DISTRICT AND SESSIONS COURT

JANJGIR-CHAMPA

DISTRICT: JANJGIR-CHAMPA

DISTRICT & SESSIONS COURT
JANJGIR-CHAMPA

DIVISIONAL JUDICIAL SEMINAR

On

An Overview of the Procedure For Section 138 of Negotiable Instrument Act Cases. Innovative Tools and Techniques for disposal of section 138 NIA Cases

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Research Team:

- Shri Sarv Vijay Agrawal 4th DJ, Janjgir, Distt. Janjgir-Champa
- Smt. Shivani Singh CJSD, Akaltara, Distt. Janjgir-Champa.
- Smt. Divya Goyal CJJD, Sakti, Distt. Janjgir-Champa.

Assisted by :

- Ms. Shubhda Goyal, CJM, Sakti, Distt. Janjgir-Champa
- Ms.Sakshi Dhruw, CJJD, Malkharoda, Distt. Janjgir-Champa.

Presented by: **District & Sessions Court Janjgir-Champa (C.G.)**

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District & Sessions Court

Janjgir-Champa, Chhattisgarh

DISTRICT & SESSIONS COURT

JANJGIR - CHAMPA (C.G)

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Bilaspur Divisional Judicial Seminar at Bilaspur (C.G.)

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An Overview of the Procedure For Section 138 of Negotiable Instrument Act Cases. Innovative Tools and Techniques for disposal of section 138 NIA Cases.

PART-1

A) An Overview of the Procedure For Section 138 of Negotiable Instrument Act Cases.

01.01- Objective and Legislative Intent of Section 138 NI ACT,1881.

Section 138 of the Act was inserted by the Banking, Public Financial Institutions and Negotiable Instrument Law (Amendment) Act, 1988 (ACT 66 of 1988) to regulate financial promises in growing business, trade, commerce and industrial activities of the country and the strict liability to promote greater vigilance in financial matters. The incorporation of the provision is designed to safeguard the faith of the creditor in the drawer of the cheque, which is essential to the economic life of a developing country like India. The provision has been introduced with a view to curb cases of issuing cheques indiscriminately by making stringent provisions and safeguarding interest of creditors. **[VINAY DEVANNA NAYAK V/S RYOT SEVA SAHAKARI BANK LTD 2008 (2) SCC 305]**

The intent behind introducing Chapter XVII is to restore the credibility of cheques as a trustworthy substitute for cash payment and to promote a culture of using cheques. Further, by criminalizing the act of issuing cheques without sufficient funds or for other specified reasons, the law promotes financial discipline, discourages irresponsible practices and allows for a more efficient and timely resolution of disputes compared to the previous pure civil remedy which was found to involve the payee in a long-drawn out process of litigation. **[SANJABIJ TARI V/S KISHORE S BORCAR & ANR 2025 SCC Online SC 2069]**

01.02- The Ingredient to Constitute the Offence u/s 138 act -

(i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;

(ii) that cheque has been 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; [Which Reduced to three months vide RBI, circular u/s 35 (A) Banking Regulation Act, 1949- w.e.f. 1.4.2012 validity period of cheque/draft/pay order- 3 months.]

(iii) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement etc;

(iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the returnof the cheque as unpaid; and

(v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice;

If the aforementioned ingredients are satisfied then the person who has drawn the cheque shall be deemed to have committed an offence.

01.03- CAUSE OF ACTION:-

Cause of action arises when notice is served on the drawer and drawer fails to make payment of the amount of cheque within 15 days. Limitation to file complaint is one month from the date of cause

of action. However, by Amendment Act of 2002 the court is empowered to take cognizance of the offence even if complaint is filed beyond one month by condoning the delay if sufficient cause is shown. **[Section 142 NI Act]**

01.04- Calculation of the period of limitation:-

In the case of Saketh India Ltd. v. Indian Securities Ltd. (1999) 3 SCC 1, it has been held by Hon'ble The Supreme Court that-

a) 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.

b) The term "month" is not defined within the N.I. Act and the same means a British Calender Month and not lunar month, by following the definition given in Section 3 (35) of the General Clauses Act meaning thereby that a month means only a period of 30 days.

c) It must be borne in mind that 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. **[Indra Kr. Patodia v. Reliance Industries Ltd. AIR 2013 SC 426]**

01.05- JURISDICTION

"While the Hon'ble Supreme Court in **Dashrath Rupsingh Rathod vs. State of Maharashtra (2014)** initially interpreted the provisions of Section 138 to mean that jurisdiction resides at the place where the questioned cheque is drawn, this position was subsequently superseded by the **Negotiable Instruments (Amendment) Act, 2015**. Territorial jurisdiction is now strictly governed by the amended Section 142(2) of the Act as follows:

1. **Under Section 142(2)(a):** Where the cheque is delivered for collection through an account, jurisdiction lies with the court within whose local limits the bank branch where the payee or holder in due course maintains their account is situated.

