

LAW ON  
**NEGOTIABLE INSTRUMENTS ACT, 1881**

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- 1.1 Nature of offence u/s 138 NI Act, 1881:** Offence u/s 138 NI Act, 1881 is regulatory and is created to serve public interest in ensuring reliability of negotiable instruments. Impact of the offence is confined to private parties. See: **Damoder S.Prabhu vs. Sayed Babalal H, AIR 2010 SC 1907.**
- 1.2 Nature of offence under NI Act is like a civil wrong:** Gravity of an offence under the NI Act cannot be equated with an offence under the IPC or other criminal offences. An offence under the NI Act is almost in the nature of a civil wrong which has been given criminal overtones. See:
- (i) **M/S Meters and Instruments Private Ltd. Vs. Kanchan Mehta, AIR 2017 SC 4594.**
  - (ii) **Kaushalya Devi Massand Vs. Roopkishore Khore, AIR 2011 SC 2566**
- 2.1 Ingredients of offence u/s 138 NI Act:** The ingredients of an offence u/s 138 of the NI Act, 1881 required to be proved by the complainant have been enumerated by the Hon'ble Supreme Court as under:
- (i) 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
  - (ii) the cheques should have been issued for the discharge, in whole or in part, of any debt or other liability
  - (iii) the cheque is returned by the Bank unpaid, either because of the amount of money standing to the credit of the account is insufficient or it exceeds the amount arranged

- (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 notice within 30 days (w.e.f 06.2.2003) of the receipt of information from the Bank regarding the return of the cheque unpaid, and
- (v) the drawer of the cheque fails to make payment of the said amount of money to the payee or holder in due course of the cheque within 15 days of the receipt said notice. See:

- (i) **Jugesh Seghal Vs. Shamsheer Singh Gogi, 2009(66) ACC 696 (SC)**
- (ii) **M/s Kusum Ingots and Alloys Ltd. Vs. M/s Pennar Peterson Securities Ltd. AIR 2000 SC 954**
- (iii) **S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla, (2007) 4 SCC 70**
- (iv) **Saroj Kumar Poddar Vs. State of NCT of Delhi, AIR 2007 SC 912**

**2.2 Ingredients to constitute an offence u/s 138 of the NI Act:** For constituting an offence u/s 138 of the NI Act 1881, the following ingredients must be satisfied:

- (i) A cheque must be drawn
- (ii) It must be presented and returned unpaid *inter alia* with the remarks “insufficient funds”
- (iii) A notice for payment should be served on the accused
- (iv) The accused has failed to make the payment of the said amount to the payee within 15 days from the date of receipt of notice. See: **D.C.M. Financial Services Ltd. vs. J.N. Sareen, 2009 (65) ACC 103 (SC)**

**2.3 Ingredients of offense u/s 138 of the NI Act:** According to the Bombay High Court, the points for determination for offense u/s 138 of the NI Act must involve at least five ingredients given below:

- (i). That a person must have drawn a cheque on an account maintained by him in a bank for payment of certain amount of money to another person from out of that account for the discharge of any legally enforceable debt or other liability
- (ii). That the 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 ever is earlier.
- (iii). That the cheque is returned by the bank unpaid either because 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 made with the bank

(iv).The payee or the holder in due course of the cheque makes demand for the payment of the said amount of money by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.

(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. See:

- (i) **Krishna Janardhan Bhat Vs.Dattatraya G. Hegde, (2008) 4 SCC 54**
- (ii) **Smt.Kiran Yugalkishore Bhattad Vs. Smt. Sushila Ramcharan Kattamwar, AIR 2010 (NOC) 778 (Bombay).**

**3.1 Presumption of liability u/s 139:** Section 139 of the NI Act provides that 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(a) for the discharge, in whole or in part, of any debt or other liability. Presumptions are devices by use of which the courts are enabled and entitled to pronounce judgment on an issue notwithstanding that there is no evidence or insufficient evidence. Burden lies on the accused to rebut the presumption by adducing contrary evidence. See:

- (i).**Rajeshbhai Muljibhai Patel Vs.State of Gujarat, (2020) 3 SCC 794.**
- (ii).**Rohitbhai Jivanlal Patel Vs. State of Gujrat, AIR 2019 SC 1876**
- (iii).**Smt. P.Leelavathi Vs. Shankarnarayana Rao, AIR 2019 SC 1938**
- (iv).**M/s. Kumar Exports vs. M/s. Sharma Carpets, 2009 (1) Supreme 23**
- (v).**K.N. Beena Vs. Muniyappan, AIR 2001 SC 2895**
- (vi).**Hiten P. Dalal Vs. Bratindranath Banerjee, AIR 2001 SC 3897(Three-Judge Bench)**

**3.2 Burden to prove that there was no subsisting debt or liability lies on accused u/s 139 of NI Act:** There is no requirement 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/drawer. This they have to discharge in the trial. Merely on the basis of averments in the petition filed by the accused u/s 482 CrPC, the High Court could not have concluded that there was no existing debt or liability. Such question could have been tried and decided only at trial. See: **MMTC Ltd. Vs. Medchl Chemicals & Pharma (P) Ltd., AIR 2002 SC 182.**

- 3.3 Presumption u/s 139 of the NI Act not absolute:** The presumption raised in favour of the holder of the cheque must be kept confined to the matters covered thereby. The presumption raised does not extend to the extent that the cheque was issued for the discharge of any debt or liability which is required to be proved by the complainant. In a case of this nature, however, it is essentially a question of fact. See: **P. Venugopal vs. Madan P. Sarathi, AIR 2009 SC 568**
- 3.4 Presumptions are always rebuttable:** Section 114 of the Evidence Act covers a wide range of presumptions of fact which can be used by courts in the course of administration of justice to remove lacunae in the chain of direct evidence before it. It is, therefore, said that the function of a presumption often is to “fill up a gap” in evidence. True presumptions, whether of law or of fact, are always rebuttable. In other words, the party against which a presumption may operate can and must lead evidence to show why the presumption should not be given effect to. The result of a trial or proceeding is determined by a weighing of the totality of facts and circumstances and presumptions operating in favour of one party as against those which may tilt the balance in favour of another. See : **Narayan Govind Gavate vs. State of Maharashtra, (1977) 1 SCC 133, (Three-Judge Bench)**
- 3.5 Presumption u/s 139 that drawer/accused had issued cheque against to discharge some debt or liability is rebuttable:** Presumption u/s 139 of the NI Act that the drawer/ accused had issued the cheque to discharge any existing debt or liability owned by him to its holder is a rebuttable presumption. See:
- (i). **Laxmi Dyechem Vs, State of Gujarat, 2012 (12) JT 65 (SC)**
  - (ii). **Mandvi Co-operative Bank Ltd. Vs.Nimesh B Thakore, AIR 2010 SC 1402**
  - (iii). **Anil Hada vs. Indian Acrylic Ltd., (2000) 1 SCC 1**
- 4.1 On payment of cheque amount within 15 days from receipt of notice or before filing of complaint, liability u/s 138 ceases:** If the cheque amount is paid within 15 days of the receipt of notice by the drawer of the cheque/ accused or before the complaint is filed, the legal liability u/s 138 will cease but recovery of other demands as compensation cost, interest etc and the civil proceeding will lie. The notice given for

such other purposes would survive and cannot be faulted. **Suman Sethi Vs. Ajay K. Churiwal. AIR 2000 SC 828**

