

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

**Innovative Tools and Techniques for
disposal of section 138 NI Act Cases**

Presentation

By

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

Objective and Legislative Intent of Section 138 NI ACT, 1881

VINAY DEVANNA NAYAK V/S RYOT SEVA SAHAKARI BANK LTD 2008 (2) SCC 305

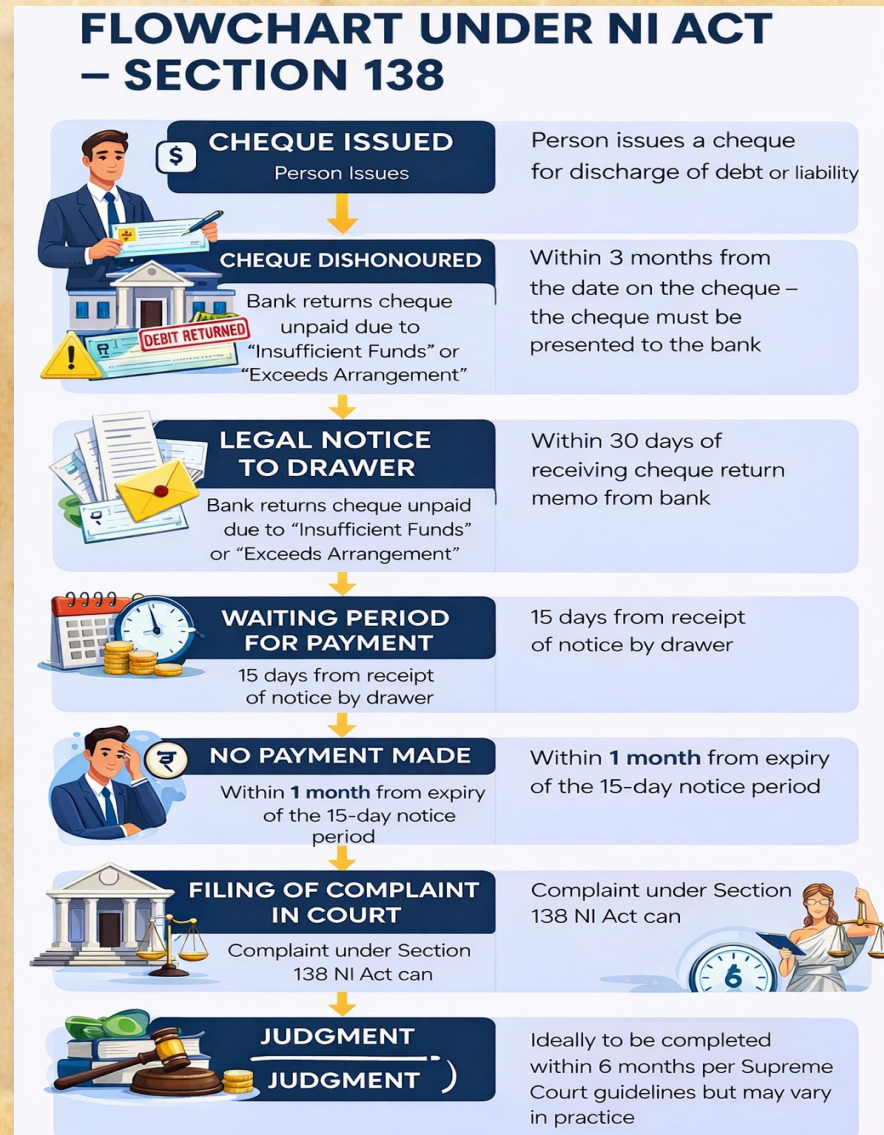
- To promote greater vigilance in financial matters.
- To safeguard the faith of the creditor in the drawer of the cheque.
- To curb cases of issuing cheques indiscriminately by making stringent provisions and safeguarding interest of creditors.