2. **Under Section 142(2)(b):** Where the cheque is presented for payment by the payee or holder in due course otherwise than through an account (e.g., over the counter), jurisdiction lies with the court within whose local limits the bank branch where the drawer maintains their account is situated.

In a very recent judgment **JAI BALAJI INDUSTRIES LTD AND ORS V/S M/S HEG LTD 2025 SCC Online SC 2581** it is held that A cheque bounce case u/s 138 NIA must be filed only in the court that has jurisdiction over the payee's home branch i.e the branch where payees account is actually maintained. Even if the cheque is

deposited in any other branch (for convenience) the law treats it as if it was deposited at home branch itself. This interpretation comes from section 142(2)(a) introduced in 2015.

01.06- Cognizance and issue of Process

This has been held by the Hon. Supreme Court in **SANJABIJ TARI V/S KISHORE S BORCAR & ANR 2025 SCC Online SC 2069** that each and every complaint under Section 138 of the NI Act shall **contain a synopsis** in the following format which shall be filed immediately after the index (at the top of the file) i.e. prior to the formal complaint :-

Format

Complaint under Section 138 of the Negotiable Instruments Act, 1881

I. Particulars of the Parties

(i) Complainant: _____

(ii) Accused: _____

(In case where the accused is a company or a firm then Registered Address, Name of the Managing Director/Partner, Name of the signatory, Name of the persons vicariously liable)

II. Cheque Details

(i) Cheque No. _____

(ii) Date: _____

(iii) Amount: _____

(iv) Drawn on Bank/Branch: _____

(v) Account No.: _____

III. Dishonour

(i) Date of Presentation: _____

(ii)Date of Return/Dishonor Memo: _____

(iii) Branch where cheque was dishonored:____

(iv) Reason for Dishonour: _____

IV. Statutory Notice

(i) Date of Notice: _____

(ii) Mode of Service: _____

(iii) Date of Dispatch & Tracking No.: _____

(iv) Proof of Delivery & date of delivery: _____

(v) Whether served:_____

(vi) If Not, reasons thereof:_____

(vii)Reply to the Legal Demand Notice, if any____

V. Cause of Action

(i) Date of accrual: _____

(ii)Jurisdiction invoked under Section 142(2): ___

(iii) Whether any other complaint under section 138 NI Act is pending between the same parties, If Yes, in which court and the date and year of the institution.

VI. Relief Sought

(i) Summoning of accused and trial under Section 138 NI Act_____

(ii) Whether Award of Interim compensation under Section 143A of NI Act sought _____

VII. Filed through:

Complainant/Authorized Representative.

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

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

The Hon'ble Apex Court has given following conclusion-

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{new sec 225 BNSS}, 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 the Cr.P.C.{new sec 242 BNSS}

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**[1] and **Subramanium Sethuraman**[2] have interpreted the law correctly

[1] - [2004] 7 SCC 338

[2] - [2004] 13 SCC 324

and we reiterate that there is no inherent power of Trial Courts to review or recall the issue of summons. This does not affect the power of the Trial Court under Section 322 of the Code {new sec 261 BNSS} to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint.

7- Section 258 of the Code{new sec 281 BNSS} is not applicable to complaints under Section 138 of the Act and findings to the contrary in **Meters and Instruments**[3] do not lay down correct law. To conclusively deal with this aspect, amendment to the Act empowering the Trial Courts to reconsider/recall summons in respect of complaints under Section 138 shall be considered by the Committee constituted by an order of this Court dated 10.03.2021.

01.07- Defences commonly raised-

- ✓ **Ques 1 – Whether it is necessary to hear accused before taking cognizance of offense under section 138 of NI Act (as per required under Section 223 of BNSS) ?**

Answer- The Supreme Court in **SANJABIJ TARI**[4] **(supra)** has clarified that in cheque bounce cases under Section 138 of the Negotiable Instruments (NI) Act, it is not mandatory to hear the

[3] - AIR 2017 SUPREME COURT 4594

[4] - 2025 INSC 1158

accused or issue summons at the pre-cognizance stage, despite the new requirements in the Bharatiya Nagarik Suraksha Sanhita (BNSS), **2023**. The court affirmed that the special procedures of the NI Act take precedence for fast-tracking, allowing magistrates to take cognizance based on the complaint and affidavit without a pre-hearing.

- ✓ **Ques 2 – Whether the Accused has a Right to be Heard While Deciding the Issue of Condonation of Delay ?**

Answer - Hon'ble **High Court of Calcutta in Sri Amitava Roy versus The State of West Bengal & Anr. 2010 SCC Online Calcutta 2089 has held that** "When any application is barred by limitation as because such an application, here in this case the petition of complaint, has been filed beyond the prescribed period of limitation, before condonation of delay and taking of cognizance on such complaint, the party whose rights and interests are likely to be affected adversely by such order, if delay is condoned, must be given reasonable opportunity of hearing before such an order is passed, in other words notice of hearing must be sent to such a party. This is what principle of natural justice demands. However, in this case delay being condoned without hearing the present petitioner the accused persons and even without making any order of issuance of notice, there has been a complete violation of principle of

natural justice and the order impugned cannot be sustained and is set aside."

