THE LAW RELATING TO THE OFFENCE UNDER SECTION 138, NEGOTIABLE INSTRUMENTS ACT.

- Filing requisites and guidelines.
- Legal enforceable debt and liability –What it is ?
- Trial procedure – recording of evidence, drawal and effect of presumptions.

Special emphasis on :

- Presentation of cheque,
- Jurisdiction
- Limitation
- Notice

Presentation By :
AVNML GAYATHRI
JCJ20220046

INTRODUCTION :

The Negotiable Instruments Act, 1881 (Hereinafter called as N.I. Act) was originally drafted in 1866 by the 3rd Indian Law Commission and introduced in December, 1867 in the Council and it was referred to a Selection Committee. The Draft prepared for the fourth time was introduced in the Council and was passed into law in 1881 being the Negotiable Instruments Act, 1881 (Act No.26 of 1881).

The Act was enacted as an attempt to consolidate the law relating to promissory notes, bills of exchange and cheques. The main object of the Act was to legalize the system by which instruments contemplated by it could pass from hand to hand by negotiation like any other goods. Another purpose of the Act was to encourage the culture of use of cheques and enhancing the credibility of the instrument.

Following a century of the enactment of the N.I. Act, Sections 138 to 142, Chapter XVII, were inserted in the Act *vide* Section 4 of the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988, (Act 66 of 1988). These sections came into force w.e.f. 29.3.1989. Subsequently, the Negotiable Instrument Act in the year of 2015 (inserting of substitution in Explanation I (a), Explanation III in Sec.6, Sec.142(2) and 142-A of N.I Act).& in the year of 2018 (insertion of Sec 143A ,Sec 148 of N.I.Act)

WHAT IS A CHEQUE?

Section 6 of the N.I. Act defines a Cheque as a bill of exchange drawn on a specified banker and not expressed to be payable otherwise then on demand and it includes the electronic image of a truncated cheque and a cheque in electronic form.

Explanation I: For the purpose of this section the expression

- :A cheque in the electronic form " means a cheque drawn in electronic form by using any computer resource and signed in a secure system with digital signature (with or without biometrics signature) and asymmetric crypto system or with electronic signature , as the case may be;
- a truncated cheque means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

Explanation II: For the purposes of this section, the expression clearing house means the clearing house managed by the Reserve Bank of India or a clearing house recognized as such by the Reserve Bank of India.

Explanation III: For the purposes of this section, the expression "asymmetric crypto system", computer resource", "digital signature", "electronic form" and electronic signature " shall have the same meanings respectively assigned to them in the Information Technology Act,2000'

INGREDIENTS OF THE OFFENCE UNDER SECTION 138, N.I. ACT :

Though section 138, N.I. Act penalizes the dishonour of a cheque, however, dishonour of a cheque is, by itself, not an offence under section 138 of the N.I. Act. To become an offence, the following ingredients have to be fulfilled:

1. Drawing of the cheque.
2. Presentation of the cheque to the bank.
3. Return of the cheque unpaid by the drawee bank.
4. Issuance of notice in writing to the drawer of the cheque demanding

payment of the cheque amount.

Failure of the drawer to make the payment within 15 days of receipt of the notice.

TIME FRAMES IN RESPECT OF THE OFFENCE UNDER SECTION 138, N.I. ACT

a) The cheque has to be presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. [Sec. 138 proviso (a)]. The Reserve Bank of India vide Notification No, DBOD.AML BC.No.47/14.01.001/2011-12 has made the period of validity of a cheque to be three months now. Hence, as of now, the cheque has to b**e presented within three months from the date on which it was drawn.**

b) The payee or holder in due course of the cheque has to make a demand for payment of the amount due by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding dishonour of the cheque. [Sec. 138 proviso (b)]

c) The drawer of the cheque has to fail to make the payment of the amount to the payee or holder in due course within 15 days of the receipt of the said notice [Sec. 138 proviso (c)].

The complaint has to be filed within one month of the date on which the cause of action arises under clause (c) of the proviso to Sec. 138 N. I. Act. [Sec. 142].

PERIOD OF LIMITATION FOR FILING A COMPLAINT IN RESPECT OF THE OFFENCE UNDER SECTION 138, N.I. ACT :

Sec. 142, N.I. Act has prescribed an outer limit of one month for filing of a complaint from the date the cause of action rises.

In the case of **Saketh India Ltd. v. Indian Securities Ltd.** reported in **(1999) 3 SCC 1**, it was held by the Hon'ble Supreme Court that ordinarily in computing time, the rule observed is to exclude the first day and to include the last, and the period of one month will be reckoned from the day immediately following the day on which the period of 15 days from the date of receipt of notice by the drawer expires. The 15th day is to be excluded for counting the period of one month. The month employed in the Act has not been defined anywhere in the N.I. Act and the

same means a British Calender Month and not lunar month, by following the definition given in Sec. 3 (35) of the General Clauses Act meaning thereby that a month means only a period of 30 days.

Saketh India Ltd. (supra) was taken up for reconstruction in **Econ Antri Ltd. v. Rom Industries** reported in **AIR 2013 SC 3283.** The Hon'ble Supreme Court affirmed the judgment in **Saketh India Ltd. (supra)** by holding that for the purpose of 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.

The Apex Court hed in " **Indra Kr. Patodia v. Reliance Industries Ltd.** reported in **AIR 2013 SC 426**, For computing the period of limitation, one has to consider the date of filing of the complaint or initiation of criminal proceedings and not the date of taking cognizance by the Magistrate.