- 4.2 Closure of proceedings by court u/s 258 CrPC on satisfaction of liability:** Procedure of Section 258 CrPC will apply and Court can close proceedings and discharge accused on satisfaction that cheque amount with assessed costs and interest is paid and if there is no reason to proceed with punitive aspect. See : **M/S Meters and Instruments Private Ltd. Vs. Kanchan Mehta, AIR 2017 SC 4594.**
- 4.3 Complainant need not state in complaint about subsisting debt or liability as burden lies on accused to disprove it:** As per Section 139 of the NI Act, there is no requirement 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/drawer. This they have to discharge in the trial. Merely on the basis of averments in the petition filed by the accused u/s 482 CrPC, the High Court could not have concluded that there was no existing debt or liability. Such question could have been tried and decided only at trial. See: **MMTC Ltd. Vs. Medchl Chemicals & Pharma (P) Ltd., AIR 2002 SC 182.**
- 4.4 Proving legally recoverable debt must for constituting offence u/s 138:** Proving legally recoverable debt is must for constituting offence u/s 138 of the NI Act. See : **K. Subramani Vs. K. Damodara Naidu, (2015) 1 SCC 99.**
- 4.5 Prosecution for post-dated cheque described as 'security' towards repayment of loan amount permissible u/s 138 :** Prosecution for post-dated cheque described as 'security' towards repayment of loan amount already disbursed is permissible u/s 138 of the Negotiable Instruments Act, 1881. See: **Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited, (2016) 10 SCC 458.**
- 5.1. Complaint filed u/s 138 before expiry of 15 days from date on which notice was served on drawer/accused is no complaint in the eye of law :** Complaint filed u/s 138 of the NI Act before expiry of 15 days from date on which notice was served on the drawer/accused is no complaint in the eye of law. No cognizance of offence can be taken on the basis of such complaint. Fact that on date of consideration of complaint or

taking of cognizance thereof, a period of 15 days had elapsed is not a ground to take cognizance of the complaint. See : **Yogendra Pratap Singh Vs. Savitri Pandey, AIR 2015 SC 157 (Three-Judge Bench).**

*Note : Narsingh Das Tapadia Vs. Goverdhan Das Partani, AIR 2000 SC 2946 overruled by the Three-Judge Bench in Yogendra Pratap Singh Vs. Savitri Pandey.*

- 5.2. Giving demand notice to drawer mandatory:** As required u/s 138, Proviso (b), Giving notice to drawer is a condition precedent for filing complaint u/s 138 of the NI Act. It is not necessary that notice be given by post only.
- 5.3 Service of legal notice on drawer within 30 days of receipt of information of dishonor of cheque mandatory:** For purposes of limitation, in so far as legal notice is concerned, it is to be served within 30 days of the receipt of information by the drawee from the bank regarding the return of the cheque as unpaid. Therefore, after the cheque is returned unpaid, notice has to be issued within 30 days of the receipt of information in this behalf. That is the period of limitation provided for issuance of legal notice calling upon the drawer of the cheque to make the payment. After sending of this notice, 15 days time is to be given to the notice from the date of receipt of the said notice to make the payment, if that is already not done. If noticee fails to make the payment, the offence u/s 138 can be said to have been committed and in that event cause of action for filing the complaint would accrue to the complainant and he is given one month's time from the date of cause of action to file the complaint. See : **Kamlesh Kumar Vs. State of Bihar, 2014 (84) ACC 311 (SC)**
- 5.4 Presumption of service of registered notice:** According to Section 27 of the General Clauses Act, 1897, where the sender has dispatched the notice on correct address, notice would be deemed to have been served unless the addressee proves that it was not really served and that he was not responsible for such non-service. In the present case, the house of the addressee was reported "locked" by the postman. See:
- (i). **V. Rajakumari vs. P. Subbarama Naidu, 2005 (51) ACC 13 (SC)**
  - (ii). **Jag Mohan vs. State of U.P., 2005(51) ACC 74 (All)**
  - (iii). **K. Bhaskaran vs. Sankaran Vaidhyam Balan, 1999 (39) ACC 844 (SC)**
  - (iv). **D. Vinod Shivappa vs. Nanda Belliappa, (2006) 6 SCC 456**

**5.5 Burden on drawer/addressee to prove non-service of notice:** According to Section 138, Proviso, clauses (b) and (c) read with Section 142 of the NI Act, if the notice was sent to the addressee through registered post, presumption of service of notice on the addressee can be held in case of report on its envelope to the effect- **refusal, unclaimed, not available, premises locked, party not at station, arrival not known.** Court may presume receipt of notice by the drawer on such reporting by the postman. Drawer may prove at trial by evidence that the endorsement of the postman was not correct. See:

- (i) **V. Raja Kumari vs. P. Subbarama Naidu, (2004) 8 SCC 774**
- (ii) **Prem Chand Vijai Kumar vs. Yashpal Singh, (2005) 4 SCC 417**
- (iii) **Sadanandan Bhadrans vs. Madhavan Sunil Kumar, (1998) 6 SCC 514**
- (iv) **K. Bhaskaran vs. Sankaran Vaidhyan Balan, (1999) 7 SCC 510**
- (v) **Dalmia Cement (Bharat) Ltd. vs. Galaxy Traders, (2001) 6 SCC 463**

**5.6 Refusal to receive registered notice, service can be presumed:** It is well settled that a notice refused to be accepted by the addressee can be presumed to have been served on him. See:

- (i). **Harcharan Singh Vs. Shivrani, 1981 (2) SCC 535**
- (ii). **Jagdish Singh Vs. Natthu Singh, 1992(1) SCC 647**

**5.7 Serving notice only on Director and not the company, not fatal:** Making mere Managing Director party/ accused in complaint and not the company is not fatal for prosecution for offence u/s 138 of the NI Act. Serving notice on company is also not necessary. See:

- (i). **Avneet Singh vs. State of U.P., 2005 (53) ACC 402 (All)**
- (ii). **Anil Hada vs. Indian Acrylic Ltd., (2000) 1 SCC 1**

**Note :** *Decision in Anil Hada vs. Indian Acrylic Ltd., (2000) 1 SCC 1 has now been overruled by a Three-Judge Bench Judgment dated 27.04.2012 of the Supreme Court in Criminal Appeal No. 838/2008, Aneeta Hada Vs. M/s God Father Travel & Tours Pvt. Ltd. reported in 2008(67) AIC153 (SC).*

**6.1 Cause of action to file complaint when arises?:** Section 138, Proviso (c): Drawer's failure to make payment within 15 days of the receipt of the notice gives cause of action to the payee to file complaint u/s 138 of the NI Act. See: **D. Vinod Shivappa vs. Nanda Belliappa, (2006) 6 SCC 456**

- 6.2 Cause of action for complaint when accrues?:** Payee may successively present a dishonoured cheque but once a notice u/s 138 was received by the drawer, the payee or holder of the cheque forfeits his right to again present the cheque, since the cause of action had accrued when there was failure to pay the amount within 15 days from the receipt of the notice. See:
- (i).D. Vinod Shivappa vs. Nanda Belliappa, (2006) 6 SCC 456**
  - (ii).Dalmia Cement (Bharat) Ltd. vs. Galaxy Traders, (2001) 6 SCC 463**
- 6.3 Starting point of computation of period of limitation is date of filing of complaint:** Starting point of computation of period of limitation is date of filing of complaint and not the date of taking cognizance See: **Indra Kumar Patodia Vs. Reliance Industries Ltd., AIR 2013 SC 426**
- 6.4 Second/successive presentation of cheque valid so long as requirements of Section 138 are fulfilled :** Overruling its earlier decision in *Sadanandan Bhadran Vs. Madhavan Sunil Kumar*, (1998) 6 SCC 514, the Hon'ble Supreme Court has held that prosecution on second/successive presentation of cheque is valid so long as requirements of Section 138 NI Act, 1881 are fulfilled. See :
- (i) Kamlesh Kumar Vs. State of Bihar, (2014) 2 SCC 424**
  - (ii) M.S.R. Leathers Vs. S. Palaniappan, 2013 (83) ACC 678 (SC)**
- 6.5 Second presentation of cheque after issue of notice permissible?:**No. Payee may successively present a dishonored cheque but once a notice u/s 138 was received by the drawer, the payee or holder of the cheque forfeits his right to again present the cheque since the cause of action had accrued when there was failure to pay the amount within 15 days from the receipt of the notice. See:
- (i).D. Vinod Shivappa vs. Nanda Belliappa, (2006) 6 SCC 456**
  - (ii).Dalmia Cement (Bharat) Ltd. vs. Galaxy Traders, (2001) 6 SCC 463**
- 6.6 Value of second reminder notice given to drawer/ accused under NI Act:** Second reminder notice given to the drawer/accused cannot be construed as admission of non-service of the first notice. See: **N. Parmeswaran Unni Vs. G. Kannan, AIR 2017 SC 1681**

