are modified as under:–

(a) If the accused pays the cheque amount before recording of his evidence (namely defence evidence), then the Trial Court may allow compounding of the offence without imposing any cost or penalty on the accused.

(b) If the accused makes the payment of the cheque amount post the recording of his evidence but prior to the pronouncement of judgment by the Trial Court, the Magistrate may allow compounding of the offence on payment of additional 5% of the cheque amount with the Legal Services Authority or such other Authority as the Court deems fit.

(c) Similarly, if the payment of cheque amount is made before the Sessions Court or a High Court in Revision or Appeal, such Court may compound the offence on the condition that the accused pays 7.5% of the cheque amount by way of costs.

(d) Finally, if the cheque amount is tendered before this Court, the figure would increase to 10% of the cheque amount.

Para 39–

This Court is of the view that if the Accused is willing to pay in accordance with the aforesaid guidelines, the Court may suggest to the parties to go for compounding. If for any reason, the financial institutions/complainant asks for payment other than the cheque amount or settlement of entire loan or other outstanding dues, then the Magistrate may suggest to the Accused to plead guilty and exercise the power under Section 255(2) and/or 255(3) of the Cr.P.C. or 278 of the BNSS, 2023 and/or give the benefit under the Probation of Offenders Act, 1958 to the Accused.

Analysis:

The Court prescribed a graded cost system to discourage delayed compounding at later stages of litigation.

Question 28. What is the effect of compounding during appeal?

Answer: acquittal.

Case: K.J.B.L. Rama Reddy v. Annapurna Seeds (2005) 10 SCC 632

Relevant Extract (para 3):

“Once the parties have amicably settled the matter and the amount is paid, the offence stands compounded and the conviction deserves to be set aside.”

Question 29. Does pendency of a civil case bar criminal prosecution under Section 138?

Answer—No.

Relevant Case: M/S Sri Krishna Agencies vs State Of A.P.& Anr.(2008) 13 SCC 729.

Relevant Extract (last para):

“We are also of the view that there can be no bar to the simultaneous continuance of a criminal proceeding and a civil proceeding if the two arise from separate causes of action. ”

Question 29 A . If a company is declared sick under SICA, can prosecution under Section 138 still continue?

Answer: Yes.

Relevant Case: BSI Ltd. v. Gift Holdings Pvt. Ltd. (2000) 2 SCC 737

para 15–

“The fallacy of the above contention is two–fold. First is that maintainability of a prosecution proceeding is not to be tested on the touchstone of any practical hurdle in enforcing the sentence which might be imposed on a company after conviction. Second is, there is no insurmountable hurdle for recovery of the fine covered by the sentence even from a sick industrial company because the ban contained in Section 22 (1) is only conditional as could be discerned from the last limb thereof which reads thus: "Except with the consent of the Board or, as the case may be, the Appellate Authority." It means that with such consent the court would be in a position to resort to proceedings for distress against the properties of the sick industrial company. Hence the aforesaid contention has no merit at all”

Question 30. Does filing a winding–up petition protect a company from Section 138 liability?

Answer: No.

Relevant Case: Pankaj Mehra v. State of Maharashtra (2000) 2 SCC 756

Relevant Extract (para 23):

“the debt would not cease to be legally enforceable merely because some body has filed a petition for winding up. ”

Question 31: Whether physical disability and financial inability absolve liability under section 138 NI Act?

Answer No

Relevant Case : Pankaj Mehra v. State of Maharashtra (2000) 2 SCC 756

Para 29–30–

“The words “the drawer of such cheque fails to make the payment” are ostensibly different from saying “the drawer refuses to make payment”. Failure to make payment can be due to the reasons beyond the control of the drawer. An illustrative case is, if the drawer is not a company but individual who has become so pauper or so sick as he cannot raise the money to pay the demanded sum. Can he contend that since failure to make payment was on account of such conditions he is entitled to be acquitted? The answer cannot be in the affirmative though the aforesaid conditions can be put forth while considering the question of sentence.”

“We therefore feel that legislature has thoughtfully used the word “fails” instead of other expressions as failure can be due to variety of reasons including his disability to pay. But the offence would be complete when the drawer “fails” to make payment within the stipulated time, whatever be the cause for such failure”

Question 32. Can a company be punished under Section 138 if it cannot be imprisoned?

Answer: Yes

Relevant Case: Standard Chartered Bank and Ors. v. Directorate of Enforcement and Ors. (2005) 4 Supreme Court Cases 530

Para 31 – 32

"We hold that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment prescribed is mandatory imprisonment sic and fine"

Question 33. Can directors or officers be prosecuted when the company itself is not arraigned?

Answer: Yes.

Relevant Case: Anil Hada v. Indian Acrylic Ltd. (2000) 1 SCC 1

Para 12–

"If the offence was committed by a company it can be punished only if the company is prosecuted. But instead of prosecuting the company if a payee opts to prosecute only the persons falling within the second or third category the payee can succeed in the case only if he succeeds in showing that the offence was actually committed by the company. In such a prosecution the accused can show that the company has not committed the offence, though such company is not made an accused, and hence the prosecuted accused is

not liable to be punished. The provisions do not contain a condition that prosecution of the company is sine qua non for prosecution of the other persons who fall within the second and the third categories mentioned above. No doubt a finding that the offence was committed by the company is sine qua non for convicting those other persons. But if a company is not prosecuted due to any legal snag or otherwise, the other prosecuted persons cannot, on that score alone, escape from the penal liability created through the legal fiction envisaged in [section 141](#) of the Act ”

Analysis: Even if the company is not arraigned as an accused, its directors and officers who were in charge of and responsible for the conduct of business can be prosecuted if there exists sufficient material to show their participation in the transaction.

Question 34. Who can be held liable under Section 141 (offences by companies)?

Relevant Case: A.K. Singhania v. Gujarat State Fertilizer Co. Ltd. (2013) 16 SCC 630

Para 14–

“in the case of offence by the company, to bring its Directors within the mischief of Section 138 of the NI Act, it shall be necessary to allege that they were in charge of and responsible to the conduct of the business of the company. It is a necessary ingredient which would be sufficient to proceed against such Directors. However, as no particular form is prescribed, it may not be necessary to reproduce the words of Section 141. If reading of the complaint shows and the substance of accusation discloses necessary

averments, that would be sufficient to proceed against such of the Directors and no particular form is necessary.”

Analysis: Only those persons who were “in charge of and responsible for the conduct of the business of the company” at the time the offence was committed can be prosecuted. Merely holding a designation such as “Director” or “Managing Director” is not enough; specific averments must be made in the complaint to show actual responsibility and control.

Question 35. Can a non-executive or sleeping director be prosecuted?

Answer: No.

Relevant Case: A.K. Singhania v. Gujarat State Fertilizer Co. Ltd. (2013) 16 SCC 630.

Para 14–

“in the case of offence by the company, to bring its Directors within the mischief of Section 138 of the NI Act, it shall be necessary to allege that they were in charge of and responsible to the conduct of the business of the company..”

Analysis: Unless the complaint contains specific averments showing that such director was actively responsible for the conduct of the business, they cannot be held vicariously liable under Section 141. Mere status as a director is insufficient.

Question 36. Can liability extend to partners in a firm under Section 141?

Relevant Case: Dilip Hariramani v. Bank of Baroda, 2022 SCC OnLine SC 579.

Relevant Extract (para 8):

“Sub–section (1) to Section 141 of the NI Act states that where a company commits an offence, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business, as well as the company itself, shall be deemed to be guilty of the offence. The expression "every person" is wide and comprehensive enough to include a director, partner or other officers or persons. At the same time, it follows that a person who does not bear out the requirements of "in charge of and responsible to the company for the conduct of its business" is not vicariously liable under Section 141 of the NI Act. The burden is on the prosecution to show that the person prosecuted was in charge of and responsible to the company for conduct of its business”

Analysis: No vicarious liability arises unless it is proved that the partner was in charge of and responsible for the conduct of the business of the firm at the time of offence. In this case, the Supreme Court set aside the conviction due to lack of such evidence.

Question 37. What must a complaint against a company show to succeed under Section 138?

Relevant Case: (i) S.M.S Pharmaceuticals Ltd. V. Neeta Bhalla, 2005 8 SCC 89.

(i) Standard Chartered Bank Versus State of Maharashtra & Others, 2016 6 SCC 62.

S.M.S Pharmaceuticals Para 19(a)

"It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied."