SUCCESSIVE PRESENTATION OF CHEQUES

In **Sadanandan Bhadran v. Madhavan Sunil Kumar: (1998) 6 SCC 514,** the Hon'ble Supreme Court observed that there can be only one cause of action under Section 142(b), N.I. Act. Section 142, gives cause of action a restrictive meaning, in that, it refers to only one fact which will give rise to the cause of action and that is the failure to make the payment within 15 days from the date of the receipt of the notice. Consequent upon the failure of the drawer to pay the money within the period of 15 days as envisaged under clause (a) of the proviso to Section 138, the liability of the drawer for being prosecuted for the offence he has committed arises, and the period of one month for filing the complaint under section 142 is to be reckoned accordingly.

However, the Hon'ble Apex Court has **Sadanandan Bhadran (supra)** been over-ruled in **MSR Leathers v. S.Palaniappan** reported in **AIR 2014 SC 642 (para No.10).**

As of now, a payee or the holder in due course has a right to present the cheque as many number of times for encashment within a period of Three months or within its validity period,

whichever is earlier. A prosecution based on second or successive dishonor of the cheque is also permissible so long as it satisfies the requirements stipulated under the proviso to Section 138 of the N.I.

Act.

DEMAND NOTICE

The Notice must be in writing and it must be issued within 30 days of receipt of information from the bank, regarding return of the cheque as unpaid.

It is worth adding here that while calculating the period of 30 days, the date of receipt of information from the bank has to be excluded.

In **K. Bhaskaran v. Sankaran** reported in **(1999) 7 SCC 510, &**

In **Dalmia Cement (Bharat) Ltd. v. M/s. Galaxy Traders** reported in **AIR 2001**

SC 676, the Hon'ble Supreme Court held that to constitute an offence under section 138 N.I. Act, the complainant is obliged to prove its ingredients which includes 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 statutory period.

In **State of M. P. v. Hira Lal** reported in **(1996) 7 SCC 523** as well as in **Jagdish Singh v. Nathu Singh** reported in **AIR 1992 SC 1604,** the Hon'ble

Supreme Court held that where the addressee manages to have the notices returned with postal remarks "refused", "not available in the house," "houselocked" and "shop closed" respectively, it must be deemed that the notices have been served on the addressee.

Commenting on the issue of deemed service, the Hon'ble Supreme Court has in **C.C. Alavi Haji v. Palapetty Muhammad & Anr** reported in **(2007) 6**

SCC 555 held as follows. :

"According to Section 114 of the (Evidence) Act, read with illustration (f) thereunder, when it appears to the Court that the common course of business renders it probable that a thing would happen, the Court may draw presumption that the thing would have happened, unless there are circumstances in a particular case to show that the common course of business was not followed. Thus, Section 114 enables the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Consequently, the court can presume that the common course of business has been followed in particular cases. When applied to communications sent by post, Section 114 enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the General Clause Act 1897 Act, is a far stronger presumption. Further, while Section 114 of Evidence Act refers to a general presumption, Section 27 refers to a specific presumption. For the sake of ready reference, Section 27 of G.C. Act is extracted below:

Meaning of service by post - Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression served by post, whether the expression serve or either of the expressions give or send or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Section 27 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 the 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."

In **C.C. Alavi Haji (supra),** the Hon'ble Supreme Court further held that a person who does not pay within 15 (fifteen) days of receipt of the summons along with the copy of the complaint under section 138 of the N.I. Act, cannot obviously contend that there was no proper service of notice as required under section 138 of the Act.

ISSUANCE OF SECOND DEMAND NOTICE :

In **Sumitra Sankar Dutta and Another v. Biswajit Paul and Others, 2004 (3) GLT 462** the Gauhati High Court quashed a proceeding which was initiated on the basis of a second notice issued by the complainant. The Honble High Court observed that as the first notice was returned with the postal remark "office always closed/out of station", and the second notice also got a similar response, the first notice must be deemed to have been served on the accused and hence, there was no scope for issuing second notice.

In **Tameeshwar Vaishnav v. Ramvishal Gupta, 2010(1) LCR 86(SC)**, The Apex Court it was observed that after the notice issued under clause (b) of Section 138 of N.I. Act is received by the drawer of the cheque, the payee or holder of the cheque, who does not take any action on the basis of such notice within the period prescribed under section 138, N.I. Act, is not entitled to send a fresh notice in respect of the same cheque and, thereafter, proceed to file a complaint.

CONTENTS OF DEMAND NOTICE

In **Suman Sethi v. Ajay K. Churiwal and Another, (2000) 2 SCC 380**, the Honble Apex Court has been pointed out that it is a 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. But where in addition to "said amount", there is also a claim by way of interest, cost etc. whether the notice is bad or not would depend on the language of the notice. If in a notice while giving the breakup 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 dishonoured cheque, the notice might fail to meet the legal requirement and may be regarded as bad.

Does the failure of the complainant to mention the existence of a legally enforceable debt or liability vitiate the case of the prosecution?

In **M.M.T.C. Ltd. & Anr. v Medchal Chemicals and Pharma (P) Ltd. & Anr.** reported in **(2002) 1 SCC 234**, the Hon'ble Supreme Court has held that there is no requirement under the law that the complainant must specifically allege in the complaint that there was a subsisting liability. The burden of proving that there was no existing debt or liability is on the accused.

The Plea of Security Cheque :

It is a common plea in most cheque dishonour cases that the cheque in question was issued as a security cheque. However, let me point out that the words "security cheque" do not necessarily disprove the case against the accused. The expression "security cheque" is not a statutorily defined expression in the Act. Moreover, the Act does not *per se* carve out an exception in respect of a "security cheque".

In the case of **I.C.D.S. Ltd. v. Beena Shabbir & Anr.** reported in **AIR**

2002 SC 3014, the Hon'ble Supreme Court has observed as follows.

".....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.."

Thus, even if the dishonoured cheque in question was issued as a security cheque, it will still come under the ambit of Section 138 of the Act. The only condition is that the cheque must be backed by some form of legally enforceable debt or liability towards the holder.