- ✓ **Ques 3 – When Accused took defence that he has given Blank Cheque to the complainant ?**

Ans- "...even if a blank cheque leaf is voluntarily signed and handed over by the accused towards some payment would attract the presumption under Section 139 of the Act and in the absence of any cogent evidence to show that the cheque was not issued in discharge of the debt, the presumption would hold good," the Court observed relying on the judgment in **Bir Singh v.Mukesh Kumar 2019 (4) SCC 197**

The Supreme Court has reiterated that a blank cheque leaf, which has been voluntarily signed by the drawer and handed over to the payee towards some payment, will carry the presumption that it was issued in discharge of a legally enforceable debt as per Section 139 of the Negotiable Instruments Act. **(K. RAMESH VERSUS K. KOTHANDARAMAN, 2024 SCC Online SC 531**

Ques 4 – When Accused took defence that he has given Cheque to the complainant as security ?

Ans - The "Security" Defence in Cases Relating to Dishonour of Cheques – Not a Get-Out-Of-Jail-Free Card

The Supreme Court, in the case of **Sripati Singh vs. The State of Jharkhand & Anr 2021 SCC Online SC 1002,** has provided much needed clarity on the often-used defence of a cheque having been issued as 'security' in proceedings under the Negotiable Instruments Act, 1881 (the Act). The Court held that a cheque issued by way of security, if dishonoured, would attract the provisions of the Act, if the same is issued in consequence of a legally enforceable debt, which has become recoverable at the time of its presentation.

But in a recent judgment of Hon'ble **Delhi High Court Sri Sai Sapthagiri Sponge Pvt. Ltd. vs. The State (GNCT of Delhi) and ANR 2025 SCC Online Del 7093** has took the view that if cheques in question were security Cheques and were not issued or encashable for any legally enforceable liability or debt and the Complaints under S.138 NI Act on account of dishonour of such cheques, is not maintainable.

Ques 5– When Accused took the defence that the demand notice was not served to him ?

Ans -There are several provisions regarding to draw presumption of due service :- The Supreme Court in **C.C. Alavi Haji v. Palappetty Muhammed (2007) 6 SCC 555** has clarified that if a notice is sent to the correct address, service is presumed, and the accused must rebut it.

Section 27 of the General Clauses Act creates a strong presumption: service is deemed effected if a notice is properly addressed, stamped, and sent by registered post, even if not actually received. Proof of dispatch to the correct address suffices,the actual receipt of the notice is not necessary; it suffices that it was sent to the address known to the sender **.{** P. V. Monichan VS State of Kerala Represented By The Public Prosecutor, High Court of Kerala, Ernakulam – Kerala **2020 SCC Online Ker 1670.}**

Burden Shifts to the Accused

Once dispatch is proven, the onus shifts to the accused to show non-receipt or incorrect address. Mere denial isn't enough; evidence like proof of address change notification is required **P. V. Monichan VS State of Kerala Represented By The Public Prosecutor, High Court of Kerala, Ernakulam -2020 SCC Online Ker 1670.**

Ques 6 – When Accused took defence that the Amount Wholly Paid but Cheque not returned to him ?

Ans - No Offence if Cheque Does Not Represent Enforceable Debt (Partial/Previously Paid) **Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel & Anr. — 2022 SCC Online SC 1376.**

Held: A dishonoured cheque does not attract an offence under Section 138 of the NI Act if it is presented for the full amount after partial payment has already been made, because the cheque no longer represents the legally enforceable debt at the time of presentation. The Court clarified that any partial payment must be endorsed on the cheque under Section 56; absent such endorsement, the cheque for the full amount does not represent the correct debt and thus there is no offence under Section 138.

Ques 7 – Whether the interim moratorium under Section 96 of the Insolvency and Bankruptcy Code (IBC), 2016, bars criminal proceedings under Section 138 of the Negotiable Instruments Act, 1881 ?

Ans - In Rakesh Bhanot vs. Gurdas Agro (P) Ltd Equivalent Citations: 2025 SCC OnLine SC 728 Hon'ble Supreme Court held that the interim moratorium under Section 96 of the Insolvency and Bankruptcy Code, 2016 does not bar criminal proceedings under Section 138 of the Negotiable Instruments Act, 1881. The Court observed that Section 96 applies only to civil recovery proceedings and not to penal actions. It clarified that insolvency proceedings and cheque dishonour cases serve different legal purposes. As the NI Act aims to penalize financial dishonesty, the filing of a personal insolvency petition cannot be used to avoid criminal liability for dishonoured cheques.

Ques 8 – When Accused took defence that the Cheque was Issued for an Illegal Purpose (e.g., Securing a Job) ?