SANJABIJ TARI V/S KISHORE S BORCAR & ANR 2025 SCC ONLINE SC 2069

- To restore the credibility of cheques as a trustworthy substitute for cash payment.
- To promote a culture of using cheques.
- To promotes financial discipline, discourages irresponsible practices and allows for a more efficient and timely resolution of disputes

THE INGREDIENT TO CONSTITUTE OFFENCE U/S 138 OF NI ACT, 1881

- A person must have drawn a cheque
- Cheque has been presented to the bank within a period of six months or within the period of its validity
- Cheque is returned by the bank unpaid
- The drawer of such cheque fails to make payment.
- Cause of action arises on failure of the drawer to pay within 15 days of notice, and the complaint is to be filed within one month, subject to condonation under Section 142 NI Act.



CALCULATION OF PERIOD OF LIMITATION

In Saketh India Ltd. v. Indian Securities Ltd. (1999) 3 SCC 1, Hon'ble Supreme Court held-

- First day is excluded and the last day is included while computing limitation.
- The one-month period is to be reckoned from the day immediately following the expiry of 15 days from the date of receipt of notice by the drawer.
- The 15th day is excluded for the purpose of calculating the one-month limitation period.
- The term “month” under the NI Act means a British Calendar month, not a lunar month, as per Section 3(35) of the General Clauses Act, i.e., a period of 30 days.
- For limitation purposes, the relevant date is the filing of the complaint or initiation of proceedings, not the date of taking cognizance by the Magistrate (**Indra Kumar Patodia v. Reliance Industries Ltd., AIR 2013 SC 426**).

JURISDICTION

- In *Dashrath Rupsingh Rathod v. State of Maharashtra* (2014), Hon'ble Supreme Court initially held that jurisdiction lies at the place where the cheque is drawn. **This view was superseded by the Negotiable Instruments (Amendment) Act, 2015.**
- **Territorial jurisdiction in cheque-bounce cases is now governed by Section 142(2) NI Act.**
 - **Section 142(2)(a):** If the cheque is deposited through an account, jurisdiction lies where the payee's home branch is situated.
 - **Section 142(2)(b):** If presented otherwise than through an account, jurisdiction lies where the drawer's bank branch is situated.
 - In **Jai Balaji Industries Ltd. v. M/s HEG Ltd., 2025 SCC OnLine SC 2581**, Hon'ble Supreme Court held that: Complaint must be filed at the payee's home branch, even if deposited elsewhere

COGNIZANCE AND ISSUE OF PROCESS

- In Sanjabij Tari v. Kishore S. Borcar & Anr., 2025 SCC OnLine SC 2069 Hon'ble Supreme Court held that

Every Section 138 NI Act complaint must include a synopsis in the prescribed format, to be filed immediately after the index and before the formal complaint.

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

Hon'ble apex court has given following guidelines

- Reasons mandatory before converting summary trial to summons trial
 - Inquiry mandatory when accused resides outside jurisdiction
 - For conduct of Inquiry under Section 202 CrPC/ S.225 BNSS Inquiry may be based on affidavit evidence/documents only
 - Recommendation for one trial for multiple S.138 offences within 12 months
 - Deemed service of summons for all connected complaints of same transaction
 - No power to recall summons.
- (Adalat Prasad & Subramaniam Sethuraman reiterated)**
- Trial court may revisit process only for lack of jurisdiction (S.322 CrPC / S.261 BNSS)
 - Section 258 CrPC/ S.281 BNSS not applicable to S.138 cases; contrary view overruled

Expeditious Trial under Section 138 N.I. Act

(As per Suo Motu WP (Crl.) No. 2 of 2020)