Cheque Issued as Advance Payment Will Not Attract Culpability under section 138, N.I. Act :

In Indus Airways Pvt. Ltd & Ors v. Magnum Aviation Pvt. Ltd & Anr reported in 2014 (2) Crimes (SC) 105, the Hon'ble Supreme Court has held that where payment was made by cheque in the nature of advance payment, it indicates that at the time of drawal of cheque, there was no existing liability and as such no offence was made out. In a recent judgment [Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Limited reported in (2016) 10 SCC 458], the Hon'ble Supreme Court has had the occasion to analyze the judgment of Indus Airways (supra). The Hon'ble Supreme Court has made it abundantly clear that the culpability under section 138 of the Act is extinguished only when the dishonoured cheque was issued for the purpose of an advance payment.

Liability of Guarantor under section 138, N.I. Act

What happens if a guarantor issues a cheque on behalf of the principal debtor and the same gets dishonoured? Will the guarantor be liable for prosecution under section 138, N.I. Act. The answer will have to be in the affirmative. Let me enunciate why.

Section 138, N.I. Act penalizes the dishonour of any cheque which has been issued in the discharge of the whole or part of "any debt or other liability". And the liability of the guarantor and principal debtor is co-extensive. Hence, the guarantor cannot escape liability under section 138, N.I. Act if he has issued a cheque for the discharge of the liability of the principal debtor.

The matter came up for consideration before the Gauhati High Court in the case of **Don Ayengia v. State of Assam & Another (Cri. Apl. No. 10 of 2012).** The Gauhati High Court answered the question " *Whether a person indemnifying the holder of a cheque can be said to have legally enforceable debt or other liability towards the holder of the cheque when the payer defaults in payment of the cheque amount under section 138, N.I. Act?'* in the negative. The High Court held that no person can be convicted or prosecuted in a proceeding under Section 138 of the N.I. Act, who indemnifies the principal debtor for his liability towards the complainant unless such guarantor enters into an agreement with the holder of the cheque.

However, an appeal was preferred against this judgment before the Hon'ble Supreme Court of India and the judgment and order of the Gauhati High Court was set aside.

The matter gets cleared up once and for all if we consider the judgment of **I.C.D.S. Ltd. v. Beena Shabbir & Anr.** reported in **AIR 2002 SC 3014.** The Hon'ble Supreme Court held 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 stand 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. The High Court, it seems, got carried away by the issue of guarantee and guarantor's liability and thus has overlooked the true intent and purport of Section 138 of the Act."

APPLICABILITY OF LIABILITY UNDER SECTION 138, N.I. ACT FOR A TIME BARRED DEBT:

Prosecution under section 138, N.I. Act is only maintainable against a legally enforceable debt. A time barred debt, however, is a not a legally enforceable debt. The Hon'ble Apex Court has also held in **Sasseriyil Joseph Vs Devassia 2001 Crl.J.24** held that

" a criminal prosecution under section 138, N.I. Act is not maintainable in respect of a time barred debt. "

WHO CAN FILE THE COMPLAINT?

The cases under the N.I. Act have a distinction from other criminal cases in the fact that *locus standi* to prosecute is an essential requirement for the trial. A complaint under section 138 of the Act can be filed only by the **Payee** of the dishonoured cheque or by the **Holder in due course** as mandated by Section

142 of the Act. However, this requirement has been qualified with an addendum. The complaint under section 138 of the Act can be filed by the payee through his power of attorney holder/duly authorized representative as held in **Sankar Finance and Investment v. State of A.P. & Others** reported in **(2008) 8 SCC 536.**

When the payee is a natural person, he can himself file the complaint or can do the same through his authorized representative in whose favour he has given the power of attorney or

authority letter. But when the payee or the holder in due course, as the case may be, is an artificial or juristic person, such as a partnership firm, body corporate or a company constituted under the Companies Act, the question may arise as to who would file the complaint, in as much as, the firm or the company being a juristic person is not capable of coming to the court. Therefore, whenever a complaint is filed by a firm or company or a juristic person, it must be represented by a natural person who would be the *de facto* complainant for the purpose of the trial.

Where the payee is a proprietary concern:

The complaint can be filed

i. by the proprietor of the proprietary concern, describing himself as the sole proprietor of the "payee";

ii. the proprietary concern describing itself as a sole proprietary concern, represented by its sole proprietor; and

iii. the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor." **Where the payee is a partnership firm:**

Every partner is an agent of the firm and his other partners for the purpose of business of the firm and the acts of every partner bind the firm and his partners, unless, of course, the partner had, in fact no authority to act for the firm and his other partners.

Thus, any of the active partners can institute a complaint under section 138, N.I. Act on behalf of the partnership firm. The partnership firm can also authorize a Power of Attorney holder to prosecute a complaint on its behalf. The question of launching a valid criminal prosecution under section 138 of N.I. Act with the aid of power of attorney is no more *res integra* in view of the authoritative judgment of the Hon'ble Supreme Court in **A.C. Narayanan v. State of Maharashtra and Another** reported in **AIR 2014 SC 630.**

However, a question may arise as to whether a single partner can grant Power of Attorney to a representative to file a complaint. Sections 9, 12(a), 12(b), 18 and 19 of the Partnership Act, 1932 clearly empowers a single partner can also file a complaint on behalf of the firm or he may authorize a Power of Attorney holder to do so on behalf of the firm and it would not be necessary that all the partners would have to sign the Power of Attorney.

Whether a partner of an unregistered firm can file a complaint U/sec.138 of NI Act. ?