Ans – Hon'ble Karnataka Highcourt in R. Parimala Bai vs Bhaskar Narasimhaiah 2018 SCC Online Kar 3989 has held that for loan or any amount given for securing job is not legally recoverable debt because it is given for illegal purpose. Court further held that *"So far as Section 139 of the Negotiable Instruments Act is concerned, of course there is a presumption under law. Initially the court has to draw presumption in favour of the complainant if on plain reading of the complaint, the court is of the opinion that the complainant has pleaded that there existed a legally recoverable debt and in support of that contention. The presumption has to be raised in favour of the complainant regarding existence of legally recoverable debt. But, if an illegal consideration is relied upon by the complainant himself, then such presumption u/s.139 of the Negotiable Instruments Act, cannot be raised at the initial stages also. It all depends upon the facts and circumstances of each case on the basis of the pleadings of the parties."*

Ques 9 – When Accused took defence that there is violation of Section 269SS of the Income Tax Act (Cash Transaction Exceeding ₹20,000) ?

Ans – In **SANJABIJ TARI V/S KISHORE S BORCAR & ANR 2025 SCC Online SC 2069** the Supreme Court held that once the execution of the cheque is admitted, the statutory presumptions under Sections 118 and 139 NI Act arise in favour of the complainant. Violation of Section 269SS of the Income-Tax Act (cash loan above ₹20,000) does not make the transaction illegal or unenforceable under Section 138. Such breach only leads to penalty under Section 271D IT Act, and does not destroy the debt for Section 138 purposes. An accused cannot merely challenge the complainant's financial capacity or invoke Section 269SS to rebut statutory presumptions without cogent evidence.

Hon. Supreme Court has further held that However, this Court is of the view that any breach of Section 269SS of the IT Act, 1961 is subject to a penalty only under Section 271D of the IT Act, 1961. Further neither Section 269SS nor 271D of the IT Act, 1961 state that any transaction in breach thereof will be illegal, invalid or statutorily void. Therefore, any violation of Section 269SS would not render the transaction unenforceable under Section 138 of the NI Act or rebut the presumptions under Sections 118 and 139 of the NI Act because such a person, assuming him/her to be the payee/holder in due course, is liable to be visited by a penalty only as prescribed. Consequently, the view that any transaction above Rs.20,000/- (Rupees Twenty

Thousand) is illegal and void and therefore does not fall within the definition of 'legally enforceable debt' cannot be countenanced. Accordingly, the conclusion of law in **P.C. Hari vs. Shine Varghese & Anr.,2025 SCC OnLine Ker 5535** is set aside.

Ques 10 – When Accused took defence that there is Lack of Financial Capacity of the Complainant ?

Ans – In **Aps Forex Services Pvt. Ltd. v. Shakti International Fashion Linkers (2020) 12 SCC 724** the Supreme Court reaffirmed that the statutory presumption under Section 139 NI Act is rebuttable and that the burden to rebut lies on the accused when the complainant has proved issuance and dishonour of the cheque.

Mere denial of liability is not sufficient; the accused must set up a credible probable defence consistent with probabilities. Once rebutted, burden shifts back to complainant to prove the debt and financial capacity. Again in **Rajaram S/o Sriramulu Naidu (Since Deceased) Through LRs. vs. Maruthachalam (Since Deceased) Through LRs., (2023) 16 SCC 125 Hon. Supreme Court** has held that presumptions under Sections 118 and 139 of the NI Act can be rebutted by the accused examining the Income Tax Officer and bank officials of the complainant/drawee.

Ques 11 – When Accused took defence that the cheque does not contain his signature ?

Ans – In Ajitsinh Chehuji Rathod v. State of Gujarat (2024) 4 SCC 453 Hon. Supreme court has held that in a complaint under Section 138 of the Negotiable Instruments Act, if the accused is disputing the signature on the cheque, then the certified copies of the signatures from the bank could be summoned from the bank to compare the same with the signature appearing on the cheque. The Court explained that the endorsements on a cheque carry a presumption of genuineness as per Section 118(e) of the Negotiable Instruments Act. Hence, it is incumbent upon the accused to lead evidence to rebut the presumption of genuineness of signatures. Certified copy of a document issued by a Bank is itself admissible under the Bankers' Books Evidence Act, 1891 without any formal proof thereof. Hence, in an appropriate case, the certified copy of the specimen signature maintained by the Bank can be procured with a request to the Court to compare the same with the signature appearing on the cheque by exercising powers under Section 73 of the Indian Evidence Act, 1872,".

01.08- Trial Procedure.

Hon. Supreme Court in **SANJABIJ TARI V/S KISHORE S BORCAR & ANR 2025 SCC Online SC 2069** reiterates the direction of this Court in **In Re: Expeditious Trial of cases under Section 138 of NI Act (supra)** that the Trial Courts shall record cogent and sufficient reasons before converting a summary trial to summons trial.

