



## Trial Courts To Conduct Cheque Bouncing Cases Expeditiously

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Considerable disadvantage is caused due to delay in disposing of the cases pending under section 138 of the Negotiable Instruments Act, 1881 ("Act"). This problem is especially faced by the banking industry. A consortium of banks approached the Supreme Court bringing to light that it is difficult to expeditiously recover huge amount of public fund which are blocked in cases pending under section 138 of the Act and inter-alia sought for directions to lay down appropriate guidelines/directions to be followed by all competent Courts within the territory of India whilst trying a complaint under section 138 of the Act and to follow and comply with the mandate of section 143 of the said Act read with sections 261 to 265 of Criminal Procedure Code, 1973 for summary trial of such complaints filed or pending before the said Courts.

The Hon'ble Supreme Court, whilst noting that many directions given by various High Courts are worthy of emulation, has given directions to the trial courts in the country dealing with section 138 cases to follow the procedures for speedy and expeditious disposal of cases falling under section 138 of the said Act. It also observed that in the present era of globalization and rapid technological improvements it is imperative that commercial interest and financial trust is restored.

The Amendment of 2002 [\[1\]](#) introduced changes in the provisions of the Act by introducing the provisions of fine and imprisonment in case of dishonor of Cheque, thus attracting penal liability of fine amounting to twice the amount of cheque or imprisonment upto two years or with both. Pursuant to the amendment, section 143 was introduced in the Act, empowering criminal courts to try and dispose of the cases summarily i.e. in a time bound manner and as expeditiously as possible. Inevitably, even the complaints filed under the Act for dishonor of a cheque and amendments in the Act, did not prove to be sufficient for a trial court to dispose of the cases in a short period thereby negating the process of summary trial of cases to a bare minimum.

In this background the Hon'ble Supreme Court of India was therefore approached by a consortium of banks for laying down directions to the trial courts for a speedy disposal of cases [\[2\]](#).

### Present Procedure Followed By The Court For Offence Of Dishonor Of Cheque:

- Section 138 of the Act provides that a payee, who has received intimation

from a bank or dishonor of a cheque, is required to issue a demand notice on the issuer of cheque within 30 days of receiving such intimation calling upon him to pay the amount within 15 days of receipt of the notice.

- Failure of the issuer to pay the amount demanded within one month from the expiry of notice would entitle the payee to lodge a written complaint with a Metropolitan Magistrate or Judicial Magistrate First Class as the case may be, under the provisions of section 143 of the Act read with section 262 to 265 of the criminal procedure code 1973. section 143 (3) of the Act provides that the case shall be disposed of within 6 months from the date of the filing of the complaint.
- The Court verifies/examines the complainant on oath and the contents of the complaint records his statement and directs him to produce original documents viz.
  1. original dishonoured cheque,
  2. bank memo/intimation of dishonor,
  3. copy of statutory notice issued for demand,
  4. proof of service of demand notice
  5. necessary averment in the Complaint /Affidavit stating that the Issuer has failed to pay the amount demanded in the demand notice within stipulated period.
- Upon verification of the complainant, the court proceeds to issue summons to the accused by RPAD or courier service. The accused if and when enters his appearance and if contests the case, gets an opportunity to cross examine the complainant which takes unusually longer time. This process practically stretches beyond 6 months as otherwise provided in section 143 (3) of the Act. The accused is thereafter cross examined by the complainants' advocate and the case is posted for arguments of parties followed by a judgment. However, this procedure has proved to be cumbersome and lengthy and has defeated the very purpose of the summary trial of cases relating to dishonor of cheques under the Act.
- Being dissatisfied with the overdrawn process of the trial courts in deciding the cases relating to dishonor of cheques under the Act, several High Courts in India have time and again sought to lay down guidelines and directions for trial courts for expediting disposal of cases. [3]
- Pertinently, all the aforesaid judgments are based on facts of each individual case and are therefore not uniform in nature lacking its applicability on all the lower / trial courts not falling within its supervisory jurisdiction. The Hon'ble Supreme court of India was therefore required to set out guidelines/directions to overcome the cumbersome and long drawn process of trial prevalent in the trial courts dealing with complaints under section 138 of the Act.

## **Directions Laid Down By Supreme Court:**

In view of the provisions of the Act, having not achieved the desired objective, the Supreme Court of India laid down following directions, to be strictly followed and adhered by the trial courts across India:

1. *Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the 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 issuing summons. Summons must be properly addressed and sent by post as well as 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 un-served, immediate follow up action be taken.*
3. *Court may indicate in the summons 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.*
4. *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 251Cr.P.C. to enable him to 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 re- calling a witness for cross-examination.*
5. *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.*

As can be seen from the aforementioned directions, the Supreme Court of India has considered the views of High Courts and has proceeded to pass aforesaid directions which have modified the procedure mentioned hereinabove.

### **Effect Of New Directions:**

<b>SR. NO.</b>	<b>PRESENT PROCEDURE</b>	<b>PROCEDURE AS PER NEW DIRECTIONS</b>	<b>EFFECT OF NEW DIRECTIONS</b>
1	On receipt of the complaint verification of the complainant and original documents.	On receipt of the Complaint, affidavit and documents, take cognizance and <b>issue summons.</b>	Issue summons straight away on receipt of complaint
2	Summons to be issued through court via RPAD or courier services and time is	Summons to be issued through court via RPAD, courier and <b>e-mail address</b> of	Summons can now be served through emails and a short date for presence of accused in court

	consumed for receiving acknowledgment of service of summons on accused	<b>accused. A short date is fixed for appearance of accused.</b>	is given on the day the complaint is lodged.
3	Summons to appear on the next date is issued	Specific mention in the summons itself that <b>the accused has an option of filing an application for agreeing to pay the amount and/or compound the offence.</b>	Accused is given an option to compound / dispose the case on the first date he attends the court.
4	Complainant to file his affidavit of evidence when accused appears in court. Accused to thereafter cross examine the complainant / witness.	<b>Fix the date for accused to file his evidence</b> unless an application is made by the accused to cross examine the complainant / witness	The process of examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case

## Conclusion:

By setting out the aforesaid directions, the Hon'ble Supreme Court has simplified the procedure in the existing provisions of Act relating to section 138 cases pending before the Trial Courts with a view to dispose them off in a time bound manner. These directions are welcomed by the banking industry and are also beneficial to several other persons who are awaiting summary outcome and disposal of their cases before the Trial Courts. The intent of the Legislature for introducing the Act in 1881 for dealing with cases relating to dishonored cheques, bringing amendment to the Act in 2002 providing a summary trial of these cases can be achieved if the aforesaid directions are strictly adhered to and followed by Courts and litigants in their true letter and spirit.

**- By Amey Nabar (Associate Partner) & Rhishikesh Bidkar (Associate)**

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[1] Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002

[2] 2014 STPL(Web) 291 SC 1; Indian Bank Association and Others Vs. Union of India and Others

[3] Bombay High Court in KSL and Industries Ltd. v. Mannalal Khandelwal and The State of Maharashtra through the Office of the Government Pleader (2005) CriLJ 1201;

Indo International Ltd. and another v. State of Maharashtra and another (2005) 44 Civil CC (Bombay); Harischandra Biyani v. Stock Holding Corporation of India Ltd. (2006) 4 MhLJ 381;

Calcutta High Court in Magma Leasing Ltd. v. State of West Bengal and others (2007) 3 CHN 574;

Delhi High Court in Rajesh Agarwal v. State and another (2010) ILR 6 Delhi 610.

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