The said issue came before Hon'ble High Court of Telangana and State of Andhra Pradesh in " M/s Sri Sai Karuna Finance and Enterprises represented by its Manager Vs. N. Sandhya Rani and another (Cr.M.P.No.452/2006, dated 24.10.2018) Whereas the Hon'ble High Court held that " *the Negotiable Instruments Acts specifically laid down that the debt or other liability means Legally enforceable of Legal liability has to be in the nature of Civil Suit because the debt or other liability cannot be recovered by filing a criminal case and when there is a bar of filing a suit by unregistered firm, the bar equally applies to criminal case as laid down in explanation to of 138 NI Act."* **Where the Payee is a Company :**

When the payee or holder in due course happens to be a company, then the question arises as to who may file the complaint. The Apex Court been held in" **Dale & Carrington Investment (P) Ltd. and Another v. P.K. Prathapan and Others"** reported in **(2005) 1 SCC 212,** that company being an incorporeal juristic person, acts through its Board of Directors and the Board of Directors takes decisions on the activities of the company by adopting resolutions in its meetings as per the memorandum and articles of the company.

It does not require pointing out here that a single director cannot act on his own on behalf of the company. His actions require ratification from the Board. The Board of Directors of the complainant company will have to take a resolution whereby the person who is likely to act as the *de facto* complainant would have to be granted a Power of Attorney to do so.

It is pertinent to mention here that the Power of Attorney as well as the Board Resolution will have to be adequately proved during the course of the trial or the complaint will cease to be maintainable.

Lack of Authorization is a Curable Defect :

The Hon'ble Supreme Court held in **M.M.T.C. Ltd. and Another v. Medchl Chemicals and Pharma (P) Ltd. And Another** reported in **(2002) 1 SCC 234**, the Hon'ble Supreme Court has held that, the only eligibility criteria prescribed by Section 142, N.I. Act for maintaining a complaint under section 138 is that the complainant must be the payee or the holder in due course. However, in case of a company, if the *de facto* complainant did not have authority in the initial stage, still the company can, at any stage, rectify that defect at a subsequent stage, and the company can send a person who is competent to represent it.

In **Samrat Shipping Co. Pvt. Ltd. v. Dolly George** reported in **(2002) 9SCC 455**, the Hon'ble Supreme Court termed the dismissal of the complaint at the threshold by the Magistrate on the ground that the individual through whom the complaint was filed had not produced the resolution of the Board of Directors of the Company authorizing him to represent the Company before the Magistrate to be not justified and termed this exercise to be "too hasty an action". A three Judge Bench of the Hon'ble Supreme Court in **M/S Haryana State Co.Op. Supply and Marketing Federation Ltd. v. M/S Jayam Textiles and Another** reported in **AIR 2014 SC 1926** held that the dismissal of the complaint for mere failure to produce authorization would not be proper and an opportunity ought to be granted to produce and prove the authorization.

When Can the Functions of a Power of Attorney Holder be Further Delegated?

A.C. Narayanan and Anr. v. State of Maharashtra and Ors reported in

AIR 2014 SC 630 has made it clear that sub delegation of functions *vis a vis* filing of a complaint is only permissible when the same is duly and explicitly mentioned in the authority granted to the delegator.

Power of Attorney Holder Must Have Personal Knowledge of the Transaction

A.C. Narayanan and Anr. v. State of Maharashtra and Ors reported in **AIR 2014 SC 630** has further made it clear that while 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 able to bring on record the truth of the grievance/offence. It has been further clarified that there is no reason as to why the attorney holder cannot depose as a witness. Nevertheless, an explicit assertion as to the knowledge of the Power of Attorney holder about the transaction in question must be specified in the complaint.

TERRITORIAL JURISDICTION

K. Bhaskaran v. Sankaran [(1999) 7 SCC 510] and later Dashrath Rupsingh Rathod v. State of Maharashtra & Anr. [AIR 2014 SC 3519] have addressed the issue of territorial jurisdiction of courts trying offences under sections 138, N.I. Act.

However, to increase the credibility of cheques as financial instruments and to clarify the issues of jurisdiction, the Parliament enacted The Negotiable Instruments (Amendment) Act, 2015. The Amendment Act of 2015 amended Section 142 to decisively lay down the territorial jurisdiction of courts deciding cases under section 138, N.I. Act.

Following the amendment was made in Section 142 (2), N.I. Act reads as follows:

The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the **payee or holder** in due course, as the case may be, **maintains the account,** is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, **the branch of the drawee bank** where

the **drawer maintains the account, is situated.**

OFFENCES UNDER SECTION 138, N.I. ACT TO BE TRIED SUMMARILY

In J.V. Bahurani v. State of Gujarat reported in (2014) 10 SCC 494, it has been observed by the Hon'ble Supreme Court as follows:

"Sub-section (1) of Section 143 of the N.I. Act makes it clear that all offences under Chapter XVII of the N.I. Act shall be tried by the Magistrate 'summarily' applying, as far as may be, provisions of Sections 262 to 265 of Code of Criminal Procedure. It further provides that in case of conviction in a summary trial, the Magistrate may pass a sentence of imprisonment for a term not exceeding one year and a fine exceeding Rs. 5,000/-. Sub-section (1) of Section 143 of the N.I.

Act further provides that during the course of a summary trial, if the Magistrate is of the opinion that the nature of the case requires a sentence for a term exceeding one year or for any other reason, it is undesirable to try the case summarily, he must record the reasons for doing so and go for a 'regular trial'. Thereafter, the Magistrate can also recall any witness who has been examined and proceed to hear or rehear the case.

CAN THE ACCUSED ADDUCE EVIDENCE ON AFFIDAVIT?