- 6.7 15 days period to be computed from the date of service or deemed service of the notice on the drawer:** 15 days time contemplated under Proviso (c) to Section 138 of the NI Act commences from the date of receipt of notice or endorsement as to “not claimed, unclaimed, door locked, refused, not found, not available etc.”
- 7.1 Competent complainant alone to file complaint on behalf of firm:** Where the complaint was filed by the complainant claiming himself to be soul proprietor of the firm but no evidence was produced so that he was the soul proprietor of the firm, it has been held that he could not have been treated as “payee” of the cheque and the complaint u/s 138 of the NI Act, 1881 at his instance is not maintainable. See :**Milind Shripad Chandurkar vs. Kalim M. Khan, 2011 CrLJ 1912(SC)**
- 7.2 Power of Attorney holder or LR can file complaint u/s 138 :** Power of Attorney Holder or the legal representative of the deceased complainant can file complaint for the offence u/s 138 of the NI Act. See :
- (i) **Vinita S. Rao Vs. M/s Essen Corporate Services Pvt. Ltd., AIR 2015 SC 882**
  - (ii) **A.C. Narayanan Vs. State of Maharashtra, 2013 (83) ACC 583 (SC)(Three-Judge Bench).**
- 7.3 Power of Attorney Holder cannot be permitted to continue prosecution on behalf of the deceased complainant:** Power of Attorney Holder cannot be permitted to continue prosecution on behalf of the deceased complainant. See: **Jimmy Jahangir Madan vs. Bolly Cariyappa Hindley (Dead), 2005 (51) ACC 23 (SC)**
- 7.4 General power of Attorney holder cannot delegate his functions to another person unless so specified in the power of attorney :** General power of Attorney holder cannot delegate his functions to another person unless so specified in the power of attorney. See : **A.C. Narayanan Vs State of Maharashtra, 2013 (83) ACC 583 (SC) (Three-Judge Bench).**
- 8.1 Company and its functionaries equally liable for any offence committed by the company:** Provisions of Section 141 of the NI Act clearly stipulate that when a person which is a company commits an offence, then certain categories of persons in-charge as well as the company would be deemed to be liable for the offence u/s 138 of the NI

Act. Thus, the statutory intendment is absolutely plain. As is perceptible, the provision makes the functionaries and the companies to be liable and that is by deeming function. See: **Aneeta Hada Vs. M/s Godfather Travels & Tours Pvt. Ltd., (2012) 5 SCC 661 ( Three-Judge Bench)**

**8.2 Liability of Director and non-Director :Ingredients to be pleaded in complaint:** It is necessary to specifically aver in a complaint u/s 138 and 141 of the NI Act that at the time of offence, accused was in-charge of and responsible for the conduct of business of the company. Mere being a director of the company not sufficient for prosecution u/s 138 or 141. A person cannot be deemed to be in-charge of and responsible for the conduct of business of a company. Even a non-Director can be liable u/s 141 of the NI Act. See:

**(i) Gunmala sales Pvt. Ltd. Vs. Navkar Promoters Pvt. Ltd., (2015) 1 SCC 103**

**(ii) SMS Pharmaceuticals vs. Neeta Bhalla, 2005 (53) ACC 503 (SC)**

**8.3 Constructive liability of the persons conducting business of company:** Section 141 of the NI Act creates a constructive liability on the persons responsible for conduct of business of the company. Unless company is made party, Director cannot be made party vicariously. See:

**(i) Decision dated 30.08.2017 of the Supreme Court in Criminal Appeal No. 1534/2017, N. Harihara Krishan Vs. J. Thomas.**

**(ii) Standard Chartered Bank Vs. State of Maharashtra, AIR 2016 SC 1750**

**8.4 Pre-conditions for fastening liability on Director for offence u/s 138 :** It is necessary for complainant to aver in the complaint and also in the sworn statements u/s 200 CrPC that the Director was in-charge of the affairs of the company and responsible for the day to day business of the company, otherwise director cannot be held liable. It is so because in case such an averment of the complainant is ultimately found false or mala fide, court may direct registration of case against the complainant for malicious prosecution. See:

**(i).Tamil Nadu News Print & Papers Ltd. Vs. D. Karunakar, (2016) 6 SCC 78.**

**(ii). Sabitha Ramamurthy vs. RBSC, AIR 2006 SC 3086**

**(iii).2007 CrLJ 2442 (SC)**

**(iv).Paresh P. Rajda vs. State of Maharashtra, 2008 (61) ACC 996 (SC).**

- 8.5 To hold Director liable, not necessary to make specific averment in the complaint that he was in-charge of the affairs of the company :** If the accused was Managing Director or a Joint Managing Director of the company, then it is not necessary to make specific averment in the complaint to that effect as by virtue of his position, he is liable to be proceeded for the offence u/s 138 of the NI Act. See :
- (i) **Mainuddin Abdul Sattar Shaikh Vs. Vijay D. Salvi, (2015) 9 SCC 622.**
- (ii) **National Small Industries Corporation Limited Vs. Harmeet Singh Paintal, (2010) 3 SCC 330 (Para 39).**
- 8.6 Making only Director party and not the company, not fatal:** Making mere Managing Director party/ accused in complaint and not the company is not fatal for prosecution for offence u/s 138 of the NI Act. Serving notice on company is also not necessary. See:
- (i). **Avneet Singh vs. State of U.P., 2005 (53) ACC 402 (All)**
- (ii). **Anil Hada vs. Indian Acrylic Ltd., (2000) 1 SCC 1**
- Note :** *Decision in Anil Hada vs. Indian Acrylic Ltd., (2000) 1 SCC 1 has now been overruled by a Three-Judge Bench Judgment delivered in Aneeta Hada Vs. M/s Godfather Travels & Tours Pvt. Ltd., AIR 2012 SC 2795.*
- 8.7 Other persons responsible for business of company not to be prosecuted :** Other persons responsible for business of the company cannot be prosecuted for offence u/s 138 of the NI Act for dishonor of the cheque. See: **Anil Hada vs. Indian Acrylic Ltd., (2000) 1 SCC 1**
- Note :** *Decision in Anil Hada vs. Indian Acrylic Ltd., (2000) 1 SCC 1 has now been overruled by a Three-Judge Bench Judgment delivered in Aneeta Hada Vs. M/s Godfather Travels & Tours Pvt. Ltd., AIR 2012 SC 2795.*
- 8.8 Joint account holders not to be prosecuted u/s 138 unless the cheque was signed by each of them :** Joint account holders not to be prosecuted u/s 138 unless the cheque was signed by each of them. See : **Mrs. Aparna A. Shah Vs. M/s. Sheeth Developers Pvt. Ltd., 2013 (83) ACC 576 (SC)**
- 9 Stop payment instruction: effect?:** Provisions of Section 138 of the NI Act are attracted even if a cheque is dishonored because of stop payment instructions issued by the drawer to the Bank. See:
- (i). **Avneet Singh vs. State of U.P., 2005 (53) ACC 402 (All)**
- (ii). **Modi Cements Ltd. vs. Kuchil Kumar Nandi, 1998 (36) ACC 593 (SC)**
- (iii). **K.K. Sridharthan vs. T.P. Praveena Chandran, (1996) 6 SCC 369**