To facilitate this process,this Court clarifies that in view of the judgment of the Delhi High Court in **Rajesh Agarwal vs. State and Anr.,2010 SCC OnLine Del 2511,** the Trial Court shall be at liberty (at the initial post cognizance stage) to ask questions, it deems appropriate, under Section 251 Cr.P.C. / Section 274 BNSS, 2023 including the following questions:-

- ✓ (i) Do you admit that the cheque belongs to your account? Yes/No
- ✓ (ii) Do you admit that the signature on the cheque is yours? Yes/No
- ✓ (iii) Did you issue/deliver this cheque to the complainant? Yes/No
- ✓ (iv) Do you admit that you owed liability to the complainant at the time of issuance? Yes/No
- ✓ (v) If you deny liability, state clearly the defence:

- ✓ (a) Security cheque only;
- ✓ (b) Loan repaid already;
- ✓ (c) Cheque altered/misused;
- ✓ (d) Other (specify).
- ✓ (vi) Do you wish to compound the case at this stage? Yes/No

The Court shall record the responses to the questions in the order sheet in the presence of the accused and his/her counsel and thereafter determine whether the case is fit to be tried summarily under Chapter XXI of the Cr.P.C. / Chapter XXII of the BNSS, 2023.

Though the provision contained in section 143 of the N I Act provides that cases u/s.138 are to be tried in summary way but If it appears to the Magistrate that nature of case is such that sentence of imprisonment for a term exceeding one year may have to be passed, or that it is for any other reasons undesirable to try the case summarily, Magistrate shall after hearing the parties record and order to that effect and try the case as a regular summons case.

01.09- Judgment and Sentencing.

BURDEN OF PROOF :

(a) Presumptions:

Under Sec. 139 of the act, 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.

Presumption under Section 118 (a) of the Act says until the contrary is proved, it shall be presumed 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.

(b) Relevant case law :

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 and it is for the accused to prove that the cheque in question had not been issued in discharge of a legally enforceable debt or liability.

In the case of ***Rohitbhai Jivanlal Patel v. State of Gujarat*** reported in ***2019 (5) SCALE 138***, 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.

The Apex Court 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 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.

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.

(c) <u>Material required to discharge the burden of the complainant:</u>

i) Documents filed by the complainant

ii) There is no dispute that the cheque has been drawn on the account of the accused.

iii) Non denial of signature of accused on the instrument.

If the above three conditions are fulfilled, then trial court has a bounded duty to raise the presumption an enumerated under section 139 of N.I.Act.

(d) Scope of presumption under section 139:

In the case of ***Krishna Janardhan Bhat vs. Dattatreya Hegde,*** reported in ***(2008) 4 SCC 54***, the Hon"ble Supreme Court held that section 139 merely raised presumption in favour of holder in due course of cheque that said cheque has been issued for discharge of any debt or other liability, so existence of legally recoverable debt is not a matter of such presumption.

Further in the case of ***Rangappa vs. Sree Mohan*** reported in ***(2010) 11 SCC***

441 the Hon"ble Supreme Court held that the presumption under section 139 extends beyond existence of legally enforceable debt or liability. Latest pronouncement on that point is „Jain P. Jose vs. Santhosh and another, dt.10.11.2022".

Hence when legally enforceable debt is established and proved, presumption under section 139 can be taken and conviction can be given, unless the accused rebuts such presumption through probable defence.

(e) Reverse burden on accused – standard of proof:

i) Once a presumption under section 139 is drawn, then the burden (onus of proof) shifts to accused to show that their exists no liability/debt to be supported by subject cheque.

ii) Standard of proof require to dispel the presumption is preponderance of probabilities and accused need not enter into witness box. (No adverse inference can be drawn against the accused). As held in ***M/s.Kumar Exports vs. Sharma Carpets,*** reported in ***(2009) 2 SCC 513.***

iii) To rebut the presumption, it is open for the accused to relay on evidence let by him or he can also rely on the material submitted by the complainant. Inference of probabilities can be drawn not only from the material brought on record by the parties but also by reference to the circumstances upon which they rely.

iv) In the case of ***Kishan Rao vs. Shankar Gowda*** reported in ***(2018) 8 SCC 165*** it was held that a mere denial of debt or liability cannot shift the onus of proof from accused to complainant. All which the accused needs to establish is a probable defence.

v) In the case of ***Basalingappa vs. Mudibasappa*** reported in ***(2019) 5 SCC 418*** it was held that whether a probable defence has been established is a matter to be decided on the facts of each case on conspectus of evidence and circumstances that exists. It becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, accused was shown that the case of the complainant is in peril for the reason that the accused has established a probable defence.

(f) <u>Onus of proof when to be considered as dicharged by accused?</u>

i) If the defence set by accused is probable and same is substantiated by material on record, then the onus will again be reverted back to the complainant to prove that the cheque is supported by consideration. Unless and until such presumption is dispelled by the accused, complainant need not prove any facts further for securing conviction of accused.

