OFFICE OF THE DISTRICT & SESSIONS JUDGE
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THE HIGH COURT OF ORISSA; CUTTACK

Letter No. 5362(30) Date 23.04.2021

XLV-D-5/2020 E-mail : statisticsohc@gmail.com

From :

Shri Pratap Kumar Patra, *O.S.J.S.*
Registrar (Inspection)

To

The District & Sessions Judge.....(All)

Sub. :Order of Hon'ble Supreme Court of India in Suo Motu Writ Petition(Criminal) No. 2/2020.

Sir / Madam,

I am directed to send here with the copy of order dated 16th April, 2021 passed in Suo Motu Writ Petition (Crl.) No. 2 of 2020 (In Re: Expeditious Trial of cases under section 138 of N.I. Act 1881) by the Hon'ble Supreme Court of India regarding "Practice Direction" for expeditious trial of cases under Section 138 of N.I. Act, 1881, for circulation among the Judicial officers of your Judgeship for information and guidance.

Yours faithfully,

23/4/2021

Registrar (Inspection)

Enclosure: Copy of order in Suo Motu Writ Petition (Crl.) No. 2 of 2020

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

SUO MOTU WRIT PETITION (CRL.) NO.2 OF 2020

In Re: EXPEDITIOUS TRIAL OF CASES UNDER SECTION 138 OF N.I. ACT 1881.

O R D E R

1. Special Leave Petition (Criminal) No. 5464 of 2016 pertains to dishonour of two cheques on 27.01.2005 for an amount of Rs.1,70,000/-. The dispute has remained pending for the past 16 years. Concerned with the large number of cases filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'the Act') pending at various levels, a Division Bench of this Court consisting of two of us (the Chief Justice of India and L. Nageswara Rao, J.) decided to examine the reasons for the delay in disposal of these cases. The Registry was directed to register a Suo Motu Writ Petition (Criminal) captioned as “Expeditious Trial of Cases under Section 138 of N.I. Act 1881”. Mr. Sidharth Luthra, learned Senior Counsel was appointed as Amicus Curiae and Mr. K. Parameshwar, learned Counsel was requested to assist him.

Signature Not Verified
Digitally signed by Sanjay Kumar
Date: 2021.04.16 17:18:05 IST
Reason:

Notices were issued to the Union of India, Registrar Generals of the High Courts, Director Generals of Police of the States and Union Territories, Member Secretary of the National Legal Services Authority, Reserve Bank of India and Indian Banks' Association, Mumbai as the representative of banking institutions.

2. The learned Amici Curiae submitted a preliminary report on 11.10.2020 which was circulated to all the Respondents. On 19.01.2021, the learned Amici Curiae informed this Court that only 14 out of 25 High Courts had submitted their responses to the preliminary report. The Reserve Bank of India had also filed its suggestions. Seven Directors General of Police had filed their affidavits putting forward their views to the preliminary report. The parties who had not filed their responses were granted further time and the matter was listed on 24.02.2021 for final disposal. During the course of the hearing, it was felt by a Bench of three Judges, consisting of the Chief Justice of India, L. Nageswara Rao, J. and S. Ravindra Bhat, J. that the matter had to be considered by a larger bench in view of the important issues that arose for determination before this Court. The reference of the matter to a larger bench was also

necessitated due to the submission made by the learned Amici Curiae that certain judicial pronouncements of this Court needed clarification. We have heard learned Amici Curiae, Advocates for some States, the learned Solicitor General of India, Mr. Vikramjit Banerjee, learned Additional Solicitor General of India, Mr. Ramesh Babu, Advocate for the Reserve Bank of India and Dr. Lalit Bhasin, Advocate for the Indian Banks' Association.

3. Chapter XVII inserted in the Act, containing Sections 138 to 142, came into force on 01.04.1989. Dishonour of cheques for insufficiency of funds was made punishable with imprisonment for a term of one year or with fine which may extend to twice the amount of the cheque as per Section 138. Section 139 dealt with the presumption in favour of the holder that the cheque received was for the discharge, in whole or in part, of any debt or other liability. The defence which may not be allowed in a prosecution under Section 138 of the Act is governed by Section 140. Section 141 pertains to offences by companies. Section 142 lays down conditions under which cognizance of offences may be taken under Section 138. Over the years, courts were inundated with complaints filed under

Section 138 of the Act which could not be decided within a reasonable period and remained pending for a number of years.

