

# PROCEDURE FOR DISPOSAL OF CHEQUE DISHONOUR CASES

**Nitin Arjun Mane**

Research Scholar, Department of Law, Chhatrapati Shivaji Maharaj University, Navi Mumbai

**Prof.(Dr.) S.P Mishra**

HOD, Department of Law, Chhatrapati Shivaji Maharaj University, Navi Mumbai

**Dr. Avani Mistry**

Associate Professor, Department of Law, Chhatrapati Shivaji Maharaj University, Navi Mumbai

## Abstract:

Cheques are widely used by individuals and institutions for financial purposes. It serves as a legal document for banks. However, if not followed, it may lead to raise several financial as well as legal issues and complications. This research paper examines the legal and procedural aspects of cheque dishonour in India, focusing on the steps involved in the disposal of dishonoured cheques. It explores the legal framework under the Negotiable Instruments Act, 1881, particularly Section 138, which addresses the consequences of cheque dishonour due to insufficient funds or other reasons. The paper details the procedural requirements for issuing a notice of dishonour, the timeline for initiating legal action, and the role of courts in adjudicating such cases. Additionally, it highlights the challenges faced by both the payee and the drawer during the process, including potential delays and legal complexities. By providing a comprehensive overview of the cheque dishonour process, this paper aims to offer insights for legal practitioners, banking professionals, and individuals dealing with cheque-related disputes.

**Keywords:** *Cheque Dishonour, Negotiable Instruments Act, Section 138, Legal Procedure, Notice of Dishonour*

## • Introduction

Chapter 17 of the Negotiable Instrument Act inserted by banking public financial institutions and negotiable instrument laws amendment act 1988 with effect from 01/04/1989. By this amendment Sec. 138 to Sec. 147 have been inserted by which dishonour of an instrument made an offence and penalty has been provided as per Sec. 138. Being a special enactment courts have been empowered to try cases summarily as well permitted to take evidence on affidavit on oath in lieu of chief examination. All these provisions enacted for the purpose of speedy disposal as well save time and increase credibility of negotiable instrument transaction.

Sec. 138 of the NI Act provides in what condition offence made out as well limitation to initiate proceeding. Let's move towards Sec. 138 of N.I. Act. Dishonour of cheque for insufficiently, etc of a funds in the account — if cheque drawn by person on an account maintain by him with a banker for payment of any amount of money to another for the discharge of whole or part liability, is returned unpaid either because of insufficient money to honour the cheque or it exceeds the amount arranged to be paid such person shall be deemed to have committed an offence.

Said section also provides punishment such as imprisonment for a term which may extend to two years or with fine which may extend twice the amount of the cheque or with both.

Earlier part of this provision provides how the offence have committed an if committed what is the penalty provided. Now one proviso also given according to this proviso (1) cheque should has been presented within the period of six month or within the period of its validity. (2) payee or holder in due course makes a demand for payment by giving notice in writing within 30 days of the receipt of information regarding returned of cheque unpaid and (3) after notice if drawer fail to make the payment of amount of a money to the payee within 15 days of the receipt of the notice, then offence alleged to have been committed.

Sec. 142 provides cognizance of offences according to said section no court shall take cognizance except upon a complaint in writing made by payee or holder. Such complaint need to be made within one month from the date on which cause of action arose under Clause C of a proviso Sec. 138.

After this period of limitation unlike civil proceeding being a special enactment magistrate can take cognizance if complainant satisfies court that he had sufficient cause for not making a complaint within such period. As like Cr.P.C. and Bharatiya Nagrik Surikahya Sanhita this special enactment empowers court to take a cognizance after the period of limitation. Thereafter, Sec. 142 provides power of court to try cases summarily.

According to sec. 142 of NI Act all offences under Chapter 7(3) shall be try as per Sec. 262 to 265 both inclusive of Cr.P.C. Therefore, a legislature intend summary procedure for disposal of cheque dishonour cases. Further it has excepted that trial be continued from day to day until its conclusion and no adjournment granted beyond the following day for reason to be recorded in writing. Expedites trial excepted an endeavor shall be made to conclude the trial within six months from the date of filing of a complaint.