Standard Chartered Para 11–

"On a perusal of the aforesaid provision, it is clear as crystal that if the person who commits an offence under Section 138 of the Act is a company, the company as well as other person in charge of or responsible to the company for the conduct of the business of the company at the time of commission of the offence is deemed to be guilty of the offence. Thus, it creates a constructive liability on the persons responsible for the conduct of the business of the company"

Question 38. Can a company file a complaint under Section 138?

Answer: Through an authorised representative.

Case: Milind Shripad Chandurkar v. Kalim M. Khan, 2011 AIR SCW 1773.

Para 22–

"In a case of this nature, where the "payee" is a company or a sole proprietary concern, such issue cannot be adjudicated upon taking any guidance from Section 142 of the Act 1881 but the case shall be governed by the general law i.e. the Companies Act 1956 or by civil law where an individual carries on

business in the name or style other than his own name. In such a situation, he can sue in his own name and not in trading name, though others can sue him in the trading name. So far as Section 142 a complaint shall be maintainable in the name of the "payee", proprietary concern itself or in the name of the proprietor of the said concern. A company being a juristic person can file a complaint under Section 138 of the Act through its authorised signatory or power of attorney holder. The authorised representative must, however, have knowledge of the transaction."

Question 39 What is object of a demand notice under Section 138 of the Negotiable Instruments Act, 1881?

Relevant Case: K. R. Indira vs. Dr. G. Adinarayana, AIR 2003 SC 4689:

Purpose of the Notice, Para 8–

"As was observed by this Court in Central Bank of India v. Saxons Farms (1999) 8 SCC 221, the object of the notice is to give a chance to the drawer of the cheque to rectify his omission. The demand in the notice has to be in relation to the 'said amount of money' as described in the provision. The expression 'payment of any amount of money' as appearing in the main portion of Section 138 of the Act goes to show it needs to be established that the cheque was drawn for the purpose of discharging in whole or in part of any debt or any liability ... "

Question 40: Does Additional Claims Invalidate the Notice?

Relevant Case: Suman Sethi v. Ajay K. Churiwal & Another (2000) 2 SCC 380

Para 9–

“The legislative intent as evident from Section 138 of the Act is that if for the dishonoured cheque the demand is not met within 15 days of the receipt of the notice the drawer is liable for conviction. If the cheque amount is paid within the above period or before the complaint is filed the legal liability under Section 138 ceases to be operative and for the recovery of other demands such as compensation, costs, interests etc. separate proceedings would lie. If in a notice any other sum is indicated in addition to the amount covered by the cheque, that does not invalidate the notice.”

Interpretation:

Even if the notice includes additional claims like interest, costs, or damages along with the cheque amount, it remains valid—provided the cheque amount is clearly specified and demanded. The inclusion of other claims does not render the notice defective.

Question 41: Whether demand notice is invalid if it is not Specific to the Cheque Amount vague or ambiguous?

Answer: It will be invalid. Demand notice must Be Specific to the Cheque Amount not vague or ambiguous.

Relevant Case: Suman Sethi vs Ajay K, Churiwal (2000) 2 SCC 380

Para 8

"It is well settled principle of law that the notice has to be read as a whole. In the notice, demand has to be made for the "said amount" i.e. cheque amount. If no such demand is made the notice no doubt would fall short of its legal requirement. Where in addition to "said amount" there is also a claim by way of interest, cost etc. whether the notice is bad would depend on the language of the notice. If in a notice while giving the break up of the claim the cheque amount, interest, damages etc. are separately specified, other such claims for interest, cost etc. would be superfluous and these additional claims would be severable— and will not invalidate the notice. If, however, in the notice an omnibus demand is made without specifying what was due under the dishonored cheque, notice might well fail to meet the legal requirement and may be regarded as bad."

Analysis:

The demand notice must specifically call upon the drawer to pay the cheque amount. A vague or composite demand for other dues without distinctly mentioning the amount covered by the dishonoured cheque renders the notice invalid.

Question 42: In case of dishonour of cheque, when does the cause of action arise under Section 138 of the Negotiable Instruments Act, 1881?

Relevant Case: M/s. Dalmia Cement (Bharat) Ltd. v. Galaxy Traders & Agencies Ltd., AIR 2001 SC 676.

Para 4 and 6–

“To constitute an offence under Section 138 of the Act the complainant is obliged to prove its ingredients which include the receipt of notice by the accused under Clause (b). It is to be kept in mind that it is not the giving of the notice which makes the offence but it is the receipt of the notice by the drawer which gives the cause of action to the complainant to file the complaint within the stipulated period. The offence under Section 138 of the Negotiable Instruments Act, 1881 is complete upon the receipt of the notice by the drawer of the cheque.”

Analysis: As held in M/s. Dalmia Cement (Bharat) Ltd. v. Galaxy Traders & Agencies Ltd., the cause of action for filing a complaint under Section 138 NI Act arises only upon the receipt of the demand notice by the drawer and not merely on its dispatch. The complainant must therefore prove the issuance of a valid statutory notice, and its actual or deemed receipt by the drawer. Only upon the drawer's failure to make payment within 15 days of receipt of notice does the complainant acquire the right to initiate prosecution under Section 138 of the NI Act.

Question 43. Can a demand notice be issued by a director where the cheque was issued by a company?

Answer: Yes

Relevant Case : Rajneesh Aggarwal vs. Amit J. Bhalla, AIR 2001 SC 518.

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The object of issuing notice indicating the factum of dishonour of the cheques is to give an opportunity to the drawer to make the payment within 15 days, so that it will not be necessary for the payee to initiate any criminal action, even though the bank dishonoured the cheques. It was the respondent who had signed the cheques as the Director of the drawer company. When the notice was issued to the respondent Director, it was incumbent upon him to see that the payments were made within the stipulated period. Admittedly the respondent had signed the cheques and he was the Director of the drawer company. Bearing in mind the object of issuance of such notice, it has to be held that the notices could not be construed in a narrow technical way without examining the substance of the matter. The High Court committed an error in recording a finding that there was no notice to the drawer of the cheque as required under Section 138 of the Negotiable Instruments Act and quashing the complaints on the ground.

Analysis:

The statutory notice under Section 138 NI Act is meant to give the drawer a final chance to pay within 15 days. Here, the respondent himself had signed the cheques as Director, so notice served on him was valid and sufficient. Such notice cannot be interpreted narrowly or technically when its purpose is fulfilled.

Question 44. Is it permissible to exempt the accused from answering Sec. 313 Cr.P.C. Statement? What is the procedure to be followed?

Answer: Yes

Relevant Case Keya Mukherjee v. Magma Leasing Ltd., AIR 2008 SC 1807 —

Extract:—

Para 25—

“If the accused, exempted from personally appearing, applies to answer the questions without physical presence due to justified exigency, the court may permit it if accompanied by an affidavit stating:

- (a) Facts showing genuine difficulty in attending court.
- (b) Assurance that no prejudice will occur by dispensing with personal presence.
- (c) Undertaking not to raise grievance later regarding this exemption.

If satisfied, the court can supply the questionnaire under Section 313 to the advocate, fix a return time, and require a properly authenticated affidavit signed by the accused. The accused may indicate refusal to answer any question. Failure to return the completed questionnaire within time forfeits the right to exemption. The court must ensure counsel’s responses do not substitute the accused’s statements.”

Para 26–

“If the court is satisfied of the genuineness of the statements made by the accused in the said application and affidavit it is open to the court to supply the questionnaire to his advocate (containing the questions which the court might put to him under Section 313 of the Code) and fix the time within which the same has to be returned duly answered by the accused together with a properly authenticated affidavit that those answers were given by the accused himself. He should affix his signature on all the sheets of the answered questionnaire. However, if he does not wish to give any answer to any of the questions he is free to indicate that fact at the appropriate place in the questionnaire (as a matter of precaution the court may keep photocopy or carbon copy of the questionnaire before it is supplied to the accused for an answer). If the accused fails to return the questionnaire duly answered as aforesaid within the time or extended time granted by the court, he shall forfeit his right to seek personal exemption from court during such questioning. [The Court has also to ensure that the imaginative response of the counsel is intended to be availed to be a substitute for taking statement of the accused.”

Para 27–

“In our opinion, if the above course is adopted in exceptional exigency it would not violate the legislative intent envisaged in Section 313 of the Code.”

Question 45. Whether the insolvency of the accused absolves him of the liability under Sec. 138 NI Act?

Answer:: No, a delay or procedural lapse does not absolve the accused of liability.