4. This gargantuan pendency of complaints filed under Section 138 of the Act has had an adverse effect in disposal of other criminal cases. There was an imminent need for remedying the situation which was addressed by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002. Sections 143 to 147 were inserted in the Act, which came into force on 06.02.2003. Section 143 of the Act empowers the court to try complaints filed under Section 138 of the Act summarily, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (hereinafter, 'the Code'). Sub-section (3) of Section 143 stipulates that an endeavour be made to conclude the trial within six months from the date of filing of the complaint. Section 144 deals with the mode of service of summons. Section 145 postulates that the evidence of the complainant given by him on affidavit may be read as evidence in any inquiry, trial or other proceeding under the Code. Bank's slip or memo denoting that the cheque has been dishonoured is presumed to be *prima facie* evidence

of the fact of dishonour of the cheque, according to Section 146. Section 147 makes offences punishable under the Act compoundable. The punishment prescribed under the Act was enhanced from one year to two years, along with other amendments made to Sections 138 to 142 with which we are not concerned in this case.

5. The situation has not improved as courts continue to struggle with the humongous pendency of complaints under Section 138 of the Act. The preliminary report submitted by the learned Amici Curiae shows that as on 31.12.2019, the total number of criminal cases pending was 2.31 crores, out of which 35.16 lakh pertained to Section 138 of the Act. The reasons for the backlog of cases, according to the learned Amici Curiae, is that while there is a steady increase in the institution of complaints every year, the rate of disposal does not match the rate of institution of complaints. Delay in disposal of the complaints under Section 138 of the Act has been due to reasons which we shall deal with in this order.

6. The learned Amici Curiae identified seven major issues from the responses filed by the State Governments and Union Territories which are as under:

a) Service of summons

b) Statutory amendment to Section 219 of the Code

c) Summary trials

d) Attachment of bank accounts

e) Applicability of Section 202 of the Code

f) Mediation

g) Inherent jurisdiction of the Magistrate

7. Service of summons on the accused in a complaint filed under Section 138 of the Act has been one of the main reasons for the delay in disposal of the complaints. After examining the responses of the various State Governments and Union Territories, several suggestions have been given by the learned Amici Curiae for speeding up the service of summons. Some of the suggestions given by him pertain to dishonour slips issued by the bank under Section 146 of the Act, disclosing the current mobile number, email address and postal address of the drawer of the cheque, the details of the drawer being given on the cheque leaf, creation of a Nodal Agency for electronic service of summons and generation of a unique number from the dishonour memo. The Union of India and the Reserve Bank of India were directed to submit their responses to the suggestions made by the learned Amici Curiae on these

aspects. After hearing the learned Solicitor General of India and Mr. Ramesh Babu, learned counsel for the Reserve Bank of India, on 10.03.2021, it was considered appropriate by this Court to form a Committee with Hon'ble Mr. Justice R.C. Chavan, former Judge of the Bombay High Court, as the Chairman to consider various suggestions that are made for arresting the explosion of the judicial docket. The recommendations made by the learned Amici Curiae relating to attachment of bank accounts to the extent of the cheque amount, pre-summons mediation and all other issues which are part of the preliminary note and the written submissions of the learned Amici Curiae shall be considered by the aforementioned Committee, in addition to other related issues which may arise during such consideration. The Committee is directed to deliberate on the need for creation of additional courts to try complaints under Section 138 of the Act.

MECHANICAL CONVERSION OF SUMMARY TRIAL TO SUMMONS TRIAL

8. The learned Amici Curiae submitted that Section 143 of the Act provides that Sections 262 to 265 of the Code shall apply for the trial of all offences under Chapter XVII of the Act.