In the case of ***Pavan Dilip Rao Dike vs. Vishal Narendrabhai Parmar,*** reported in ***2019 (3) RCR (Criminal) 863*** it was held that no heavy burden can be placed on the complainant to prove debt. Once a presumption has been drawn against accused under section 139, the burden to prove that the

cheque in question was issued for some other purpose other than discharging legal debt or liability is upon accused.

When evidence as to financial capacity of complainant is required to be adduced?

If nothing was averred in the reply notice as to the capacity of the complainant to lend the amount, at first instance the payee need not adduce evidence in that aspect as held in the case of ***Tedhi Singh vs. Narayana Dass Mahant, Crl.Appeal No.362/2022, dt.07.03.2022***.

Examination of accused under section 313 Cr.P.C in the absence of accused:

In the case of ***Keya Mukherjee vs. Magma Leasing Ltd.,*** reported in ***AIR 2008 SC 1807*** it was held that sworn affidavit accompanied with petition shall contain:

i) A narration of facts to satisfy the court of his real difficulties to be physically present in court forgiving such answers.

ii) An assurance that no prejudice would be caused to him, in any manner, by dispensing with his personal presence during such questioning.

iii) An undertaking that he would not raise any grievance on that score at any stage of case.

Applicability of Probation of Offenders Act:

The provisions of Probation of Offenders Act are not applicable to N.I. Act cases. There is no question of reforming a person who is found guilty of the offence. If such benefit is given, th every object of the Act will be defeated, as held in the case of ***M.V.Nalinikanth vs. M.Rameshan*** reported in ***(2009) Crl.L.J. 1703***.

Can the court award the fine exceeding the limit as compensated under section 29 Cr.P.C?

Yes. First proviso to sub section (1) of section 143 empowers the court to award fine exceeding the limit as contemplated under section 29 Cr.P.C.

It was held in ***R. Vijayan v. Baby, (2012) 1 SCC 260*** that in regard to any prosecution for offences punishable under Section 138 of the Act, a First Class Magistrate may impose a fine exceeding Rs 5000, the ceiling being twice the amount of the cheque.

If accused is involved in number of cheque bounce cases arising out of same transaction, a joint trial can be held and the sentence ordered in those cases shall run concurrently.

If offences arise in connection with issue of cheque or with respect to different transaction, then sentences shall run consecutively.

Compensation:

In all the cases where accused is found guilty of the offence under section 138, the court shall consider awarding compensation to complainant in view of the provisions under section 138,143 of N. I. Act and section 357 Cr.P.C. The court must exercise the power and discretion to compensate the injury suffered by complainant, as held in the case of ***Hari Kishan vs. Sukhbir Singh*** reported in ***(1988) 4 SCC 551***.

In the case of ***R.Vijayan vs. Baby*** reported in ***(2012) 1 SCC 260***:

i) Either fine or compensation, but not both.

ii) When fine forms part of the sentence, compensation out of fine amount [section

357 (1)(b) Cr.P.C, now section 395 of Bharathiya Nagarik Suraksha Sanhitha, 2023], when it does not form part of sentence, compensation under section 357 (3) Cr,P.C, now section 395 of Bharathiya Nagarik Suraksha Sanhitha, 2023.

iii) The provision for levy of fine which is linked to the cheque amount and may extend to twice of cheque amount, renders section 357 (3) virtually infructuous in so far as cheque dishonour cases are concerned. Thus, compensation out of fine amount under section 357 (1) (b) Cr.P.C is the rule.

iv) After introduction of section 143 (2) which conferred special power and jurisdiction of the magistrate to pass sentence of imprisonment extending one year and fine exceeding Rs.5,000/- in trials under chapter-17 of N.I. Act, the cealing has to the amount of fine stipulated under section 29 Cr.P.C (New section 23 of BNSS) is removed. The only cealing is twice the amount of cheque.

v) Uniformity and consistency in procedure in awarding compensation along with simple interest at 9% per annum increases the credibility of cheque as Negotiable Instrument, and also of the courts of justice.

In the case of ***K.A.Abbas vs. Sahu Joseph*** reported in ***(2010) 6 SCC 230*** and ***R.Mohan vs. A.K.Vijaya Kumar*** reported in **(2012) 8 SCC 721** it was held that 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 (Section 64 I.P.C).

Default sentence if under gone by accused, that does not absolve him from payment of compensation. It shall be recovered from his estate as it were a fine as provided by section 431 Cr.P.C (New section 471 of BNSS), following the procedure contemplated under section 421 Cr.P.C (New section 461 of BNSS).