Relevant Case: Bharath N. Mehta vs. Mansi Finance (Chennai) Ltd. 1999 Cr. LJ 2929

Para 17–

“The offence under Section 138 of the Negotiable Instruments Act is a statutory offence and these proceedings are totally different from that of the Insolvency proceedings and by any stretch of imagination, it cannot be said that Section 17(2) prohibits the continuation of criminal proceedings initiated for dishonour of the cheque under Section 138 of the Negotiable Instruments Act.”

Para 18.–

“Similarly, the wordings in Section 18(1) referring about “stay any suit or other proceedings pending against the insolvent before any Judge or Judges of the Court subject to the superintendence of the Court would definitely mean only civil proceedings and not criminal proceedings, as criminal courts are not subject to the superintendence of the Insolvency Court.”

Para 19–

“The protection conferred under Section 25(1) and 25(3) would also refer about the protection to the insolvent from being arrested or detained in civil prison for any debt and not with reference to any offence liable to be convicted by the criminal court.”

Para 20–

“Therefore, none of the provisions referred to by the learned counsel for the petitioner would not be in any way helpful to the petitioner to substantiate his contention.”

Question 46 .Whether substituted service of summon is permissible under Negotiable Instrument Act ?

Relevant Case: Mac Charles (1) Ltd. v. Chandrashekar, 2005 SCC OnLine Kar 368: ILR 2005 KAR 3648

Para 9–

S. 65 CrPC prescribes that if service cannot by the exercise of due diligence be effected as provided in Ss. 62 and 63 or 5. 64, the sending officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper. Indisputably the mode of service as prescribed under S. 65 CrPC is substituted service viz. by affixture of one of the duplicates of the summons to some conspicuous part of the house of the accused. Such a mode of service of summons to the accused could be resorted to when

the service of summons to the accused in the manner as contemplated under Ss. 62 and 63 or S. 64 cannot be effective.

Question 47: Can the sentence of imprisonment be altered to fine?

Answer: Yes

Relevant Case: P. Mohan Babu v. D. Ramaswamy & Anr., 2000 (9) SCC 528

Para 3

“In view of the said development, we are disposed to save the appellant from the imprisonment part of the sentence. We, therefore, alter the sentence to a fine of Rs. 5,000/– which appellant shall remit in the trial Court within four weeks from today. In default of payment of fine, he will undergo simple imprisonment for a period of 3 months.”

Analysis: Even though the accused was originally sentenced to imprisonment, the sentence of imprisonment can be altered to a fine if circumstances justify it. Thus a court has discretion to convert or reduce imprisonment to a fine, particularly when the complainant's rights are satisfied and justice warrants leniency.

Question 48. Can the Court award the fine more than one contemplated under Section 29 CrPC?

Answer: Yes

Relevant Case: Shaila P. Prabhu v. Nagendra K. Mallya, 2006 (1) KCCR 366)

Para 7–

Section 143 of the Negotiable Instruments Act is inserted by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002, with effect from 6-2-2003. Thus, from that date onwards, even the Judicial Magistrate First Class may pass sentence of fine exceeding Rs. 5,000/-. In view of conferring of the special jurisdiction or powers on the Magistrate of First Class in the matter of awarding sentences by inserting Section 143 of the N.I. Act, the limitation stipulated in Section 29(2) of Cr. P.C. is obviated. Similar provisions are also incorporated in Section 12 of the Essential Commodities Act, 1955, Section 36 of the Drugs and Cosmetics Act, 1940 and Section 21 of the Prevention of Food Adulteration Act, 1954 (these instances are only illustrative and not exhaustive). Thus, it is clear that even the Magistrate of First Class may impose fine exceeding Rs. 5,000/- for the offence punishable under Section 138 of the N.I. Act, after the aforesaid amendment.

Analysis: The Court can impose a fine significantly in excess of what might be typically expected under the usual range in Section 29 CrP subject to statutory limits and fairness provided it is justified by facts of the case.

Question 49. What is the purpose of a demand notice under Section 138 of the Negotiable Instruments Act, 1881?

Answer: To afford final opportunity for payment.

Relevant case: Central Bank of India & Anr. vs. Saxons Farms & Ors. (1999) 8 SCC 221.

Para 8-

“The object of notice is to give a chance to the drawer of the cheque to rectify his omission and also to protect an honest drawer. Service of notice of demand in clause (b) of the proviso to Section 138 is a condition precedent for filing a complaint under Section 138 of the Negotiable Instruments Act, 1881.”

Analysis: The purpose of a demand notice is to provide the drawer of the dishonoured cheque with an opportunity to rectify the default by making payment within the statutory period, and to protect an honest drawer who may have defaulted inadvertently. The notice also acts as a condition precedent for initiating prosecution under Section 138.

Question 50 What are requirement of written notice ?

Relevant Case: Central Bank of India vs. Saxons Farms (1999) 8 SCC 221.

Para 7–

“Though, no form of notice is prescribed in the above Clause (b) the requirement is that notice shall be given in writing within fifteen days of receipt of information from the bank regarding return of the cheque as unpaid and in the notice a demand for payment of the amount of the cheque has to be made.”

Analysis:

The notice must be in writing and must specifically demand payment of the cheque

amount within fifteen days of the complainant's knowledge of dishonour. Compliance with this formality is essential for the validity of subsequent prosecution.

Question No. 51 Whether full or part payment of the cheque amount absolves the liability of the accused under Section 138 of the Negotiable Instruments Act, 1881?

Answer: No.

Relevant Case: Rajneesh Aggarwal vs. Amit J. Bhalla, AIR 2001 SC 518.

Para 7–

“Once the offence is committed any payment made subsequent thereto will not absolve the accused of the liability of criminal offence, though in the matter of awarding of sentence, it may have some effect on the court trying the offence. But by no stretch of imagination, a criminal proceeding could be quashed on account of deposit of money in the court.”

Analysis: Neither full nor part payment of the cheque amount made subsequently absolves the accused from criminal liability.

Question 52. If payment is made can the sentence be reduced to the period already undergone?

Answer: Yes

Relevant Case:– K. L. Kunjappan v. Rafeeqe, (2002) 8 SCC 181)

Para 3–

“It is stated by the learned counsel for the respondent that the money due under the cheque has already been received by the respondent. In this view of the matter we find no justification for continuing the sentence of imprisonment.”

Analysis: when the accused makes payment or when the amount due becomes satisfied the court may reduce or set aside the imprisonment portion of the sentence. The key is that the underlying debt/liability has been discharged, so continuing imprisonment lacks justification.

Question 53. Whether lenient view can be taken while imposing sentence?

Answer: Yes

Relevant Case: Smt. Chandrammal v. Smt. R. Padmavathy, 2010 (1) KCCR 278.

Para 6

“But however, as regards the sentence, it is argued by the learned Counsel for the petitioner that ... the petitioner is an old lady aged more than 70 years, she has no sufficient source of income to generate the funds and make payment in lump sum, it is also submitted that the petitioner, she is suffering from old age ailments ”

Para 7:

“Having regard to the hardship pleaded by the petitioner and looking to the totality of the facts and circumstances, this Court is of the considered view that a lenient view deserves to be taken regarding Imposition of sentence.”

Analysis: Courts may adopt a lenient view in sentencing under Section 138 NI Act when the accused is elderly, ill, or financially distressed, and the overall circumstances justify a reduced sentence. The object is to ensure fairness and proportionality in sentencing.

Question 54. Is it permissible to exempt the accused from answering Sec. 313 Cr.P.C. Statement? What is the procedure to be followed?

Answer: Yes

Relevant Case Keya Mukherjee v. Magma Leasing Ltd., AIR 2008 SC 1807 –

Para 25–

“If the accused, exempted from personally appearing, applies to answer the questions without physical presence due to justified exigency, the court may permit it if accompanied by an affidavit stating:

(a) Facts showing genuine difficulty in attending court.

(b) Assurance that no prejudice will occur by dispensing with personal presence.

(c) Undertaking not to raise grievance later regarding this exemption.

If satisfied, the court can supply the questionnaire under Section 313 to the advocate, fix a return time, and require a properly authenticated affidavit

signed by the accused. The accused may indicate refusal to answer any question. Failure to return the completed questionnaire within time forfeits the right to exemption. The court must ensure counsel's responses do not substitute the accused's statements."