Section 145 of the N.I. Act provides for adducing of evidence on affidavit of the complainant. Now a question may arise as to whether the accused can also adduce evidence on affidavit? The scope of Section 145, N.I. came up for consideration before the Hon'ble Supreme Court in Mandvi Cooperative Bank Limited v. Nimesh B. Thakore [(2010) 3 SCC 83] and the same was explained in that judgment stating that the Legislature provided for the complainant to give his evidence on affidavit but did not provide the same for the accused. As such, the trial Magistrate cannot accord permission to the accused to adduce his evidence on affidavit.

The Apex Court in "**Indian Bank Association Vs Union of India (2014) 5SCC 590"** directed the concerned Court must ensure that examination-inchief, cross-examination and reexamination of the complainant must be conducted within three months of assigning the case. The Court has option of accepting affidavits of the witnesses, instead of examining them in court. Witnesses to the complaint and accused must be available for crossexamination as and when there is direction to this effect by the Court.

It is a cardinal principle of criminal jurisprudence that it is the burden of the prosecution to prove the guilt of the accused beyond reasonable doubt. Statutory presumptions, wherever available, create an exception to this cardinal principle by shifting the burden of proof to the opposite party.

Sec. 139: Presumption in favour of holder

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 the discharge, in whole or in part, of any debt or other liability.

Similarly, Section 118 (a), N.I. Act provides as follows:

Presumptions as to Negotiable Instruments. —

Until the contrary is proved, the following presumption shall be made:—

(a) of consideration —that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

However, there has been some amount of dispute as to when the presumption under section 118 (a) and especially the one under section 139, N.I. Act start to run.

The law as it stands now after " **Rangappa Vs. Sri Mohan "** reported in **(2010) 11 SCC,** the Apex Court has made it clear that " once the issuance of the cheque is admitted or proved, the trial court is duty bound to raise the presumption that the dishonoured cheque placed before it was indeed issued in discharge of a legally enforceable debt or liability of the amount mentioned therein.

The presumption is a rebuttable one; it is up to the accused to prove that the cheque in question had not been issued in discharge of a legally enforceable debt or liability.

The Issue of Financial Competence of Complainant

In **John K. Abraham v. Simon C. Abraham & Anr.** reported in **(2014) 2 SCC 236,** the Hon'ble Supreme Court has observed in Paragraph 9 that in order to draw the presumption under sections 118 and 139 of the Act, the burden is cast heavily upon the complainant to show that he had the requisite funds for advancing the money to the accused.

In **Basalingappa vs. Muudibasappa (Criminal Appeal No. 636 of 2019)**, the Hon'ble Supreme Court observed that a complainant in a cheque bounce case is bound to explain his financial capacity, when the same is questioned by the accused, by leading evidence to that effect.

However, **Rangappa (supra)** would prevail over both **John K. Abraham (supra)** and **Basalingappa (supra)** in so much so that it as it has been decided by a full bench as opposed to **John K. Abraham (supra)** and **Basalingappa (supra)** which have been decided by division benches.

Moreover, **Rangappa (supra)** has extensively discussed the issues of presumption and how it comes to play *vis a vis* a dishonoured cheque.

Furthermore, the observations in **John K. Abraham (supra)** and **Basalingappa (supra)** are more in the domain of *obiter* being guided by the peculiar factual matrices of those cases.

> *[In **John K Abraham (supra),** it was the claim of the complainant that the source for advancing the sum of Rs. 1,50,000/- to the accused was from the sale of his portion of his family property and a loan taken from the cooperative society. The complainant also told the trial court that he would be able to produce the documents in support of his stand but he failed to do so. There were also contradictory pleas as to who wrote the contents of the cheque. It was only on consideration of such factual lacunae in the case of the complainant that the Supreme Court set aside the judgment of the High Court and upheld the one of the trial court.*
>
> *In the case of **Basalingappa (supra),** apart from loan of Rs. 6,00,000/ given to the accused, within 2 years, an amount of Rs. 18,00,000/ had been given out by the complainant to different persons. His financial capacity was directly questioned by the defence in his cross-examination (as he was retired State Govt, employee who had enchased only Rs. 8,00,000/ in post-retirement benefits) and he failed to give a satisfactory answer to it. So, it was held that it was incumbent on the complainant to have explained his financial capacity.]*

Thus, if all the aforementioned judgments cited above are read conjointly, a clearer picture emerges. If the defence brings on record credible material challenging the financial competence of the complainant, only then the complainant would have to discharge the burden of proving his financial competence else the presumption 139 will fail.

Otherwise, a mere suggestion or question on the financial competence of the complainant will not suffice in rebutting the presumption under section 139, the burden of which remains on the defence.

Before concluding, I find it relevant to cite the case of **Rohitbhai Jivanlal Patel v. State of Gujarat** reported in **2019 (5) SCALE 138** In this case, even after purportedly drawing the presumption under Section 139 of the N.I. Act, the trial court proceeded to question the want of evidence on the part of the complainant as regards the source of funds for advancing loan to the accused and want of examination of relevant witnesses who allegedly extended him money for advancing it to the accused. The Hon'ble Supreme Court observed that this approach of the trial court had been at variance with the principles of presumption in law. After such presumption, the onus shifted to the accused and unless the accused had discharged the onus by bringing on record such facts and circumstances as to show the preponderance of probabilities tilting in his favour, any doubt on the complainant's case could not have been raised for want of evidence regarding the source of funds for advancing loan to the accused-appellant.

The Hon'ble Apex Court held in **Bir Singh vs. Mukesh Kumar (Criminal Appeal No. 230-231 of 2019)** as follows :

"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. A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer, if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted."

Rebuttal : Now, the question arises as to how the accused shall discharge this burden.

The Apex Court It has been held in **Hiten P Dalal v. Bratindranath Banerjee** reported in **(2001) 6 SCC 16** that a mere plausible explanation given by the accused is not enough to rebut the presumption and the accused has to necessarily disprove the prosecution case by leading cogent evidence that he had no debt or liability to issue the said cheque.