The second proviso empowers the Magistrate to convert the summary trial to summons trial, if he is of the opinion that a sentence of imprisonment exceeding one year may have to be passed or that it is undesirable to try the case summarily, after recording reasons. The learned Amici Curiae has brought to the notice of this Court that summary trials are routinely converted to summons trials in a mechanical manner. The suggestions made by him in his preliminary note that the High Courts should issue practice directions to the Trial Courts for recording cogent and sufficient reasons before converting a summary trial to summons trial have been accepted by the High Courts.

9. Section 143 of the Act has been introduced in the year 2002 as a step-in aid for quick disposal of complaints filed under Section 138 of the Act. At this stage, it is necessary to refer to Chapter XXI of the Code which deals with summary trials. In a case tried summarily in which the accused does not plead guilty, it is sufficient for the Magistrate to record the substance of the evidence and deliver a judgment, containing a brief statement of reasons for his findings. There is a restriction that the procedure for summary trials under Section

262 is not to be applied for any sentence of imprisonment exceeding three months. However, Sections 262 to 265 of the Code were made applicable "as far as may be" for trial of an offence under Chapter XVII of the Act, notwithstanding anything contained in the Code. It is only in a case where the Magistrate is of the opinion that it may be necessary to sentence the accused for a term exceeding one year that the complaint shall be tried as a summons trial. From the responses of various High Courts, it is clear that the conversion by the Trial Courts of complaints under Section 138 from summary trial to summons trial is being done mechanically without reasons being recorded. The result of such conversion of complaints under Section 138 from summary trial to summons trial has been contributing to the delay in disposal of the cases. Further, the second proviso to Section 143 mandates that the Magistrate has to record an order spelling out the reasons for such conversion. The object of Section 143 of the Act is quick disposal of the complaints under Section 138 by following the procedure prescribed for summary trial under the Code, to the extent possible. The discretion conferred on the Magistrate by the second proviso to Section 143 is to be exercised with due care and caution, after recording reasons for converting the

trial of the complaint from summary trial to summons trial. Otherwise, the purpose for which Section 143 of the Act has been introduced would be defeated. We accept the suggestions made by the learned Amici Curiae in consultation with the High Courts. The High Courts may issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 from summary trial to summons trial in exercise of power under the second proviso to Section 143 of the Act.

INQUIRY UNDER SECTION 202 OF THE CODE IN RELATION TO SECTION 145 OF THE ACT

10. Section 202 of the Code confers jurisdiction on the Magistrate to conduct an inquiry for the purpose of deciding whether sufficient grounds justifying the issue of process are made out. The amendment to Section 202 of the Code with effect from 23.06.2006, vide Act 25 of 2005, made it mandatory for the Magistrate to conduct an inquiry before issue of process, in a case where the accused resides beyond the area of jurisdiction of the court. (See: ***Vijay Dhanuka & Ors. v. Najima Mamtaj & Ors.[1], Abhijit Pawar v. Hemant***

1 (2014) 14 SCC 638

Madhukar Nimbalkar and Anr.[2] and ***Birla Corporation Limited v. Adventz Investments and Holdings Limited & Ors.***[3]). There has been a divergence of opinion amongst the High Courts relating to the applicability of Section 202 in respect of complaints filed under Section 138 of the Act. Certain cases under Section 138 have been decided by the High Courts upholding the view that it is mandatory for the Magistrate to conduct an inquiry, as provided in Section 202 of the Code, before issuance of process in complaints filed under Section 138. Contrary views have been expressed in some other cases. It has been held that merely because the accused is residing outside the jurisdiction of the court, it is not necessary for the Magistrate to postpone the issuance of process in each and every case. Further, it has also been held that not conducting inquiry under Section 202 of the Code would not vitiate the issuance of process, if requisite satisfaction can be obtained from materials available on record.