Para 26–

"If the court is satisfied of the genuineness of the statements made by the accused in the said application and affidavit it is open to the court to supply the questionnaire to his advocate (containing the questions which the court might put to him under Section 313 of the Code) and fix the time within which the same has to be returned duly answered by the accused together with a properly authenticated affidavit that those answers were given by the accused himself. He should affix his signature on all the sheets of the answered questionnaire. However, if he does not wish to give any answer to any of the questions he is free to indicate that fact at the appropriate place in the questionnaire (as a matter of precaution the court may keep photocopy or carbon copy of the questionnaire before it is supplied to the accused for an answer). If the accused fails to return the questionnaire duly answered as aforesaid within the time or extended time granted by the court, he shall forfeit his right to seek personal exemption from court during such questioning. [The Court has also to ensure that the imaginative response of the counsel is intended to be availed to be a substitute for taking statement of the accused."

Para 27–

“In our opinion, if the above course is adopted in exceptional exigency it would not violate the legislative intent envisaged in Section 313 of the Code.”

Question 55. Whether the insolvency of the accused absolves him of the liability under Sec. 138 NI Act?

Answer: No.

Relevant Case: Bharath N. Mehta vs. Mansi Finance (Chennai) Ltd. 1999 Cr. LJ 2929

Para 17–

“The offence under Section 138 of the Negotiable Instruments Act is a statutory offence and these proceedings are totally different from that of the Insolvencies, proceedings and by any stretch of imagination, it cannot be said that Section 17(2) prohibits the continuation of criminal proceedings initiated for dishonour of the cheque under Section 138 of the Negotiable Instruments Act.”

Para 18–

“Similarly, the wordings in Section 18(1) referring about “stay any suit or other proceedings pending against the insolvent before any Judge or Judges of the Court subject to the superintendence of the Court would definitely mean only civil proceedings and not criminal proceedings, as criminal courts are not subject to the superintendence of the Insolvency Court.”

Para 19–

“The protection conferred under Section 25(1) and 25(3) would also refer about the protection to the insolvent from being arrested or detained in civil prison for any debt and not with reference to any offence liable to be convicted by the criminal court.”

Question 56. Whether substituted service of summon is permissible under Negotiable Instrument Act ?

Answer: Yes

Relevant Case: Mac Charles (1) Ltd. v. Chandrashekar, 2005 SCC OnLine Kar 368: ILR 2005 KAR 3648

Para 9–

S. 65 CrPC prescribes that if service cannot by the exercise of due diligence be effected as provided in Ss. 62 and 63 or S. 64, the sending officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper. Indisputably the mode of service as prescribed under S. 65 CrPC is substituted service viz. by affixture of one of the duplicates of the summons to some conspicuous part of the house of the accused. Such a mode of service of summons to the accused could be resorted to when the service of summons to the accused in the manner as contemplated under Ss. 62 and 63 or S. 64 cannot be effective.

Question 57. Can the sentence of imprisonment be altered to fine?

Answer :Yes

Relevant CaseP. Mohan Babu v. D. Ramaswamy & Anr., 2000 (9) SCC 528

Para 3

“In view of the said development, we are disposed to save the appellant from the imprisonment part of the sentence. We, therefore, alter the sentence to a fine of Rs. 5,000/– which appellant shall remit in the trial Court within four weeks from today. In default of payment of fine, he will undergo simple imprisonment for a period of 3 months.”

— the court held that even though the accused was originally sentenced to imprisonment, the sentence of imprisonment can be altered to a fine if circumstances justify it (here full payment had been made and the complainant was fully satisfied). Thus: a court has discretion to convert or reduce imprisonment to a fine, particularly when the complainant’s rights are satisfied and justice warrants leniency.

Question 58.Can the Court award the fine more than one contemplated under Section 29 CrPC?

Answer:Yes

Extract: Shaila P. Prabhu v. Nagendra K. Mallya, 2006 (1) KCCR 366)

Para 7.

Section 143 of the Negotiable Instruments Act is inserted by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002, with effect from 6-2-2003. Thus, from that date onwards, even the Judicial Magistrate First Class may pass sentence of fine exceeding Rs. 5,000/-. In view of conferring of the special jurisdiction or powers on the Magistrate of First Class in the matter of awarding sentences by inserting Section 143 of the N.I. Act, the limitation stipulated in Section 29(2) of Cr. P.C. is obviated. Similar provisions are also incorporated in Section 12 of the Essential Commodities Act, 1955, Section 36 of the Drugs and Cosmetics Act, 1940 and Section 21 of the Prevention of Food Adulteration Act, 1954 (these instances are only illustrative and not exhaustive). Thus, it is clear that even the Magistrate of First Class may impose fine exceeding Rs. 5,000/- for the offence punishable under Section 138 of the N.I. Act, after the aforesaid amendment.

Analysis:

The Court can impose a fine significantly in excess of what might be typically expected under the usual range in Section 29 CrPC. Therefore, a Court can award a fine beyond typical expectations subject to statutory limits and fairness provided it is justified by facts of the case.

Question.59 If payment is made can the sentence be reduced to the period already undergone?

Answer:Yes

Case:– K. L. Kunjappan v. Rafeeqe, (2002) 8 SCC 181)

Para 3–“It is stated by the learned counsel for the respondent that the money due under the cheque has already been received by the respondent. In this view of the matter we find no justification for continuing the sentence of imprisonment.”

Analysis:

When the accused makes payment or when the amount due becomes satisfied the court may reduce or set aside the imprisonment portion of the sentence. The key is that the underlying debt/liability has been discharged, so continuing imprisonment lacks justification.

Question 60. Whether lenient view can be taken while imposing sentence?

Answer: Yes

Relevant Extract Smt. Chandrammal v. Smt. R. Padmavathy, 2010 (1) KCCR 278.

Para 6–

“But however, as regards the sentence, it is argued by the learned Counsel for the petitioner that ... the petitioner is an old lady aged more than 70 years, she has no sufficient source of income to generate the funds and make payment in lump sum, it is also submitted that the petitioner, she is suffering from old age ailments ... ”

Para 7:

“Having regard to the hardship pleaded by the petitioner and looking to the totality of the facts and circumstances, this Court is of the considered view that a lenient view deserves to be taken regarding Imposition of sentence.”

Analysis: Courts may adopt a lenient view in sentencing under Section 138 NI Act when the accused is elderly, ill, or financially distressed, and the overall circumstances justify a reduced sentence. The object is to ensure fairness and proportionality in sentencing.

Question 61. A cheque was dishonoured prior to the amendment to Section 138(b) extending 30 days' time for issue of demand notice. The complainant, however, issued notice after 15 days but within 30 days of dishonour, following the amendment. Is such a notice valid? Does the amendment to Section 138(b) have retrospective effect?

Answer: No.

Case Law:—Dr. Geetha vs. Vasanthi S. Shetty, 2010 (2) KAR AIR 473.

Para 21—

“There is nothing to indicate that the amendment brought to Clause (b) of proviso to Section 138 of the Act has retrospective effect. Merely because the said amendment was in the nature of substitution, it cannot have a retrospective effect, more so, when it relates to initiation of penal action. Therefore this Court is of the opinion that the amendment brought to Clause (b) of the proviso to Section 138 cannot be deemed to be in force from the

inception and the amendment brought, into effect subsequently cannot create a fresh cause of action for the complainant to issue notice and lodge a complaint based on such notice.

Question 62. Is the notice issued under Section 434 of the Companies Act sufficient for the purpose of Section 138 of the Negotiable Instruments Act, 1881?

Answer:Yes.

Relevant Case: M/s. Uniplas India Ltd. & Ors. vs. State (NCT of Delhi) & Anr., AIR 2001 SC 2625.

Para 9–

“If any notice is issued under Section 434 of the Companies Act within 15 days of the information from the bank regarding return of the cheque drawn by a company as unpaid, such a notice would as well be good enough under proviso (b) to Section 138 of the NI Act.”

Analysis– A notice issued under Section 434 of the Companies Act, 1956 if it demands payment of the cheque amount within the statutory period (then 15 days, now 30 days) from the date of dishonour is sufficient to satisfy the requirement of a demand notice under Section 138(b) of the Negotiable Instruments Act.

Question 63. What is the effect of part–payment made between the date of issuance of the cheque and the date of its presentation and sheque is presented for full amount?

Answer: Section 138 will not be attracted if presented without endorsement regarding payment on the cheque.

Relevant Case: Dasharathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel, (2023) 1 SCC 578.