The Hon'ble Supreme Court in the case of **Rangappa (supra)** has further clarified the issues in the following terms:

"Section 139 of the Act is an example of a reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. While Section 138 of the Act specifies a strong criminal remedy in relation to the dishonour of cheques, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. However, it must be remembered that the offence made punishable by Section 138 can be better described as a regulatory offence since the bouncing of a cheque is largely in the nature of a civil wrong whose impact is usually confined to the private parties involved in commercial transactions. In such a scenario, the test of proportionality should guide the construction and interpretation of reverse onus clauses and the accused/defendant cannot be expected to discharge an unduly high standard of proof. In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of ' preponderance of probabilities'. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.

Thus, it appears that the prosecution can fail if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability. And it is not necessary for the accused to take the witness stand in his favour. He can rely upon the prosecution evidence in order to raise his defence.

I want to add here that the accused is not expected to rebut the presumption beyond all reasonable doubt. The standard of disproof is only on the level of preponderance of probabilities. The nature of burden of proof has been succinctly laid down by the Hon'ble Supreme Court in **M.S. Narayana Menon v. State of Kerala and Another** reported in **AIR 2006 SC 3366,** wherein the Hon'ble Supreme Court held that the initial burden is upon the accused to rebut the presumption under section 139 of the Act. Only in the event of discharging the said initial burden, the onus shifts to the complainant.

WITHDRAWAL OF THE COMPLAINT :

As per Sec.257 of Criminal Procedure Code " if a complaint, at any time before a final order is passed in any case under this chapter, satisfies the magistrate that they are **sufficient grounds** for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all any of them, magistrate may permit him to withdraw the same and shall there upon acquit the accused against whom complaint is so withdrawn.

The said provision envisages that if they are any sufficient grounds, the complainant may be permitted to withdraw the complaint. It is general practice that if complainant and accused settle the matter outside the court they will come up with the petition U/sec.257 of Cr.P.C. In such a case if the reason stated by complainant founds to be a sufficient ground, then the complaint U/sec.200 of Cr.P.C. for the offence U/sec.138 of NI Act may be permitted to withdrawn. The effect of withdrawal amounts to Acquittal of accused U/sec.257 of Cr.P.C.

STATUS OF ACCUSED

Only the Drawer is Liable under section 138, N.I. Act

It is only the drawer of the dishonoured cheque who can be prosecuted under section 138, N.I. Act and no one else.

*I*f the dishonoured cheque has been issued out of a joint account and only one of the account holders has signed it, the said issue was decided in **Aparna A. Shah v. Sheth Developers Private Limited and Another** reported in **(2013) 8 SCC 71**, wherein the Hon'ble Supreme Court has held that each and every joint account holder cannot be prosecuted unless he has signed the cheque.

Offences by Companies :

Sub-section (1) of Section 141 of the N.I. Act provides that if a person committing an offence under the section is a company, every person who, at the time offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Sub-section (2) of Section 141 of the N.I. Act further provides that where any offence under the N.I. Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

The offender in section 138 of the N.I. Act is the drawer of the cheque. He alone would have been the offender there under if the Act did not contain other provisions. It is because of section

141 of the N.I. Act that penal liability under section 138 is cast on other persons connected with the company.

Three categories of persons can be discerned from the said provision who are brought within the purview of the penal liability through the legal fiction envisaged in the section.

1. The company,
2. Everyone who was in charge of and was responsible for the business of the company,
3. Any other person who is a director or a manager or a secretary or officer of the company, with whose connivance or due to whose neglect the company has committed the offence.

The Legislature has thought fit to provide an Explanation to Section 141 of the N.I. Act and the plain reading of the expression "company" as used in sub clause (a) of the Explanation appended to Section 141 of the N.I. Act shows that it is inclusive of any body corporate, firm or "other association of individuals".

Though the heading of Section 141 of the N.I. Act reads "offences by companies" but according to the Explanation to that Section, "company" means "any body corporate and includes a firm or other association of individuals and "director", in relation to a firm means "a partner in the firm".

It is only the drawer of the cheque, who can be held responsible for an offence under Section 138 of the N.I. Act. Section 141, however, provides for constructive liability. It postulates that a person, in charge of and responsible to the company, in the context of the business of the company, shall also be deemed guilty of the offence.

The drawer can be a company, a firm or an association of individuals, but only those directors, partners, or officers can be held responsible for the offence punishable under Section 138 of the N.I. Act who are responsible for the conduct of its business.

SCC 661] , the Apex Court had unequivocally clear on this point." that the prosecution launched against the directors without joining the company (or against the partners of the partnership firm, without joining the partnership firm) cannot be maintainable".

In **Gunamala Sales Pvt. Ltd. v. Anu Mehta** reported in **AIR 2015 SC 1072, the Apex Court** " held that it is necessary to aver in the complaint filed under section 138 read with sec. 141, N.I. Act that at the relevant time when the offence was committed, the directors were in charge and were responsible for the conduct of the business of the company".

Status of Nominated Directors :

A question may arise as to the culpability of nominated directors of a company.

The second proviso appended to Section 141, N.I. Act provides the answer in this regard. "where a person is nominated as a Director of a Company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this

Chapter."

Liability of a Company in respect of which Winding Up Proceedings have been Initiated

In Kusum Ingots and Alloys Ltd. -Vs- Penner Peterson Securities Ltd. reported in (2000) 2 SCC 745, the Apex Court observed, that if the ingredients of Sec. 138 N. I. Act are satisfied, there is no bar for initiating criminal proceeding against the company and its directors, on a complaint made by the payee under N. I. Act. Even in cases where winding up petitions have been instituted against a company, it cannot escape the penal liability for dishonour of cheque under section 138, N.I. Act on the ground that the payment of the cheque pursuant to issuance of notice would amount to disposition of property of company and, hence, void under section 536 (2) of the Companies Act.