11. The learned Amici Curiae referred to a judgment of this Court in ***K.S. Joseph v. Philips Carbon Black Ltd & Anr.***[4] where there was a discussion about the requirement of inquiry

2 (2017) 3 SCC 528
3 (2019) 16 SCC 610
4 (2016) 11 SCC 105

under Section 202 of the Code in relation to complaints filed under Section 138 but the question of law was left open. In view of the judgments of this Court in ***Vijay Dhanuka*** (supra), ***Abhijit Pawar*** (supra) and ***Birla Corporation*** (supra), the inquiry to be held by the Magistrate before issuance of summons to the accused residing outside the jurisdiction of the court cannot be dispensed with. The learned Amici Curiae recommended that the Magistrate should come to a conclusion after holding an inquiry that there are sufficient grounds to proceed against the accused. We are in agreement with the learned Amici.

12. Another point that has been brought to our notice relates to the interpretation of Section 202 (2) which stipulates that the Magistrate shall take evidence of the witness on oath in an inquiry conducted under Section 202 (1) for the purpose of issuance of process. Section 145 of the Act provides that the evidence of the complainant may be given by him on affidavit, which shall be read in evidence in any inquiry, trial or other proceeding, notwithstanding anything contained in the Code. Section 145 (2) of the Act enables the court to summon and examine any person giving evidence on affidavit as to the facts

contained therein, on an application of the prosecution or the accused. It is contended by the learned Amici Curiae that though there is no specific provision permitting the examination of witnesses on affidavit, Section 145 permits the complainant to be examined by way of an affidavit for the purpose of inquiry under Section 202. He suggested that Section 202 (2) should be read along with Section 145 and in respect of complaints under Section 138, the examination of witnesses also should be permitted on affidavit. Only in exceptional cases, the Magistrate may examine the witnesses personally. Section 145 of the Act is an exception to Section 202 in respect of examination of the complainant by way of an affidavit. There is no specific provision in relation to examination of the witnesses also on affidavit in Section 145. It becomes clear that Section 145 had been inserted in the Act, with effect from the year 2003, with the laudable object of speeding up trials in complaints filed under Section 138. If the evidence of the complainant may be given by him on affidavit, there is no reason for insisting on the evidence of the witnesses to be taken on oath. On a holistic reading of Section 145 along with Section 202, we hold that 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.

SECTIONS 219 AND 220 OF THE CODE

13. Section 219 of the Code provides that when a person is accused of more offences than one, of the same kind, committed within a space of 12 months, he may be tried at one trial for a maximum of three such offences. If more than one offence is committed by the same person in one series of acts so committed together as to form the same transaction, he may be charged with and tried at one trial, according to Section 220. In his preliminary report, the learned Amici Curiae suggested that a legislative amendment is required to Section 219 of the Code to avoid multiplicity of proceedings where cheques have been issued for one purpose. In so far as Section 220 of the Code is concerned, the learned Amici Curiae submitted that same/similar offences as part of the same transaction in one series of acts may be the subject matter of

one trial. It was argued by the learned Amici Curiae that Section 220 (1) of the Code is not controlled by Section 219 and even if the offences are more than three in respect of the same transaction, there can be a joint trial. Reliance was placed on a judgment of this Court in ***Balbir v. State of Haryana & Anr.***[5] to contend that all offences alleged to have been committed by the accused as a part of the same transaction can be tried together in one trial, even if those offences may have been committed as a part of a larger conspiracy.

14. The learned Amici Curiae pointed out that the judgment of this Court in ***Vani Agro Enterprises v. State of Gujarat & Ors.***[6] needs clarification. In ***Vani Agro*** (supra), this Court was dealing with the dishonour of four cheques which was the subject matter of four complaints. The question raised therein related to the consolidation of all the four cases. As only three cases can be tried together as per Section 219 of the Code, this Court directed the Trial Court to fix all the four cases on one date. The course adopted by this Court in ***Vani Agro*** (supra) is appropriate in view of the mandate of Section 219 of the Code. Hence, there is no need for any clarification, especially in view

5 (2000) 1 SCC 285
6 2019 (10) SCJ 238

of the submission made by the learned Amici that Section 219 be amended suitably. We find force in the submission of the learned Amici Curiae that one trial for more than three offences of the same kind within the space of 12 months in respect of complaints under Section 138 can only be by an amendment. To reduce the burden on the docket of the criminal courts, we recommend that a provision be made in the Act to the effect that a person can be tried in one trial for offences of the same kind under Section 138 in the space of 12 months, notwithstanding the restriction in Section 219 of the Code.