Para 33–

“Under section 56 read with Section 15 of the Act, an endorsement may be made by recording the part-payment of the debt in the cheque or in a note appended to the cheque. When such an endorsement is made, the instrument could still be used to negotiate the balance amount. If the endorsed cheque when presented for encashment of the balance amount is dishonoured, then the drawee can take recourse to the provisions of Section 138. Thus, when a part-payment of the debt is made after the cheque was drawn but before the cheque is encashed, such payment must be endorsed on the cheque under Section 56 of the Act. The cheque cannot be presented for encashment without recording the part payment. If the unendorsed cheque is dishonoured on presentation, the offence under Section 138 would not be attracted since the cheque does not represent a legally enforceable debt at the time of encashment. Thus, the enforceable debt reduces to the balance amount after part-payment.”

Question.64 What is the procedure to be followed in case of absconding accused? Is it permissible to record evidence U/S 299 Cr.P.C.?

Relevant decision: Mac Charles (I) Ltd. vs. Chandrashekar, ILR 2005 Kar 3648.

Para–9

“In a criminal trial where the presence of the accused is a must and where the presence of the accused could not be secured, in the manner

known to law within a reasonable time, the case against such accused will have to be split up in the manner as provided under Chapter IV of the Karnataka Criminal Rule of Practice and the case against the remaining accused who are present before the Court could be proceeded with further in accordance with law. The same will be the procedure applicable even in cases instituted for the alleged offences under Section 138 of the Negotiable Instruments Act.”

Analysis: If there are multiple accused, the case against the absconding accused can be split up as per the above decision.

Question 65. If the notice states that in addition to action under Section 138, action also would be taken under IPC by informing the police, then is such a notice valid?

Answer: Yes.

Relevant Case: Central Bank of India v. Saxons Farms & Ors., (1999) 8 SCC 221 = AIR 1999 SC 3607

2nd Last Para–

“If a cheque is dishonoured drawer may expose himself to prosecution under various Sections of the IPC which are cognizable and police could take up investigation. What was indicated in the notice was that in addition to the legal action by the appellant–bank under the Act, option was kept open for taking action against the respondents under the provisions of IPC by informing the police. Therefore, the contention of learned counsel for

the respondents has no force. For the reasons stated above we hold that notices were valid and proper”

Analysis: A demand notice is not rendered invalid merely because it also mentions that action would be taken under the Indian Penal Code (IPC) by informing the police.

Question 66. Whether a notice dispatched by fax, telegram, served by the payee himself or through a special messenger is a valid “notice in writing”?

Answer: Yes.

Relevant Case: SIL Import, USA v. Exim Aides Silk Exporters, AIR 1999 SC 1609.

Para 5

5th line from last.

“If the notice sent by fax is to be treated as the notice in writing contemplated in the Section, the cause of action should have arisen on the expiry of 15 days therefrom.”

Para–14

Chapter XVII of the Act, containing Sections 138 to 142, was inserted in the Act as per Banking Public Financial Institution and Negotiable Instruments Laws (Amendment) Act, 1988. When the legislature contemplated that notice in writing should be given to the drawer of the cheque, the legislature must be presumed to have been aware of the modern devices and equipment already in vogue and also in store for future. If the court were to interpret the words giving notice in writing in the section as restricted to the customary mode of sending

notice through postal service or even by personal delivery, the interpretative process would fail to cope up with the change of time.

Para-15

Facsimile (or Fax) is a way of sending hand-written or printed or typed materials as well as pictures by wire or radio. In the West such mode of transmission came to wide use even way back in the late 1930s. By 1954 International News Service began to use Facsimile quite extensively. Technological advancement like Facsimile, Internet, E-mail etc. were on swift progress even before the Bill for the Amendment Act was discussed by the Parliament. So when Parliament contemplated notice in writing to be given we cannot overlook the fact that Parliament was aware of modern devices and equipment already in vogue.

Para 16-

Francis Bennion in Statutory Interpretation has stressed the need to interpret a statute by giving allowances for any relevant changes that have occurred, since the Acts passing, in law, social conditions, technology, the meaning of words, and other matters.

Para 17-

For the need to update legislations, the Courts have the duty to use interpretative process to the fullest extent permissible by the enactment. The following passage at page 167 of the above book has been quoted with approval by a three Judge-Bench of this Court in State vs. S.J. Chaudhary (1996 2 SCC 428): *"It is presumed that Parliament intends the court to apply to an ongoing Act a construction that continuously updates its wording to allow*

for changes since the Act was initially framed (an updating construction). While it remains law, it is to be treated as always speaking. This means that in its application on any date, the language of the Act, though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as current law."

Para 18–

So if the notice envisaged in clause (b) of the proviso to Section 138 was transmitted by fax it would be compliance with the legal requirement.

Question 67. Can notice be issued on every successive dishonour?

Answer: Yes.

Relevant Case: M/s. MSR Leathers v. S. Palaniappan & Anr., (2013) 1 SCC 177.

Fact–

"On 28th January, 1997 the appellant sent a notice under Section 138(b) of the Act and called upon the respondent to pay the said amount with interest within 15 days. The respondent duly received the said notice on 3rd February, 1997."

Para–35

The prosecution based on second or successive dishonour of the cheque is also permissible so long as it satisfies the requirements stipulated under the proviso to Section 138 of the Act.

Analysis: A cheque may be presented any number of times within its validity period, and a fresh cause of action arises on every dishonour, provided all the statutory

requirements under Section 138 are complied with afresh (i.e., notice issued within 30 days, failure to pay within 15 days, etc.).

Question 68. When is the demand notice deemed to have been served?

(Effect of postal endorsements like “Left”, “Not known”, “House locked”, etc.)

Answer: It is valid service.

Relevant Case:

(i) State of Madhya Pradesh v. Hiralal and Ors., 2005 (3) SCC 15

(matter pertaining to M.P Land Acquisition Act)

(ii) C.C. Alavi Haji vs Palapetty Muhammed & Anr, 2007 (6) SCC 555,

(The above case was reiterated by Apex Court in this case)

State of MP...Para 1–

“In view of the office report, it would be clear that the respondents obviously managed to have the notice returned with postal remarks "not available in the house", "House locked" and "shop closed" respectively. In that view, it must be deemed that the notices have been served on the respondents”

C.C. Alavi Haji vs Palapetty Muhammed & Anr, 2007 (6) SCC 555,

Para 14

“Section 27 (General Clauses Act) gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the

addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station", due service has to be presumed."

Analysis: A demand notice under Section 138 NI Act is deemed to be served when it is sent by registered post to the correct address of the drawer, even if it is returned with postal endorsements such as "not available in the house," "house locked," "left," or "not claimed."

Question 69. Whether it is necessary that the accused must actually and physically receive the notice?

Answer– No.

Relevant Case: K. Bhaskaran vs Sankaran Vaidhyan Balan And Anr, 1999 (7) SCC 510

Para 18 –

"On the part of the payee he has to make a demand by 'giving a notice' in writing. If that was the only requirement to complete the offence on the failure of the drawer to pay the cheque amount within 15 days from the date of such 'giving' the travails of the prosecution would have been very much lessened. But the legislature says that failure on the part of the drawer to pay the amount should be within 15 days 'of the receipt' of the said notice. It is, therefore, clear

that 'giving notice' in the context is not the same as receipt of notice. Giving is a process of which receipt is the accomplishment. It is for the payee to perform the former process by sending the notice to the drawer in the correct address."

Para 19–

"In Black's Law Dictionary, 'giving of notice' is distinguished from 'receiving of the notice.' (vide page 621) "A person notifies or gives notice to another by taking such steps as may be reasonably required to inform the other in the ordinary course, whether or not such other actually comes to know of it." A person 'receives' a notice when it is duly delivered to him or at the place of his business.
"

Para 20–

"If a strict interpretation is given that the drawer should have actually received the notice for the period of 15 days to start running no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape—from the legal consequences of Section 138 of the Act. It must be borne in mind that Court should not adopt in interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure."

Analysis: Sending notice to correct address of drawer is necessary even if it is not physically received by drawer provisions of section 138 will be attracted. Actual physical receipt by the drawer is not mandatory; what matters is proper dispatch to the correct address.

Question 70. Can notice be issued to the payee who endorsed the cheque?

Answer: No.