DEFENCE COMMONLY RAISED

Section 138 NI Act – Quick Reference Chart

Issue / Defence Raised	Legal Position (Settled Law)	Key Case Law
Hearing of accused before cognizance	Hearing of the accused before taking cognizance is not mandatory; special procedure under NI Act prevails over BNSS	<i>Sanjabij Tari v. Kishore S. Borcar</i> (2025 SCC OnLine SC)
Condonation of delay	Before condoning delay in a time-barred complaint, the accused must be given notice and opportunity of hearing	<i>Sri Amitava Roy v. State of West Bengal</i> (2010 SCC OnLine Cal)
Blank cheque defence	A voluntarily signed blank cheque attracts presumption under Section	<i>Bir Singh v. Mukesh Kumar</i> (2019) 4 SCC 197
Security cheque – general rule	A security cheque attracts Section 138 if a legally enforceable debt exists on the date of presentation	<i>Sripati Singh v. State of Jharkhand</i> (2021 SCC OnLine SC 1002)
Security cheque – no enforceable liability	If the cheque was issued only as security and no legally enforceable debt existed or became payable, a complaint under Section 138	<i>Sri Sai Sapthagiri Sponge Pvt. Ltd. v. State</i> (GNCT of Delhi) (2025 SCC OnLine Del 7093)
Non-service of demand notice	Notice sent to the correct address gives rise to presumption of due service	<i>C.C. Alavi Haji v. Palapetty Muhammed</i> (2007) 6 SCC 555
Rebuttal of service presumption	Accused must rebut presumption with cogent evidence;	<i>P.V. Monichan v. State of Kerala</i> (2020 SCC OnLine Ker 1670)
Cheque amount already paid (partial/full)	Cheque must represent a legally enforceable debt on the date of presentation	<i>Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel</i> (2022 SCC OnLine SC 1876)
IBC interim moratorium (Section 96 IBC)	Interim moratorium applies to civil recovery only and does not bar criminal prosecution under Section 138	<i>Rakesh Bhanot v. Gurdas Agro (P) Ltd.</i> (2025 SCC OnLine SC 728)
Illegal consideration (e.g. job securing money)	Amount given for an illegal purpose is not a legally enforceable debt	<i>R. Parimala Bai v. Bhaskar Naresimhaiah</i> (2018 SCC OnLine Ker 9889)
Violation of Section 269SS IT Act	Cash transaction above ₹20,000 does not render the debt illegal; only penalty under IT Act	<i>Sanjabij Tari v. Kishore S. Borcar</i> (2025 SCC OnLine SC)
Lack of financial capacity of complainant	Accused must raise a probable and credible defence; mere denial is insufficient	<i>Rajaram v. Maruthachalam</i> (2025) 10 SCC 125
Denial of signature on cheque	Bank-certified specimen signatures are admissible; burden lies on accused to rebut	<i>Ajitsin Pachuji Rath v. State of Gujarat</i> (2024) 4 SCC-453

TRIAL PROCEDURE

- Hon'ble Supreme Court in Sanjabij Tari v. Kishore S. Borcar reiterated earlier directions issued in **In Re: Expeditious Trial of Cases under Section 138 of the NI Act** that Trial Courts must record cogent and sufficient reasons before converting a summary trial into a summons trial.
- **Clarification for Trial Courts (Post-Cognizance Stage)**
 - Relying upon Rajesh Agarwal v. State, Hon'ble Supreme Court clarified that: At the initial post-cognizance stage, the Trial Court is at liberty to put relevant questions to the accused. Such questions may be asked under Section 251 Cr.P.C., or Section 274 BNSS, 2023.
 - Accused's responses shall be recorded in the order sheet.

Illustrative Questions to be Put to the Accused

- (i) Whether the cheque belongs to the accused's bank account – Yes / No
- (ii) Whether the signature on the cheque is admitted – Yes / No
- (iii) Whether the cheque was issued/delivered to the complainant – Yes / No
- (iv) Whether liability existed at the time of issuance – Yes / No
- (v) If liability is denied, the defence must be clearly stated, such as:
 - (a) Cheque issued only as security
 - (b) Loan already repaid
 - (c) Cheque altered or misused
 - (d) Any other defence (to be specified)
- (vi) Whether the accused wishes to compound the offence at that stage – Yes / No

JUDGMENT AND SENTENCING

Burden of Proof & Presumptions

- Presumption under Section 139 NI Act:
- Cheque presumed to be issued for discharge of legally enforceable debt
- Presumption under Section 118(a) NI Act:
- Negotiable instrument presumed to be for consideration
- Presumptions arise once issuance/signature is admitted or proved

Settled Legal Position (Key Case Law)