15. Offences that are committed as part of the same transaction can be tried jointly as per Section 220 of the Code. What is meant by “same transaction” is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any court which has embarked upon the difficult task of defining the expression. But it is generally

thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction[7]. There is no ambiguity in Section 220 in accordance with which several cheques issued as a part of the same transaction can be the subject matter of one trial.

16. The learned Amici Curiae have brought to our notice that separate complaints are filed under Section 138 of the Act for dishonour of cheques which are part of the same transaction. Undue delay in service of summons is the main cause for the disproportionate accumulation of complaints under Section 138 before the courts. The learned Amici suggested that one way of reducing the time spent on service of summons is to treat service of summons served in one complaint pertaining to a transaction as deemed service for all complaints in relation to the said transaction. We are in agreement with the suggestion

7 State of Andhra Pradesh v. Cheemalapati Ganeswara Rao & Anr., (1964) 3 SCR 297

made by the learned Amici Curiae. Accordingly, the High Courts are requested to issue practice directions to the Trial Courts to treat service of summons in one complaint forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques issued as part of the said transaction.

INHERENT POWERS OF THE MAGISTRATE

17. In ***K. M. Mathew v. State of Kerala & Anr.***[8], this Court dealt with the power of the Magistrate under Chapter XX of the Code after the accused enters appearance in response to the summons issued under Section 204 of the Code. It was held that the accused can plead before the Magistrate that the process against him ought not to have been issued and the Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint that there is no offence for which the accused could be tried. This Court was of the opinion that there is no requirement of a specific provision for the Magistrate to drop the proceedings and as the order issuing the process is an interim order and not a judgment, it can be varied or recalled. The observation in the case of ***K. M. Mathew*** (supra) that no specific provision of law is required for recalling

8 (1992) 1 SCC 217

an erroneous order of issue of process was held to be contrary to the scheme of the Code in ***Adalat Prasad v. Rooplal Jindal and Others***[9]***.*** It was observed therein that the order taking cognizance can only be subject matter of a proceeding under Section 482 of the Code as subordinate criminal courts have no inherent power. There is also no power of review conferred on the Trial Courts by the Code. As there is no specific provision for recalling an erroneous order by the Trial Court, the judgment in the case of ***K. M. Mathew*** (supra) was held to be not laying down correct law. The question whether a person can seek discharge in a summons case was considered by this Court in ***Subramanium Sethuraman v. State of Maharashtra & Anr.***[10]***.*** The law laid down in ***Adalat Prasad*** (supra) was reiterated.

18. It was contended by learned Amici Curiae that a holistic reading of Sections 251 and 258 of the Code, along with Section 143 of the Act, should be considered to confer a power of review or recall of the issuance of process by the Trial Court in relation to complaints filed under Section 138 of the Act. He referred to a judgment of this Court in ***Meters and***

9 (2004) 7 SCC 338
10 (2004) 13 SCC 324

Instruments Private Limited and Another v. Kanchan Mehta[11] which reads as follows:

> *"While it is true that in Subramanium Sethuraman v. State of Maharashtra this Court observed that once the plea of the accused is recorded under Section 252 CrPC, the procedure contemplated under Chapter XX CrPC has to be followed to take the trial to its logical conclusion, the said judgment was rendered as per statutory provisions prior to the 2002 Amendment. The statutory scheme post-2002 Amendment as considered in Mandvi Coop. Bank and J.V. Baharuni has brought about a change in law and it needs to be recognised. After the 2002 Amendment, Section 143 of the Act confers implied power on the Magistrate to discharge the accused if the complainant is compensated to the satisfaction of the court, where the accused tenders the cheque amount with interest and reasonable cost of litigation as assessed by the court. Such an interpretation was consistent with the intention of legislature. The court has to balance the rights of the complainant and the accused and also to enhance access to justice. Basic object of the law is to enhance credibility of the cheque transactions by providing speedy remedy to the complainant without intending to punish the drawer of the cheque whose conduct is reasonable or where compensation to the complainant meets the ends of justice. Appropriate order can be passed by the court in exercise of its inherent power under Section 143 of the Act which is different from compounding by consent of parties. Thus, Section 258 CrPC which enables proceedings to be stopped in a summons case, even though strictly speaking is not applicable to complaint cases, since the provisions of CrPC are applicable "so far as may be", the principle of the said provision is applicable to a complaint case covered by Section 143 of the Act which contemplates applicability of summary trial provisions, as far as possible i.e. with such deviation as may be necessary for speedy trial in the context."*