Relevant Case: L.G. Narayana Swamy v. Vijayananda Road Lines Ltd., 2000 SCC OnLine Kar 676

Para 11–

“I do not find any necessity to prolong the discussion. The notice as contemplated under Section 138(b) is not issued to the ne of the cheque within 15 days of the receipt of information by him from the bank re garding the return of cheque as unpaid and notice to the payee who endorsed the same to the holder in due course is no compliance of Section 138(b) of the Act. As such, the complaint made upon the grounds stated in the complaint strictly do not constitute an offence under Section 138 of the Act and that the learned Magistrate is not justified in taking cognizance of the offence and issue of process. If that so, the proceedings pending is really an abuse of process of law and is liable to be quashed..”

Analysis: The demand notice under Section 138 must be served on the drawer of the cheque, not merely on the payee or an endorsee/holder in due course. Notice to a person other than the drawer does not satisfy statutory requirements.

Question 71. If cheque number is not mentioned in the notice, is it fatal?

Answer:

It depends on the circumstances:

- If only one cheque was issued by the drawer to the payee, omission of cheque number is not fatal, provided all other particulars (amount, date, bank, reason for dishonour) are stated clearly.
- If multiple cheques were issued, failure to specify the particular cheque number makes the notice defective, as the drawer would not know which cheque to pay.

Authority

Nityanand v. Jamuna Prakash, 2001 SCC Online Kar 660

Para 5–

“The purpose of giving the notice is to bring it to the notice of the drawer of the cheque that the cheque he has issued has been dishonoured and to put him on guard with regard to making of payment covered by that cheque within fifteen days so as to avoid prosecution. Viewed in this context, whether or not non-mentioning of cheque number when all other necessary particulars had been given in the notice, would be fatal to the case of the complainant, should depend upon the facts and circumstances of each case. For example, if there is only one incidence of issuing a cheque between the parties, then, if all other necessary particulars are furnished in the notice, the mere fact that cheque number is not mentioned would not be fatal. Even in a case like the present one wherein the accused totally denies having had any transaction with the complainant, and denies having issued the cheques concerned at all, it hardly matters whether cheque numbers are mentioned or not. But, there could be a case wherein the drawer of a particular cheque that has been dishonoured, would also have issued several other cheques in favour of the complainant concerned. In that event, if the cheque number is not mentioned in the notice of

demand, then, the accused drawer would not be in a position to know as to in respect of which particular cheque among several cheques that he has issued that he should make payment within fifteen days to avoid prosecution. It is in such circumstances that mentioning of cheque number would be essential.”

Question 72. What happens if the payee dies before issue of demand notice? Can the legal heir of the payee issue demand notice and prosecute the case?

Relevant Case: Shankarlal vs. Sanyogita devi (dead) through Lrs., 2009

Para–5

“There is no provision in Negotiable Instruments Act prohibiting the legal heirs to file the complaint under Section 138 of the Act. The legal heirs of the holder in due course of the cheque are clearly entitled to rely upon the instrument and there is no provision in the Act which stands in the way of legal heirs initiating proper and appropriate proceedings as they step into the shoes of the original holder in due course of the cheque.”

XI. The Cause of Action

Question 73. What gives rise to cause of action? Is it dishonour of cheque or failure to pay the cheque amount within the time stipulated?

Relevant Case: K. Bhaskaran v. Sankaran Vaidhyan Balan, AIR 1999 SC 3762

Para 18–

“It must be remembered that offence under Section 138 would not be completed with the dishonour of the cheque. It attains completion only with the failure of the drawer of the cheque to pay the cheque amount within the expiry of 15 days mentioned in clause (c) of the proviso to Section 138 of the Act.”

Analysis:

Cause of action arises only after the expiry of 15 days from the date of deemed or actual receipt of notice, if payment is not made within that period.

XII. The Limitation

Question. 74 What is the time limit within which the demand notice must be issued?

Proviso (b) to Section 138 :Within 30 days from the date of receipt of information from the bank regarding the return of the cheque unpaid.

Relevant Case: M/S. Munoth Investments Ltd. v. M/S. Puttukota Properties Ltd. & Anr. AIR 2001 SC 2752.

Second line Para 5:

“Section 138(b) of the Act inter alia provides that the payee has to make demand for the payment of money by giving a notice "to the drawer of the cheque within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid". So fifteen days are to be counted from the receipt of information regarding the return of the cheque as unpaid.”

Analysis:

Demand notice must be issued within 30 days from the date when the payee receives information of dishonour from the bank (not from the date of dishonour itself).

Question 74A. What is the statutory rule for presenting a cheque at bank (Sec. 138 Proviso (a))for clearnce/honor under Section 138 NI Act?

Answer: Section 138 proviso (a) clearly states that the cheque must be presented "within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier."

Question 75. Is the validity of a cheque still six months?

Answer: No. Three month The Reserve Bank of India has reduced the validity to three months.

RBI Notification No. DBOD.AML BC.No.47/14.01.001/2011-12 dated 04.11.2011 states: "Cheques/drafts/pay orders/banker's cheques will be valid for three months from the date of instrument." Thus, even though the NI Act mentions six months, RBI has lawfully shortened the validity to three months.

Question 76. What is the current legally enforceable presentation period?

Answer: 3 month

Relevant Case: Anil Kumar Sawhney v. Gulshan Rai, (1993) 4 SCC 424.

Para 11-

“The cheque is required to be presented to the bank within six months from the date on which it is drawn or within the period of its validity, whichever is earlier.”

Analysis:

A cheque must be presented within three months of the date written on it, because this is now the validity period under RBI regulations. Since Section 138 itself says “within the period of its validity”, the three-month RBI rule becomes binding. This principle still applies. Only the validity period has changed to three months due to RBI directions.

Question 77. Must the cheque reach the drawee bank within this validity?

Answer: Yes. In *Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd.*, (2001) 3 SCC 609, the Supreme Court clarified:

“The bank referred to in proviso (a) is the drawee bank on which the cheque is drawn.” (para 9)

Thus, the cheque must reach the drawee bank within three months; deposit with the collecting bank is not enough if the drawee bank receives it late.

Question 78. What happens if a cheque is presented after three months?

Answer:

It becomes a stale cheque, and prosecution under Section 138 NI Act cannot be maintained, because one of the essential conditions of Section 138 (presentation within validity) is not fulfilled.

Section 138(a) provides a period of 6 months from the date on which the Cheque is drawn, as the period within which the Cheque is to be presented to the bank. Section 138(b) provides that the payee must make a demand of the amount due to him within 30 days of the receipt of information from the bank. Section 138(c) uses the words 'within 15 days of the receipt of notice'. Using two different words 'from' and 'of' in the same Section at different places clarifies the intention of the legislature to convey different meanings by the said words. According to counsel, seen in this light, the word 'of' occurring in Section 138(c) and Section 142(b) is to be interpreted differently as against the word 'from' occurring in Section 138(a). The word 'from' may be taken as implying exclusion of the date in question and may well be governed by the General Clauses Act, 1897. However, the word 'of' is different and needs to be interpreted to include the starting day of the commencement of the prescribed period.

Question 79. How to calculate the period of limitation for filing the complaint?

Relevant Principle:

Section 142(b) of the NI Act– The cause of action to file a complaint arises after 15 days from the date of receipt (or deemed receipt) of the demand notice. The complaint must be filed within one month thereafter.

Relevant Case: (i) Saketh India Ltd. v. India Securities Ltd.
AIR 1999 SC 1090

(ii) Econ Antri Ltd. v. Rom Industries Ltd. 2013 (8) LAWS (SC) 58

Para 7–

The aforesaid principle of excluding the day from which the period is to be reckoned is incorporated in Section 12(1) and (2) of the Limitation Act, 1963. Section 12(1) specifically provides that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded. Similar provision is made in sub-section (2) for appeal, revision or review. The same principle is also incorporated in Section 9 of the General Clauses Act, 1897 which, inter alia, provides that in any Central Act made after the commencement of the General Clauses Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".

Para 8–

Hence, there is no reason for not adopting the rule enunciated in the aforesaid case which is consistently followed and which is adopted in the General Clauses Act and the Limitation Act. Ordinarily in computing the time, the rule observed is to exclude the first day and to include the last. Applying the said rule, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of 15 days from the date of the receipt of the notice by the drawer expires”

Econ Antri Ltd. v. Rom Industries Ltd. 2013 (8) LAWS (SC) 58

Para 20 India Kanoon

“we are of the opinion that with the aid of Section 9 of the General Clauses Act, 1897 it can be safely concluded in the present case that while calculating the period of one month which is prescribed under Section 142(b) of the N.I. Act, the period has to be reckoned by excluding the date on which the cause of action arose.”