- **Rangappa v. Sri Mohan**
 - Presumption includes legally enforceable debt; rebuttable by accused
- **Rohitbhai Jivanlal Patel v. State of Gujarat**
 - After presumption, complainant need not prove source of funds
- **Hiten P. Dalal v. Bratindranath Banerjee**
 - Mere explanation not sufficient; probable defence required
- **M.S. Narayana Menon v. State of Kerala**
 - Initial burden on accused; shifts back only if rebutted
- **MMTC Ltd. v. Medchal Chemicals**
 - No need to plead subsisting liability in complaint

Scope of Presumption under Section 139 NI Act

- Section 139 raises a statutory presumption in favour of the holder of the cheque
- **Krishna Janardhan Bhat v. Dattatreya Hegde:**
 - Presumption is that cheque was issued for discharge of debt or liability
 - Existence of legally recoverable debt not automatically presumed
- **Rangappa v. Sri Mohan:**
 - Presumption under Section 139 extends to legally enforceable debt
 - Overruled the restrictive view in Krishna Janardhan Bhat
- **Jain P. Jose v. Santhosh:**
 - Reaffirmed that presumption includes existence of legally enforceable liability

Legal position settled:

- Once legally enforceable debt is shown,
- Presumption under Section 139 applies
- Conviction can follow unless rebutted by accused through probable defence

▪ **Reverse Burden on Accused – Standard of Proof (Sec. 139 NI Act)**

- Once presumption under Section 139 NI Act is drawn, the burden shifts to the accused to show absence of debt or liability.
- The accused can rebut the presumption on the standard of preponderance of probabilities and need not enter the witness box; no adverse inference can be drawn. (**Kumar Exports v. Sharma Carpets**)
- The presumption can be rebutted by probable defence, based on evidence, circumstances, or material brought by the complainant; mere denial is insufficient. (**Kishan Rao v. Shankar Gowda**)
- If a probable defence is established, the onus shifts back to the complainant; otherwise, the presumption stands and conviction may follow. (**Basalingappa v. Mudibasappa**)

• **When Is Onus Discharged by the Accused?**

- Onus is discharged when the accused raises a probable defence supported by material on record.
- Once such probable defence is shown:
- Burden shifts back to the complainant
- Complainant must then prove that the cheque was supported by consideration.
- Until the presumption under Section 139 NI Act is rebutted:
- No further proof is required from the complainant for conviction.

In Pavan Dilip Rao Dike v. Vishal Narendrabhai Parmar 2019(3)RCR (criminal)-863 it is held that-

- No heavy burden on complainant to prove debt.
- Burden lies on accused to show cheque was issued for a purpose other than legal liability.

▪ Financial Capacity of Complainant – When Required

Tedhi Singh v. Narayana Dass Mahant crl. Appeal no. 362/2022, dt. 07.03.2022 it was held that If nothing was averred in the reply notice as to capacity of the complainant to lend the amount, Evidence of financial capacity is not required at the initial stage.