Directions of the Hon'ble Supreme Court in "Indian Banks Association Vs. Union of India". (2014) 5 SCC 590.

(1) Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when thecomplaint under Section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.

(2) MM/JM should adopt a pragmatic and realistic approach while issuingsummons. Summons must be properly addressed and sent by post by e-mail address got from the complainant. Court, in appropriate cases, may take the assistance of the police or the nearby. Court to serve notice to the accused. For notice of appearance, a short date be fixed. If the summons is received back unserved, immediate follow up action be taken.

Court may indicate in the summon that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, Court may pass appropriate orders at the earliest.

Court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251 Cr.P.C. to enable him t:o enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) for recalling a witness for cross examination.

The Court concerned must ensure that examination-in-chief, cross examination and re-examination of the complainant must be conducted within three months of assigning the case. The Court has option of accepting affidavits of the witnesses, instead of examining them in Court. Witnesses to the complaint and accused must be available for cross examination as and when there is

direction to this effect by the Court.

The Hon'ble High Court of State of Telangana has issued circular No.11/2021, Dated:21-06-2021.

As per Orders dated 16.04.2021 of Hon'ble Hon'ble Supreme Court of India in Suo Motu Writ Petition (Crl.) No.2 of 2020 titled In Re: **Expeditious Trail of Cases Under Section 138 Negotiable Instruments Act,** and directed to follow the practice directions as stated below :

PRACTICE DIRECTIONS :

➔ All the Magistrate Courts trying the cases under Section 138 of Negotiable Instruments Act shall invariably follow the directions of the Hon'ble Supreme Court in **Indian Banks Association Vs.Union of India, (2014) 5 SCC 590** as appended to this Practice Guidelines vide **'Annexure-A'.**

➔ The Magistrate Courts shall invariably register the cases under Section 138 of Negotiable Instruments Act initially as **Summary Trial Cases Negotiable Instruments (STC-NI)** in view of the directions of the Apex Court in **Indian Banks Association Vs. Union of India, (2014) 5 SCC 590.**

➔ The Magistrate Courts need not insist for the personal presence of the complainant for registration of the Complaint. (vide **A.C.Narayanan Vs. State of Maharashtra, AIR 2014 SC 360).**

➔ The power of attorney holder may be allowed to file the complaint, appear and depose for the purpose of issue of process for the offence under Section 138 of the NJ.Act (vide **A.C.Narayanan Vs. State of Maharashtra, AIR 2014 SC 630** and Sic **Tamisuddin Vs. Joy Joseph Creado. Criminal Appeal No.237 of 2012, dated 25.09.2018).** An exception to the above is when the power of attorney holder of the complainant does not have a personal knowledge about the transaction, then he cannot be examined (vide **Janki Vashdeo Bhojwani Vs. Indusind Bank Ltd., (2005) 2 SCC** 217).

➔ Recording of Complainant's sworn statement under Sec.200 Cr.P.C. is not mandatory in view of the provisions under Section 145 of Negotiable Instruments Act. (vide **A.C.Narayanan Vs. State of Maharashtra, AIR 2014 SC 630).** The sworn affidavit filed under Section 145 Negotiable Instrument Act can be considered in lieu of the sworn statement in view of said provision.

➔ In the cases where the place of residence of the accused is situated outside the territorial limits of the Court, the Courts shall follow Section 202 Cr.P.C. which mandates the inquiry by the Court. However, the said provision is not a hurdle or barrier in respect of the cases under Section 138 of Negotiable Instruments Act in view of the Constitution Bench decision dated 16.04.2021 of the Hon'ble Supreme Court in Suo Motu Writ Petition (Crl.) No.2 of 2020 titled **In Re: Expeditious Trial of Cases Under Section 138 Negotiable Instruments Act).** However, the Courts shall look into and consider the affidavit of the Complainant which may be filed under Section 145 of N.I.Act and the documents filed in support of his case to arrive at sufficient grounds to proceed against the accused and to issue the process.

➔ The compliant! shall contain a statement as to computation of the amount claimed, e-Mail ID of the complainant/accused, bank particulars of the complainant.

➔ The Courts shall insist for filing the verification affidavit as to the correctness of pleadings. (vide **Damodar S.Prabhu Vs. Sayed Babalal H., (2010) 5 SCC 663).**

➔ If all the above are duly complied, the Magistrates shall take cognizance of the offence on the date of filing itself without any delay and shall invariably register the case. (As **Summary Trial Cases - Negotiable Instruments (STC-NI}** (vide **Indian Banks Association Vs. Union of India, (2014) 5 SCC 590.)**

➔ The summons shall be issued to the accused by registered

post/approved courier agency e-Mail and other approved digital/electronic mode in the prescribed format. (vide **Indian Banks Association Vs. Union of India,** (2014) **5 SCC 590).**

➔ While issuing. summons, the Courts shall see that the summons are properly addressed and sent by post and also to the e-mail address of the accused furnished by the complainant. The Court, shall also consider to take the assistance of the Police or the nearby Court to serve summons or warrants to the accused. For appearance of the accused, a short date shall be fixed. If the summons is received back un-served, immediate follow up action be taken. The courts shall treat the service of summons in one complaint under Section 138 forming part of a translation, as deemed service in respect of all the complaints filed before the same court relating to dishonor of cheques issued as part of the said transactions. (vide Directions of the Hon'ble supreme Court in its Constitutional Bench decision, dated 16.04.2021 in Suo Motu Writ Petition (Crl.) No.2 of 2020

titled

In Re: Expeditious Trial of Case Under Section 138 Negotiable Instruments Act.)

➔ The Courts shall direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial. Here the Court shall consider the request of the accused to grant time for production of such bail bonds.