Question.80 How should limitation under proviso (a) to Section 138 be reckoned?

Relevant Case: (i) Rameshchandra Ambalal Joshi v. State of Gujarat

(ii) K V Muhammed Kunhi v P Janardhanan 1998 SCC Online Kerla 287.

Section 138 proviso (a) is involved which is so clear (as extracted above) that the date of limitation will commence only from the date found in the cheque or the instrument.”

“A comparative study of both the sections in the Act and the General Clauses Act significantly indicates that the period of limitation has to be reckoned from the date on which the cheque or instrument was drawn. The words "from" and "to" employed in section 9 of the General Clauses Act are evidently clear that in cases where there is an ambiguity or suspicion with reference to the date of commencement of period of limitation in any Act or special enactment. the words "from" and "to" employed in section 9 of the General Clauses Act can be pressed into service. But in the instant case before me, section 138, proviso (a), is involved which is so clear (as extracted above) that the date of limitation will commence only from the date found in the cheque or the instrument. This view has already been taken by the Supreme Court in *Jiwanlal Achariya v. Rameshwarlal*

Agarwalla, AIR 1967 SC 1118. No doubt, in that judgment, among the three judges two of them have taken the view that the period of limitation will commence from the date the instrument bears. Therefore, the majority view of the judges has become the settled proposition of law. This court in a Division Bench in Manoj K. Seth v. R.J. Fernandez (1991) 2 KLT 65; (1992) 73 Comp Cas 441 has relied upon the principle pronounced by the Supreme Court in Jiwanlal Acharya v. Rameshwarlal Agarwalla, AIR 1967 SC 1118. The Madras High Court in N. Sivalingam v. Chandraiya (1994) 2 KLT (SN) 4; (1996) 86 Comp Cas 167 has taken the same view like this court and the Supreme Court. Therefore, now, with reference to the date from which the period of limitation has to be reckoned is so clear, namely, from the date which is found in the instrument or cheque”.

Question 81: How should limitation under proviso (c) to Section 138 be reckoned?

Relevant Case: Rameshchandra Ambalal Joshi v. State of Gujarat 2014 (3) JT 128.

Para 17–

“The settled position is that the cause of action arises on the 16th day after service of notice on the drawer, and the complaint has to be lodged within the statutory period reckoned from that date.”

Question 82. Can delay in filing complainant be condoned?

Answer: Yes

P.S. Aithala v. Ganapathy N. Hegde, 2008 (1) KCCR 112,

Para 9–

“Despite the fact that due to some exigencies the complainant could not file the complaint in time, when a specific proviso is provided under Section 142(b) of the N.I. Act to condone the delay, the said delay could be condoned in the interest of justice having regard to the nature of transaction and the amount involved and also having regard to the difficulties expressed.”

Q.No.83 How to calculate the notice period as prescribed under Section 138(b)?

Relevant Principle:

Statute proviso (b) of Section 138 of NI Act, which reads as under:–

"(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;"

M/S Rayapati Power Generation Pvt. Ltd. and Anr. v. Indian Renewable Energy Agency Ltd. 2022 SCC OnLine Del 295

Para17–

“The legal position, as culled out from the judicial dicta referred to hereinabove, is that while computing the limitation period of 30 days prescribed under Section 138(b) N.I. Act for issuance of a valid legal notice, the day on which intimation is received by the complainant from the bank that the cheque in question has been returned unpaid has to be excluded.”

Analysis:

While calculating the statutory period prescribed for issuing the demand notice under Section 138(b) of the Negotiable Instruments Act, the day on which the payee receives information from the bank regarding dishonour is to be excluded. The period begins from the next day.

Question 84. What is vicarious liability of directors of the company?

Relevant Case: Charanjit Pal Jindal v. L.N. Metalics
2015 (5) SCALE 16,

In the said case, this Court noticed the ratio laid down in C.V. Parekh’s case and the view expressed in Sheoratan Agarwal’s case while interpreting Section 138 and 141 of the Act, this Court observed as follows: “53. It is to be borne in mind that Section 141 of the Act is concerned with the offences by the company. It makes the other persons vicariously liable for commission of an offence on the part of the company. As has been stated by us earlier, the vicarious liability gets attracted when the condition precedent laid down in Section 141 of the Act stands satisfied. There can be no dispute that as the liability is penal in nature, a strict construction of the provision would be necessitous and, in a way, the warrant. 58. Applying the doctrine of strict

construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words “as well as the company” appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative.

XIII. Jurisdiction

Q.No.85 Which Court has jurisdiction to try the offence under Section 138 NI Act?

Relevant Legal Evolution:

Stage	Authority	Key Principle
		Offence under S.138 comprises five acts
1. jurisdiction recognised	Broad K. Bhaskaran v. Sankaran Vaidhyan Balan (AIR 1999 SC 3762 ¶14–16)	—drawing, presentation, dishonour, notice, and non-payment. Courts at any place where one act occurs have jurisdiction.
2.	Restriction Harman Electronics (P) Ltd.	Mere <i>issuance</i> of notice does not confer

Stage	Authority	Key Principle
introduced	v. National Panasonic India (P) Ltd. (2009 1 SCC 720 ¶14–15)	jurisdiction; what matters is <i>receipt</i> of notice by drawer.
3. Clarification	Nishant Aggarwal v. Kailash Reaffirmed Bhaskaran's multi-component test but read with Harman Electronics—Kumar Sharma (2013 10 SCC 72 ¶11–12)	jurisdiction lies where notice is <i>received</i> .
4. Narrow view adopted	Dashrath Rupsingh Rathod v. State of Maharashtra (2014 9 SCC 129 ¶15, 22)	Jurisdiction only where the drawee bank (where cheque dishonoured) is located. Complainant's bank or residence irrelevant.
5. Statutory correction	2015 Amendment to Section 142(2) (NI Act)	Restored earlier position similar to <i>Bhaskaran</i> —jurisdiction lies where the payee's bank is situated, i.e., where cheque is presented for collection.

Current Legal Position (Post–Amendment):

The complaint under Section 138 NI Act shall be filed in the Court within whose territorial jurisdiction the bank branch of the payee/holder in due course is situated, where the cheque is presented for collection.

Question 86. Whether Amendment of Complaint permissible?

Answer: Depends upon its effects.

Relevant Case: (i) S.R.Sukumar vs. S. Sunaad Raghuram (2015) 9 SCC 609

(ii) Munish Kumar Gupta v. Mittal Trading Co., 2024 SCC OnLine 1732

S.R.Sukumar vs. S. Sunaad Raghuram (2015) 9 SCC 609 in the following paras:

Para 18

“ Insofar as merits of the contention regarding allowing of amendment application, it is true that there is no specific provision in the Code to amend either a complaint or a petition filed under the provisions of the Code, but the Courts have held that the petitions seeking such amendment to correct curable infirmities can be allowed even in respect of complaints.

Munish Kumar Gupta v. Mittal Trading Co., 2024 SCC OnLine 1732

Para 9–

“date is a relevant aspect based on which the entire aspect relating to the issue of notice within the time frame as provided under the Negotiable Instruments Act, 1881, and also as to whether as on the date there was sufficient balance in the account of the issuer of the cheque would be the question, the amendment, as sought for, in the present circumstance, was not justified.”

Analysis: If the complaint contains typographical or clerical errors, the trial Court can permit correction. The complainant need not approach the High Court under Section 482 Cr.P.C. for such rectification.

FINANCIAL COMPETENCE OF COMPLAINANT — NI ACT

Question 87. Whether a complainant must always prove his financial capacity in a cheque-bounce case?

Answer: If accused discharges initial burden to rebut presumption under S.139

Rangappa v. Sri Mohan, (2010) 11 SCC 441,

para 14 :

“the presumption mandated by Section 139 includes a presumption that there exists a legally enforceable debt or liability.”

This authoritative pronouncement establishes that the presumption under Section 139 is broad and substantive, and complainant need not prove source of funds initially.

John K. Abraham v. Simon C. Abraham, (2014) 2 SCC 236, was

“ilt has to be stated that in order to draw the presumption under Section 118 read along with 139 of the Negotiable Instruments Act, the burden was heavily upon the complainant to have shown that he had required funds for having advanced the money to the accused; that the issuance of the cheque in support of the said payment advanced was true and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant.”

Basalingappa v. Mudibasappa, (2019) 5 SCC 418,

Para 25–

23. We having noticed the ratio laid down by this Court in above cases on Sections 118(a) and 139, we now summarise the principles enumerated by this Court in following manner:—

- (i) Once the execution of cheque is admitted Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.