▪ Examination under Section 313 Cr.P.C. in Absence of Accused

In Keya Mukherjee v. Magma Leasing Ltd. AIR 2008 SC 1807

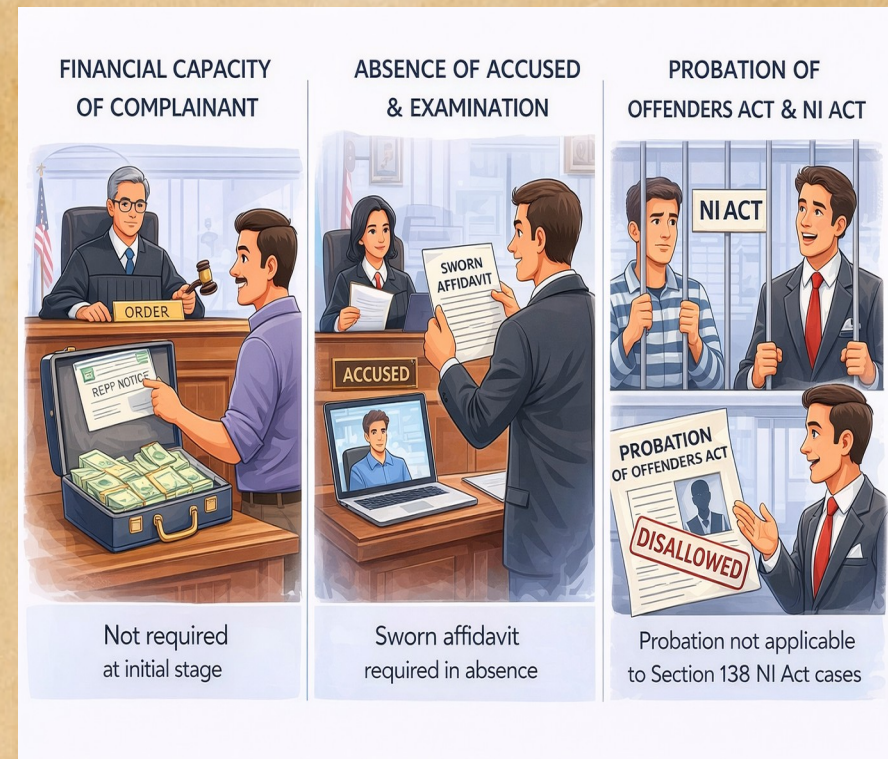
Accused must file a sworn affidavit stating:

- Genuine difficulty in being physically present
- No prejudice caused by dispensing with personal appearance
- Undertaking not to raise any grievance at any stage

▪ Probation of Offenders Act & NI Act

In M.V. Nalinikanth v. M. Rameshan 2009 crl.L.J. 1703

- Probation of Offenders Act not applicable to NI Act cases
- Object of NI Act is deterrence, not reform
- Grant of probation defeats purpose of Act



▪ **Fine beyond Section 29 Cr.P.C.(now section 23 BNSS) & Sentencing**

The Court can award fine exceeding the limit under Section 29 Cr.P.C. (Now section 23 BNSS), as permitted by Section 143(1) NI Act.

In R. Vijayan v. Baby (2012) 1 SCC 260.

- The maximum fine that may be imposed is exceeding 5000 rs the ceiling being twice the cheque amount
- Where multiple cheque cases arise from the same transaction → sentences run concurrently
- From different transactions → sentences run consecutively

▪ **Compensation – Section 138 NI Act**

- In **Hari Kishan v. Sukhbir Singh (1988) 4 scc 551** conviction under Section 138 NI Act, the Court shall consider awarding compensation to the complainant under Sections 138, 143 NI Act and Section 357 Cr.P.C., to compensate the injury suffered
- As held in **R. Vijayan v. Baby**, compensation is normally awarded out of fine under Section 357(1)(b) Cr.P.C. (now Section 395 BNSS); fine may extend up to twice the cheque amount, and Section 357(3) Cr.P.C. has limited application in cheque dishonour cases.
- In **K.A. Abbas v. Sabu Joseph; R. Mohan v. A.K. Vijaya Kumar (2012)8 SCC 721** It was held that Court may grant time or installments for payment; default sentence may be imposed, but undergoing default sentence does not absolve liability, and compensation is recoverable as fine
- Object of punishment under Section 138 is recovery of money; imprisonment is not mandatory and serves only as a means to ensure payment.

PART – 2

INNOVATIVE TOOLS AND TECHNIQUES FOR DISPOSAL OF SECTION 138 OF NI ACT CASES

Technological Innovations in Service of Summons & Online Payments

The Hon'ble Supreme Court in Sanjabij Tari v. Kishore S. Borcar issued directions to ensure early disposal of Section 138 NI Act cases, keeping in view delay caused by service of summons and the object of ensuring payment rather than retribution.

Service of Summons:

- Summons shall not be confined to usual modes.
- Dasti service by complainant is permitted.
- Courts shall also use electronic modes (email, mobile, WhatsApp, etc.) as per BNSS, 2023.
- Complainant must provide accused's contact details with affidavit at filing stage.
- Complainant must file affidavit of service; false affidavit may invite action.

Online Payment Facility:

- District Courts shall create secure online payment options (QR code / UPI).
- Summons shall mention option for accused to pay cheque amount at initial stage.
- On payment, Court may pass orders for release of amount and compounding/closure.
- Object is early settlement and speedy disposal of cases.