➔ On the date of first appearance of the accused or on the date to which the appearance of the accused is scheduled, the Magistrate Court shall furnish the copies of complaint and documents to the Accused, enquire about his capacity to engage counsel (or appoint a legal aid counsel for the accused having no capacity to engage counsel) and then shall inform him about the guidelines in **Damodar S.Prabhu Vs. Sayed**

Babalal H., (2010) 5 SCC 663 and **Madhya Pradesh State Legal Services**

Authority Vs.Prateek Jain, (2014) 10 SCC 690. If the Court is satisfied that there is an element of settlement of the case, then it shall refer the case to Lok-Adalat or Mediation in accordance with the scheme prepared by NALSA.

➔ In case of settlement of the case in any of these two modes, the award shall be drawn. In case of settlement before Lok Adalat, the parties shall be informed about the mode of execution of the award as per the Leg al Services Authorities Act, 1987 by way of filing Execution Application, while treating that award as a decree (vide **K.N.Govindan Kutty Menon Vs.C.D. Shaji, (2012) 2 SCC 51.)**

In case of not settling the issue before the Lok Adalat or the Mediation, the case shall be posted for framing notice or the examination of the accused under Section 251 of Cr.P.C. about the accusation levelled against him. In case of denial of the accusation, the accused shall be called upon to file a defence statement in writing with supporting reasons. Then the Court shall consider the scope of calling the complainant for further chief examination for making documents and for cross- examination on behalf of the accused.

➔ Till this stage, the case shall be treated as Summary Trial Case, but not as a regular Summons or Calendar Case. After examining the above aspects the Court shall consider the scope of converting the case as a regular Summons/Calendar case. If the Court is of the view that the case requires a through and detailed trial or where the case warrants imposition of grave punishment or where multiple connected civil/criminal cases are pending, it shall record the reasons for converting the case into a regular Summons or Calendar Case **(CC-NI).** The recording of reasons at this stage shall always be mandatory in view of the decision of the Hon'ble Apex Court in Suo Motu Writ

Petition (Crl.) No.2 of 2020 titled **In Re: Expeditious Trial of Case Under Section 138 Negotiable Instruments Act.**

➔ The Magistrate's shall not entertain any miscellaneous application for discharge of the accused as there is no provision in Cr.P.C. for discharge of an accused in a Summary Trial Case or a Summons Case in view of the law as settled in Suo Motu Writ Petition (Crl.) No.2 of 2020 titled **In Re: Expeditious Trial of Case Under Section 138 Negotiable Instruments Act** and **Subramanium Sethuraman Vs State of Maharashtra, AIR 2004 SC 4711.** It shall be kept in mind that as held in **In Re: Expeditious Trial of Case Under Section 138 Negotiable Instruments Ac:t,** the Section 258 of the Cr.P.C. is not applicable to the complaints under Section 138 of the N.I. Act and the judgment in **Meters and Instruments Private Limited Vs. Kanchan Mehta, AIR 2017 SC 4594** is not approved to that extent.

➔ The Magistrate Courts shall make every endeavour to complete the trial of these cases within the statutory prescribed time limit of six (6) months.

➔ After closure of the complainant side evidence, the accused shall be called upon I to answer the incriminate material available in the case of the complainant against him under Section 313 Cr.P.C and his detailed answers for the said questions shall be recorded. The accused shall be permitted to file a defence statement in view of the provisions under Section 313 Cr.P.C. at this stage.

➔ In case the accused choses to adduce evidence, the accused shall not be permitted to file his chief examination evidence in the form of affidavit in view of the law in **Mandvi Co-operative Bank Ltd. Vs. Nimesh B.Thakore, (2010)** 3

SCC 83. However, the accused can be permitted to enter into the witness box after obtaining necessary permission from the Court under Section 315 Cr.P.C. However, this permission from the Court is not mandatory when the accused intends to examine any other person as his witness.

➔ After recording the evidence of both parties, the arguments shall be heard by the Court and the Court shall pronounce the judgment within three days (excluding the day of hearing the final arguments.)

➔ In all the cases where the accused is found guilty of the offence under Section 138 of Negotiable Instruments Act, the Court shall consider awarding the compensation to the complainant party in view of the provisions under 138, 143 of Negotiable Instruments Act and Section 357 Cr.P.C. The Court must exercise the power and discretion to compensate the injury suffered by the complainant

(vide **Hari Kishan Vs. Sukhbir Singh, (1988) 4 SCC 551).** The Court shall also keep in mind the decisions of the Hon'ble Apex Court in this regard rendered in

R.Vijayan Vs Baby, AIR 2012 SC 528 and **Suganthi Suresh Kumar Vs. Jagdeeshan**,

(2002) 2 SCC 420. The Court may consider granting of installments or time to pay such compensation amount. The Court may also consider to impose in default sentence on the accused in case of failure to pay the compensation. (vide

K.A.Abbas Vs Sabu Joseph (2010) 6 SCC 230 and **R.Mohan Vs. A.K.Vijaya Kumar, (2012) 8 SCC 721.)**

Sec. 143-A: In all trials under Sec.138 of Negotiable Instruments Act, when the accused is claiming for a regular trial, the Court may order to direct the accused to pay the interim compensation to the complainant which shall not exceed 20% of the amount of cheque (Section 143-A). Such interim compensation shall be paid within 60 days from the date of order and the Court is competent to extend that time for further 30 days. In case of acquittal, the Court shall direct the complainant to repay the interim compensation amount with the bank interest rate to the accused within 60 days from the date of judgment and this time can also be extended for further 30 days. Interim compensation may be recovered as if it were a fine under Sec.421 Cr.P.C. This interim compensation amount shall be adjusted against the final compensation ordered by the Court under Sec.357

Cr.P.C. at the time of judgment.