(ii) The presumption under Section 139 is a rebuttable presumption and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.

(iii) To rebut the presumption, it is open for the accused to rely on evidence led by him or accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.

(iv) That it is not necessary for the accused to come in the witness box in support of his defence, Section

139 imposed an evidentiary burden and not a persuasive burden.

(v) It is not necessary for the accused to come in the witness box to support his defence

para 26–

“Since the accused questioned the financial capacity of the complainant, it was incumbent on the complainant to have explained his financial capacity.”

This finding too was based on peculiar facts: the complainant, a retired government employee, had allegedly advanced extraordinarily large sums to multiple persons without any satisfactory explanation. The Court found that these circumstances created sufficient doubt for the accused to rebut the statutory presumption.

However, the Court did not dilute the the initial presumption. In fact, the reasoning in Basalingappa operates only after the accused first discharges the burden of rebuttal by raising a probable defence. Hence, the requirement to prove financial capacity arises only when accused places sufficient material to cast doubt.

Question. 88: Can a court independently ask for proof of financial capacity even after drawing presumption under Section 139?

No.

Rohitbhai Jivanlal Patel v. State of Gujarat, (2019) 18 SCC 106,

para 18,:

“After such presumption, the onus shifted to the accused and unless the accused had discharged the onus... any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds.”

This makes it unequivocally clear that the trial court errs if it demands complainant's financial proof before the accused raises a valid rebuttal.

Question 89. What course should be followed when there is a serious dispute about the signature or LTM of the drawer on the cheque?

Answer: Rely on Expert Opinion.

Thiruvengada Pillai v. Navaneethammal, AIR 2008 SC 1541

Para 15–

“While there is no doubt that court can compare the disputed handwriting/signature/finger impression with the admitted handwriting/signature/finger impression, such comparison by court without the assistance of any expert, has always been considered to be hazardous and risky. When it is said that there is no bar to a court to compare the disputed finger impression with the admitted finger impression, it goes without saying that it can record an opinion or finding on such comparison, only after an analysis of the characteristics of the admitted finger impression and after verifying whether the same characteristics are found in the disputed finger impression. The comparison of the two thumb impressions cannot be casual or by a mere glance. Further, a finding in the judgment that there appeared to be no marked

differences between the admitted thumb impression and disputed thumb impression, without anything more, cannot be accepted as a valid finding that the disputed signature is of the person who has put the admitted thumb impression. Where the Court finds that the disputed finger impression and admitted thumb impression are clear and where the court is in a position to identify the characteristics of finger prints, the court may record a finding on comparison, even in the absence of an expert's opinion. But where the disputed thumb impression is smudgy, vague or very light, the court should not hazard a guess by a casual perusal."

Analysis: Judge should not take the risk of comparing the disputed writing with the admitted writing without the aid of evidence of any expert. Though Section 73 of the Evidence Act states that the Court is the expert of experts, prudence demands that such disputed signature/handwriting is referred to an expert and his opinion and evidence is considered.

Question 90: What are effects of Presenting a Pre-Mature Complaint ?

Answer: Cognizance cannot be taken till maturity.

Relevant Case: Narsingdas Tapadia vs. Goverdhan Das Partani, AIR 2000 SC 2946.

Para 10–

"Mere presentation of the complaint in the court cannot be held to mean, that its cognizance had been taken by the Magistrate. If the complaint is found to be pre-mature, it can await maturity or be returned to the complainant for filing later and its mere presentation at an earlier date need not necessarily render

the complaint liable to be dismissed or confer any right upon the accused to absolve himself from the criminal liability for the offence committed.

Analysis:

A premature complaint should be kept pending until the cause of action is complete; the accused cannot escape liability merely because of early filing.

Question 90 A.Cheque Issued Towards Time–Barred Debt Whether Prosecution Maintainable?

Answer: yes

Relevant Case:A.V. Murthy vs. B.S. Nagabasavanna, AIR 2002 SC 985

“Under Section 118 of the Act, there is a presumption that until the contrary is proved, every negotiable instrument was drawn for consideration. Even under Section 139 of the Act, it is specifically stated that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for discharge, in whole or in part, of any debt or other liability. It is also pertinent to note that under sub–section (3) of Section 25 of the Indian Contract Act, 1872, a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits, is a valid contract.”

Analysis:

Whether a cheque for a time-barred debt attracts Section 138 NI Act is a matter of evidence; the complaint cannot be dismissed at the threshold on this ground.

Question.91. Right of a Third Party to Prosecute?

Answer: The right of a third party to prosecute under Section 138 NI Act depends on facts and circumstances. If the cheque was issued to another person but misused by a third party, prosecution may not be maintainable.

Relevant Case Law: C. Antony vs. K.G. Raghavan Nair, (2002) 7 Supreme 598, AIR 2002 SCW 4617.

“The Supreme Court held that where a blank cheque was issued to one person and used by another, such third party cannot maintain prosecution under Section 138.”

Analysis:

A third party can prosecute under Section 138 NI Act only if he proves a legally enforceable debt or liability against the drawer; mere possession of cheque is insufficient.

Question.92 What happens if the complainant is absent? Can the complaint be dismissed?

Answer: May upon discretion dismiss the case.

Relevant Case: Associated Cements Co. Ltd. vs. Keshvanand. (1998) 1 SCC 687 .

Para 16 —

“The section affords some deterrence against dilatory tactics on the part of a complainant who set the law in motion. An accused who is per force to attend the court on all posting days can be put to much harassment by a complainant if he does not turn up to the court on occasions when his presence is necessary. The section, therefore, gives a discretion to the Magistrate to dismiss the complaint or not to proceed with the further enquiry or trial.”

Analysis If the court thinks that in a particular case the personal attendance of the complainant is not necessary it can dispense with his attendance and proceed with the case. But if the situation does require the presence of the complainant and he is absent on that day the court can dismiss the complaint and acquit the accused.

Question 93. Whether summons can be issued by substituted service?

Answer: Yes.

Relevant decision: Mac Charles (I) Ltd. Vs. Chandrashekar, 2005 Cr.LJ 3700 (Kar).

Para 13 (India kanoon as SCC Judgement of this case doent contains paragraph number)

Apart from that, keeping in view that the proceedings under [Section 138](#) of the Negotiable Instruments Act being quasi-criminal in nature and also in the nature of coercive measure for breach of contract, instead of splitting up the case as against accused 1 to 9, the trial Court could have directed the complainant to take all steps to proceed against them in accordance with the procedure provided as well under the Civil Procedure Code to cause service of

notice by way of substituted service i.e. paper publication, when summons issued could not be effected and warrant issued could not be executed for various reasons, after proper efforts are being made to serve the summons or warrant as the case may be.

Analysis: Summons can be issued by way of substituted service.

Question 94– Can an accused be permitted to file affidavit evidence on his behalf?

Answer:

(i) As per Apex SC–NO

(ii) As per Karnataka HC–YES

“It was, therefore, beyond doubt 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. There can be no disagreement with this part of the submission but the question is when the person who has given his evidence on affidavit appears in court, whether it is also open to the accused to insist that before cross–examining him as to the facts stated in the affidavit he must first depose in examination–in–chief and be required to verbally state what is already said in the affidavit.”

(Accused is not permitted to lead evidence on affidavit as per AIR 2010 SC 1402 – M/S Mandvi Co–operative Bank Ltd Vs Nimesh B. Thakore.)

Last Para–

“In light of the above we have no hesitation in holding that the High Court was in error in taking the view, that on a request made by the accused the magistrate may allow him to tender his evidence on affidavit and consequently, we set aside the direction as contained in sub-paragraph (r) of paragraph 45 of the High Court judgment.”

Karnataka High Court distinguished this view in Afzal Pasha Vs Mohamed Ameerjan, Criminal Petition No. 1684/2016 dated 9-8-2016, holding

“that the accused may file evidence by affidavit. Therefore, it is clear that having regard to the Scheme of the CrPC, the legislature in its wisdom has left it open to the accused to exercise the option of examining himself as a witness for an offence punishable under Section 138 of the NI Act, in deliberately omitting any reference to the evidence of the accused by way of For it would run against a first principle in criminal law namely, that an accused shall not be called as a witness except on his own request in writing. The evidence on behalf of the accused would include that of the accused, subject to Section 315 CrPC.”

Relevant point– Supreme Court has not confirmed this ruling.