Hon'ble High Court of Chhattisgarh in **Smt. Meel Bai V/S Rameshvar Prashad Chauhan 2015 SCC Online Chh 1622** and in **Atharv Agro Chemical Pvt. Ltd. V/S Gopal Chand Barik & Another 2021 SCC Online Chh 433** has held-

" Thus it is quite vivid that under section 138 of the NI Act, criminal court is competent to levy fine up to twice the cheque amount and direct the payment of such amount as compensation by way of restitution in regard to the loss on account of dishonour of cheque under section 357(1) (b) of the CrPC (New section 395(1)(b) of BNSS) and as such, the power under section 357(3) of the CrPC (New section 395(3) of BNSS) cannot be exercised by criminal court in the cheque dishonour cases."

It has been further help by the court that punishment to be awarded in section 138 of NI Act cases are meant to ensure payment of money and threat of jail is only to ensure recovery and as such, imposition of of jail sentence is not mendatory.

PART-2

B) Innovative Tools and Techniques for disposal of section 138 NIA Cases.

2.01 Technological Innovations in service of summons and online payments-

Hon. Supreme Court in **SANJABIJ TARI V/S KISHORE S BORCAR & ANR 2025 SCC Online SC 2069 has given certain directions for early disposal of NIA cases which are as follows -**

"Keeping in view the massive backlog of cheque bouncing cases and the fact that service of summons on the accused in a complaint filed under Section 138 of the NI Act continues to be one of the main reasons for the delay in disposal of the complaints as well as the fact that punishment under the NI Act is not a means of seeking retribution but is more a means to ensure payment of money and to promote credibility of cheques as a trustworthy substitute for cash payment, this Court issues the following directions:-

A. In all cases filed under Section 138 of the NI Act, service of summons shall not be confined through prescribed usual modes but shall also be issued dasti i.e. summons shall be served upon the accused by the complainant in addition. This direction is necessary as a large number of Section 138 cases under the NI Act are filed in the metropolitan cities by financial institutions, by virtue of Section 142(2) of the NI Act, against accused who may not be necessarily residing within the territorial jurisdiction of the Court where the complaint has been filed. The Trial Courts shall further resort to service of summons by electronic means in terms of the applicable Notifications/Rules, if any, framed under sub- Sections 1 and 2 of Section 64 and under Clause (i) of Section 530 and other provisions of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short'BNSS, 2023') like Delhi BNSS (Service of Summons and Warrants) Rules, 2025. For this purpose, the complainant shall, at the time of filing the complaint,

provide the requisite particulars including e-mail address,mobile number and/or WhatsApp number/messaging application details of the accused, duly supported by an affidavit verifying that the said particulars pertain to the accused/respondent.

B. The complainant shall file an affidavit of service before the Court. In the event such affidavit is found to be false, the Court shall be at liberty to take appropriate action against the complainant in accordance with law.

C. In order to facilitate expeditious settlement of cases under Section 138 of the NI Act, the Principal District and Sessions Judge of each District Court shall create and operationalise dedicated online payment facilities through secure QR codes or UPI links. The summons shall expressly mention that the Respondent/Accused has the option to make payment of the cheque amount at the initial stage itself, directly through the said online link. The complainant shall also be informed of such payment and upon confirmation of receipt, appropriate orders regarding release of such money and compounding/closure of proceedings under Section 147 of the NI Act and/or Section 255 of Cr.P.C./278 BNSS, 2023 may be passed by the Court in accordance with law. This measure shall promote settlement at the threshold stage and/or ensure speedy disposal of cases.

2.02 Guidelines by Hon. Supreme Court in SANJABIJ TARI (supra) for compounding of offence under NI Act Cases-

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

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

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

(c) Sessions or High Court: Similarly, if the payment of cheque amount is made before the Sessions Court or a High

Court in Revision or Appeal, such Court may compound the offence on the condition that the accused pays 7.5% of the cheque amount by way of costs.

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

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

2.03 Innovative Tools for Speedy Appearance of Accused in Section 138 NI Act Cases

An overview of the procedure for Section 138 of the Negotiable Instruments Act, 1881, reveals that delay in securing the appearance of the accused is one of the major obstacles in the expeditious

disposal of cases. Accused persons often deliberately avoid summons and warrants, thereby frustrating the object of the Act.

In order to address this issue, the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) provides an effective and structured mechanism, replacing Sections 82, 83 and 84 of the Code of Criminal Procedure, to ensure early and compulsory appearance of absconding accused.

STEP–WISE PROCEDURE UNDER BNSS

A. Issuance of Summons and Warrants.

Upon taking cognizance under Section 138 of the NI Act, the court issues summons to the accused. If the summons are deliberately avoided, the court may issue bailable and thereafter non-bailable warrants.

B. Proclamation for Person Absconding (Section 84, BNSS)

Where the court is satisfied that the accused has absconded or is concealing himself to avoid execution of warrants, it may issue a written proclamation requiring the accused to appear at a specified place and time, not less than thirty days from the date of publication. **The proclamation is published by:**

- Public reading at a conspicuous place of the accused's residence,
- Affixing a copy at the courthouse,
- Publication in a local newspaper or electronic mode, where appropriate.