GUIDELINES FOR COMPOUNDING

In Damodar S. Prabhu vs Sayed Babalal Hon'ble Supreme Court Held recognized that offences u/s 138 are primarily compensatory in nature and introduced graded guidelines for compounding of cases at different stages along with reasonable costs to discourage delayed settlement.

- **(In Sanjabij Tari v. Kishore S. Borcar)**

Hon'ble Supreme Court revised the compounding guidelines considering huge pendency of cheque bounce cases and reduced interest rates, to promote early settlement.

- **Stage-wise compounding guidelines:**

- Before defence evidence → Compounding allowed without any cost
- After defence evidence but before judgment → Compounding with 5% of cheque amount as cost
- Before Sessions Court / High Court (Appeal or Revision) → Compounding with 7.5% of cheque amount
- Before Supreme Court → Compounding with 10% of cheque amount

If the accused is willing to pay as per these guidelines, the Court may suggest compounding to the parties.

- **If the complainant/financial institution seeks payment beyond cheque amount, the Magistrate may:**

- Suggest the accused to plead guilty, and
- Exercise powers under Section 255(2)/(3) Cr.P.C. or Section 278 BNSS, 2023, and/or
- Grant benefit under the Probation of Offenders Act, 1958.

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

In proceedings under Section 138 of the Negotiable Instruments Act, delay in securing the appearance of the accused is one of the principal causes for prolonged pendency, as accused persons often deliberately evade summons and warrants, thereby frustrating the object of the Act. To address this difficulty and ensure speedy disposal of cases, the Bharatiya Nagarik Suraksha Sanhita, 2023 has introduced an effective and structured mechanism, replacing Sections 82, 83 and 84 of the Code of Criminal Procedure, to deal with absconding accused and to secure their early and compulsory appearance before the Court.

STEP WISE PROCEDURE UNDER BNSS

- **Issuance of Summons & Warrants**
 - After cognizance, Court issues summons
 - If deliberately avoided:
 - Bailable warrant
 - Thereafter non-bailable warrant
 - **Proclamation for Absconding Accused – Section 84 BNSS**
 - If accused absconds or conceals himself:
 - Court issues written proclamation
 - Appearance date: not less than 30 days
 - **Mode of publication:**
 - Public reading at residence
 - Affixing at Court
 - Newspaper / electronic mode
- Early use of Section 84 BNSS acts as a strong deterrent



Attachment of Property – Section 85 BNSS

- ➔ On failure to appear after proclamation: Court may order attachment of movable/immovable property.
- ➔ Attachment may be: Along with proclamation, or After expiry of proclamation period.

Declaration as Proclaimed Person – Section 86 BNSS

Continued non-appearance attracts:

- ➔ Declaration as proclaimed person
- ➔ Strengthened power of arrest
- ➔ Adverse inference against accused
- ➔ Creates strong deterrent effect

Innovative Value of BNSS Procedure

- ➔ Ensures speedy appearance of accused
- ➔ Prevents procedural abuse
- ➔ Strengthens object of NI Act
- ➔ Encourages early settlement & compounding
- ➔ Reduces pendency and adjournments



Mediation in Section 138 NI Act Cases

Dayawati vs Yogesh Kumar Gosain

- Mediation is legally permissible in Section 138 cases
Objective: speedy, time-bound recovery of cheque amount
 - **Binding Nature of Mediated Settlement**
 - Settlement through mediation is binding on parties
 - Breach defeats object of Sections 138 & 147 NI Act
 - Mediation cannot be used to abuse judicial process
 - **Procedure After Settlement**
 - Settlement must be in writing & signed
 - Court verifies legality & voluntariness
 - Statements of parties recorded on oath
 - Court passes order accepting settlement under Section 147
 - **Legal Effect of Court Approval**
 - Settlement amount becomes amount payable under court order
 - Court can issue directions for payment
 - Parties bound by settlement terms
- Scope of Settlement**
- Even disputes beyond case subject matter bind parties
 - Settlement operates under court supervision



CONCLUSION

Magnitude of NI Act cases require 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**.....