11 (2018) 1 SCC 560

19. In ***Meters and Instruments*** (supra), this Court was of the opinion that Section 143 of the Act confers implied power on the Magistrate to discharge the accused, if the complainant is compensated to the satisfaction of the court. On that analogy, it was held that apart from compounding by the consent of the parties, the Trial Court has the jurisdiction to pass appropriate orders under Section 143 in exercise of its inherent power. Reliance was placed by this Court on Section 258 of the Code to empower the Trial Courts to pass suitable orders.

20. 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. The judgment of this Court in ***Meters and Instruments*** (supra) in so far as it conferred

power on the Trial Court to discharge an accused is not good law. Support taken from the words "as far as may be" in Section 143 of the Act is inappropriate. The words "as far as may be" in Section 143 are used only in respect of applicability of Sections 262 to 265 of the Code and the summary procedure to be followed for trials under Chapter XVII. Conferring power on the court by reading certain words into provisions is impermissible. A judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation[12]. The Judge's duty is to interpret and apply the law, not to change it to meet the Judge's idea of what justice requires[13]. The court cannot add words to a statute or read words into it which are not there[14].

21. A close scrutiny of the judgments of this Court in ***Adalat Prasad*** (supra) and ***Subramanium Sethuraman*** (supra) would show that they do not warrant any reconsideration. The Trial Court cannot be conferred with inherent power either to review or recall the order of issuance of process. As held

12 J. Frankfurter, "Of Law and Men: Papers and Addresses of Felix Frankfurter".
13 Dupont Steels Ltd. v. Sirs (1980) 1 All ER 529 (HL)
14 Union of India v. Deoki Nandan Aggarwal 1992 Supp (1) SCC 323

above, this Court, in its anxiety to cut down delays in the disposal of complaints under Section 138, has applied Section 258 to hold that the Trial Court has the power to discharge the accused even for reasons other than payment of compensation. However, amendment to the Act empowering the Trial Court to reconsider/recall summons may be considered on the recommendation of the Committee constituted by this Court which shall look into this aspect as well.

22. Another submission made by the learned Amici Curiae relates to the power of the Magistrate under Section 322 of the Code, to revisit the order of issue of process if he has no jurisdiction to try the case. We are in agreement with the learned Amici Curiae that in case the Trial Court is informed that it lacks jurisdiction to issue process for complaints under Section 138 of the Act, the proceedings shall be stayed and the case shall be submitted to the Chief Judicial Magistrate or such other Magistrate having jurisdiction.

23. Though we have referred all the other issues which are not decided herein to the Committee appointed by this Court on 10.03.2021, it is necessary to deal with the complaints under Section 138 pending in Appellate Courts, High Courts and

in this Court. We are informed by the learned Amici Curiae that cases pending at the appellate stage and before the High Courts and this Court can be settled through mediation. We request the High Courts to identify the pending revisions arising out of complaints filed under Section 138 of the Act and refer them to mediation at the earliest. The Courts before which appeals against judgments in complaints under Section 138 of the Act are pending should be directed to make an effort to settle the disputes through mediation.

24. The upshot of the above discussion leads us to the following conclusions:

1) The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial.

2) Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.

3) For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.

4) We recommend that suitable amendments be made to the Act for provision of one trial against a person for multiple offences under Section 138 of the Act committed within a period of 12 months, notwithstanding the restriction in Section 219 of the Code.

5) The High Courts are requested to issue practice directions to the Trial Courts to treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques issued as part of the said transaction.

6) Judgments of this Court in ***Adalat Prasad*** (supra) and ***Subramanium Sethuraman*** (supra) have interpreted