Early invocation of Section 84 BNSS in Section 138 NI Act cases acts as a strong deterrent against deliberate evasion.

C. Attachment of Property (Section 85, BNSS)

If the accused fails to appear despite proclamation, the court may order attachment of movable or immovable property of the accused. The attachment may be ordered simultaneously with the proclamation or after the expiry of the proclamation period.

Since Section 138 cases involve financial liability, attachment of property directly impacts the accused and compels appearance.

D. Legal Consequences and Declaration as Proclaimed Person (Section 86, BNSS)

Continued non-appearance without lawful excuse attracts further legal consequences. Declaration as a proclaimed person strengthens police authority to arrest, permits adverse inference regarding the conduct of the accused and creates a deterrent effect.

E. INNOVATIVE VALUE OF ABOVE PROCEDURE

- Ensures speedy appearance of accused.
- Prevents abuse of procedural delays.
- Strengthens the object of the NI Act.
- Encourages early settlement and compounding.
- Reduces pendency and repeated adjournments.

Timely and effective use of Sections 84, 85 and 86 of the BNSS serves as an innovative procedural tool for securing early appearance of accused in Section 138 NI Act cases and facilitates speedy & meaningful justice.

2.04 Cash amount for ₹2,00,000/- or above Directions issued by Hon. Supreme Court The Correspondence Rbanms Educational Vs. B Gunashekar 2025 SCC Online SC 793 may be followed as a Principle not as a Dictum to misuse of cheque bounce cases -

"(a) Whenever, a suit is filed with a claim that Rs. 2,00,000/- and above is paid by cash towards any transaction, the courts must intimate the same to the jurisdictional Income Tax Department to verify the transaction and the violation of Section 269ST of the Income Tax Act, if any,"

Likewise the court dealing with cheque bounce cases may also take the same recourse and where loan amount of ₹2,00,000/- or above is claimed to be given then court in such cases can intimate the same to the jurisdictional Income Tax Department to verify the transaction and the violation of Section

269ST of the Income Tax Act, if any. This will help to curb the frivolous litigations of cheque bounce cases.

2.05 Mediation can also be a quick mode of amicable settlement of Section 138 NI Act cases-

In **Dayawati vs Yogesh Kumar Gosain (Hon'ble High Court of Delhi) 2017 SCC Online Del 11032**, the issue regarding legal permissibility of referring a complaint case under Section 138 NI Act for amicable settlement through mediation, procedure to be followed upon settlement and the legal implications of breach of mediation settlement were considered. Observations in paras 104 to 107 may be beneficially reproduced:

> "**104**. Binding the parties to a settlement agreement entered into through a formal mediation process and being held accountable for honouring the same is really enforcing the legislative mandate in enacting Sections 138 and 147 of the NI Act i.e. to ensure an expeditious time bound remedy for recovery of the cheque amounts. Breach of a lawful entered agreement would not only frustrate the parties to the mediation, but would be opposed to the spirit, intendment and purpose of Section 138 of the NI Act and would defeat the ends of justice. The courts cannot permit use of mediation as a tool to abuse judicial process.
>
> **105.** There is no legal prohibition upon a criminal court seized of such complaint, to whom a mediated settlement is reported, from adopting the above procedure. Application of the above enunciation of law to a mediation arising out of a criminal case manifests that a settlement agreement would require to be in writing and signed by the parties or their counsels. The same has to be placed before the court which has to be satisfied that the agreement was lawful and consent of the parties was voluntary and not obtained because of any force,

pressure or undue influence. Therefore, the court would record the statement of the parties or their authorized agents on oath affirming the settlement, its voluntariness and their undertaking to abide by it in the manner followed by the civil court when considering a settlement placed before it under Order XXIII Rule 3 of the CPC. The court would thereafter pass an appropriate order accepting the agreement, incorporating the terms of the settlement regarding payment under Section 147 of the NI Act and the undertakings of the parties. The court taking on record the settlement stands empowered to make the consequential and further direction to the respondent to pay the money in terms of the mediated settlement and also direct that the parties would remain bound by the terms thereof.

106. In having so proceeded, there is a satisfaction of the voluntariness and legality of the terms of the settlement of the court and acceptance of the terms thereof as well as a specific order in terms thereof. Consequently, the amount payable under the settlement, would become an amount payable under an order of the criminal court.

107. So far as the disputes beyond the subject matter of the litigation is concerned, upon the settlement receiving imprimatur of the court, such settlement would remain binding upon the parties and if so ordered, would be subject to the orders of the court."

Conclusion

Magnitude of NI Act cases requires urgent attention and constant efforts to impart justice on time. The procedural guidelines and best practices aim at simplifying the procedure for dealing with NI Act cases and emphasis on making special courts regarding dealing with such cases and on compensation in preference to imposition

sentence of imprisonment may serve to purpose. The new guidelines encourages the use of modern technology which will certainly pave the way for expeditious disposal of 138 cases.

------Thank you----