By this procedure cheque dishonour cases need to be try summarily as well expeditiously and by conducting day to day trial without awarding and adornments it shall be made conclude within six months. Considering current pendency for cheque dishonour cases Sec. 143 of the NI Act become a crucial one as well important. If court having jurisdiction over cheque dishonour cases adopt the procedure as provided by Sec. 143 then it will definitely help to reduce some pendency of cheque dishonour cases.

Sec. 144 provides mode of service of summons the act permit to serve summons by speed pose or currier service approved by court of sessions. Another important section inserted by it as like civil proceeding parties are able to tender their evidence on affidavit. Sec. 145 provides the evidence of the complainant may be given by him on affidavit, be read in evidence if any inquiry trial or other proceeding. The court an application or prosecution or accused summons and examine any person giving evidence on affidavit.

Considering this special provision regarding leading of evidence then we find even parties are at liberty to file affidavit on oath for evidence. Said sections categorically mention only complainant may give affidavit but later part sub clause 2 provide on the application of prosecution or the accused, summons and examine any person giving evidence on affidavit as to the facts. Now considering this clause even accused may tender evidence on affidavit. With respect to some rulling wherein Hon'ble Bombay High Court, as well Apex Court not permitted to tender evidence on affidavit for accused but so

far as clause 2 of Sec. 145 of NI Act is concerned accused can file said affidavit. These procedure provided by the Negotiable Instrument Act for cheque dishonour cases. According to provision and facts of each different cases a law has been establish various guidelines as well direction have been issued by the Hon'ble Apex Court as well Hon'ble Bombay High Court, and other High courts in respect of cheque dishonour cases. So it is noteworthy to understand how the law develop from rullings and guidelines.

• **Jurisdiction of the Court :**

Prior to Rupsingh Dashrasingh Rathod case a position was payee or holder were resides within whose local jurisdiction of the court cheque dishonour cases be filed but position changed and after the judgment mention supra cases trial by the court in which the drawer resides. After this judgment in entire countries all the proceedings which were pending at the time of this ruling transferred according to the president and new cases started to file within the local jurisdiction of a court were dependent resides. Considering this chaos Negotiable instrument Act 2015 amended with effect from 15/06/2015 and accordingly as per original practice the payee or the holder in due course revise complaint shall be filed. Sec. 142A validation for transfer of pending cases according to this provision irrespective of any contention of Cr.P.C. or any judgment, decree or order or direction of any court all cases transfer to the court having jurisdiction as per (2) of Sec. 142 of the NI Act.

Sec. 142 (2) also amended and inserted by way of Negotiable Instrument Act 2015 with effect from 15/06/2015. According to said provision offence under Sec. 138 shall be inquired and tried by court within whose local jurisdiction cheque is delivered for collection through an account where payee or holder maintain the account or if cheque presented in due course in the branch of drawee bank where the drawer maintains the account he situated.

By this special enactment or insertion again cases have been re transfer to the original court and new cases started to be file as earlier practice.

Indian Bank Association Vs. Union of India and another 2014(5) SCC 590.

This writ petition under article 32 of the Indian Constitution has been preferred by indian banks association along with Punjab National Bank for seeking following reliefs.

- A. Laying down appropriate guidelines / direction to be followed by all the court competent to try cheque dishonour cases to follow and comply with the mandate of Sec. 143 of NI Act read with Sec. 161 to 165 of Cr.P.C. for a summary trial.
- B. To issue writ of mandamus for compliance with guidelines of Apex court indicating various steps to be followed for summary trial of complaints filed for cheque dishonour cases.
- C. To issue writ of mandamus directed to respondent to adopt necessary policy and legislative changes to deal with cases related to cheque dishonour for expeditious disposal in accordance with the intent of the act.

Petitioner was an association of 174 banks and financial institution. It was voluntary association and being an issue was of considerable national importance owing to the reason that in the era of globalization and rapid technological development, financial trust and commercial interest have to be restore. Banking and Financial industry have been put to a considerable disadvantage due to the delay in disposing cheque dishonour cases and therefore the petition came to be filed. Ultimately considering special enactment over negotiable instrument act, its aim object and earlier settled law by Apex court following guidelines or direction have been issued these are as follows.

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 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.
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.

We, therefore, direct all the Criminal Courts in the country dealing with Section 138 cases to follow the above-mentioned procedures for speedy and expeditious disposal of cases falling under Section 138 of the Negotiable Instruments Act.

Writ Petition is, accordingly, disposed of, as above.

• **IN EXPEDITIOUS TRIAL OF CASES UNDER SECTION 138 OF N.I. ACT 1881.**

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

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

Upon hearing and considering NI Act enactment and settled position the Apex court has reached at 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, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.
- 4) We recommend that suitable amendments be made to the Act for provision of one trial against a person for multiple offences under Section 138 of the Act committed within a period of 12 months, notwithstanding the restriction in Section 219 of the Code.
- 5) The High Courts are requested to issue practice directions to the Trial Courts to treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques issued as part of the said transaction.
- 6) Judgments of this Court in *Adalat Prasad* (supra) and *Subramaniam Sethuraman* (supra) have interpreted the law correctly 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 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 is not applicable to complaints under Section 138 of the Act and findings to the contrary in *Meters and Instruments* (supra) 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.

8) All other points, which have been raised by the *Amici Curiae* in their preliminary report and written submissions and not considered herein, shall be the subject matter of deliberation by the aforementioned Committee. Any other issue relating to expeditious disposal of complaints under Section 138 of the Act shall also be considered by the Committee.

After the decision of above mentioned writ petition as per direction issued every High Courts issued direction for the disposal of cheque bounce cases. Out parent Hon'ble High Court, Bombay also issued direction in respect of mentioned issued on date 27/01/2022 same is as Gallows.

In compliance of the order of Hon'ble the Supreme Court of India dated 16.04.2021 passed in *Suo Motu Writ Petition (Criminal) No. 2/2020* titled "In Re: Expeditious Trial of Cases under Section 138 of Negotiable Instrument Act 1881", the Honourable the Chief Justice has been pleased to issue the following practice directions -

1. The magistrates having jurisdiction to try offences under the Negotiable Instruments Act, 1881 (in short N.I. Act), shall record cogent and sufficient reasons before converting a complaint under section 138 of the N.I. Act from summary trial to summons trial in exercise of power under the second proviso of section 143 of N.I. Act. Due care and caution shall be exercised in this regard and the conversion of summary trial to summons trial shall not be in a mechanical manner.
2. On receipt of any complaint under section 138 of N.I. Act, wherever it is found that any accused is resident of the area beyond the territorial jurisdiction of the magistrate concerned, an inquiry shall be conducted by the magistrate to arrive at sufficient grounds to proceed against the accused as prescribed under section 202 of Cr.P.C.
3. While conducting any such inquiry under section 202 of Cr.P.C., the evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the magistrate may restrict the inquiry to examination of documents without insisting for examination of witnesses for satisfaction as to the sufficiency of grounds for proceeding under the said provision.
4. Trial Court shall treat service of summons in one complaint under section 138 of the N.I. Act forming part of a transaction, as deemed service in respect of all complaints filed before the same Court relating to the dishonor of cheques issued as a part of the same transaction.
5. Trial Courts have no inherent power to review or recall the issue of summons in relation to complaint filed under section 138 of N.I. Act. However, the same shall not affect the power of the Trial Court under section 322 of Cr.P.C 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.
6. Section 258 of Cr.P.C. has no applicability to complaints under section 138 of the N.I. Act. The words "as far as may be" in section 143 are used only in respect of applicability of sections 262 to 265 of the Code and the summary procedure to be followed for trials under the said Code.
7. The appellate courts before which appeals against the judgments in complaint under section 138 of the N.I. Act are pending are directed to make an effort to settle the dispute through mediation.

These practice directions shall come into force with immediate effect. Strict compliance of the above directions be insured.

Sec. 143 to 147 inserted by at 55 of 2002 Sec. 10 with effect from 06/02/2003.

1. Inserted by act of 1988 banking public financial institution and negotiable instrument laws amendment act.