- 10 Refer to drawer: Effect?:** Where the cheque was returned by the bank with the endorsements like “refer to drawer, insufficiency of funds, account closed”, it has been held that the provisions of Section 138 NI Act would be attracted. See:
- (i).1996 CrLJ 1223**
  - (ii).(1992) 2 Crimes 1145 (Delhi)**
  - (iii).1992 CrLJ 4048 (A.P.) (DB)**
- 11 Absence or closure of account before issue of cheque:** When a person draws a cheque, he will believe that the cheque will in no case be dishonored. Therefore, such a defence is not allowed as per Section 140 of the NI Act. Once a person had issued a cheque drawn on an account, which he was holding in the bank necessarily, he cannot take up a defence that he did not have a subsisting account on the date of drawal of the cheque. It will, if permitted, undoubtedly, defeat the intent behind Section 140 of the Act. See: **State of Punjab Vs. Subhash Chander, 2004 Cr LJ 414 (Kerala) (DB)**
- 12 Non-mentioning of account number in the cheque: Effect?:** If the account number is not mentioned in the cheque, Section 138 NI Act is not attracted. See: **Deepa Finance corporation Vs. A.K. Mohammed, 2001 Cr LJ 3582 (Karnataka)**
- 13 Signature of the drawer when incomplete or not tallying: Effect?:** When the signature of the drawer on the cheque was found incomplete or not tallying, it has been held by the Supreme Court that the ingredients of an offence u/s 138 NI Act are not made out. See : **Vinod Tanna vs. Zaheer Siddiqui, 2002 (1) JIC 407 (SC)**
- 14.1 How to speed up disposal of NI cases and service of processes:** Magistrate should adopt pragmatic and realistic approach while issuing process to ensure presence of accused. Summons must be properly addressed and sent by post or e-mail got from the complainant. Assistance of police or the nearby court may also be taken for service of notice on the accused. Short date be fixed for return of notice or appearance of the accused. If the summons are received back unserved, immediate follow-up action should be taken.ailable warrants and non-ailable warrants should be executed through police as per Section 72 CrPC. Coercive methods provided under u/s 82 and 83 CrPC should be seldom used. If e-mail ID is available with the bank where the accused had maintained his account, such bank should furnish e-mail ID to payee of

cheque on being requested. See: **Makwana Mangaldas Tulsidas Vs.State of Gujarat, (2020) 4 SCC 695**

**14.2 Online procedure for filing complaint for offence u/s 138 NI Act :** Having regard to magnitude of challenge posed by cases filed under Section 138 of the NI Act which constitute about 20% of total number of cases filed in Courts (as per 213th Report of the Law Commission), there appears to be need to consider categories of cases which can be partly or entirely concluded 'online' without physical presence of parties by simplifying procedures where seriously disputed questions are not required to be adjudicated. At least some number of Section 138 cases can be decided online. If complaint with affidavits and documents can be filed online, process issued online and the accused pays specified amount online, it may obviate the need for personal appearance of the complainant or accused. Only if accused contests, need for appearance of parties may arise which may be through counsel and wherever viable, video conferencing can be used. Personal appearances can be dispensed with on suitable self operating conditions. From the said judgment of the Supreme Court, following aspects emerge:

- (i) Offence u/s 138 of the Act is primarily civil wrong. Burden of proof is on accused in view presumption u/s 139 but standard of such proof is 'preponderance of probabilities'. Same has to be normally tried summarily as per provisions of summary trial under CrPC but with such variation as may be appropriate to proceedings under Chapter XVII of Act. Thus read, principle of Section 258 CrPC will apply and Court can close proceedings and discharge accused on satisfaction that cheque amount with assessed costs and interest is paid and if there is no reason to proceed with punitive aspect.
- (ii) Object of provision being primarily compensatory, punitive element being mainly with object of enforcing compensatory element, compounding at initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to parties or Court.
- (iii) Though compounding requires consent of both parties, even in absence of such consent, Court, in interests of justice, on being satisfied that complainant has been duly compensated, can in its discretion close proceedings and discharge accused.
- (iv) Procedure for trial of cases under Chapter XVII of Act has normally to be summary. Discretion of Magistrate under second proviso to Section 143 to hold

that it was undesirable to try case summarily as sentence of more than one year may have to be passed, is to be exercised after considering further fact that apart from sentence of imprisonment, Court has jurisdiction u/S. 357(3) CrPC to award suitable compensation with default sentence u/s 64 IPC and with further powers of recovery under Section 431 CrPC. With this approach, prison sentence of more than one year may not be required in all cases.

- (v) Since evidence of complaint can be given on affidavit, subject to Court summoning person giving affidavit and examining him and bank's slip being prima facie evidence of dishonour of cheque, it is unnecessary for Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. Manner of examination of person giving affidavit can be as per Section 264 CrPC. Scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 of the NI Act becomes necessary, where sentence of one year may have to be awarded and compensation u/s 357(3) CrPC is considered inadequate, having regard to the amount of cheque, financial capacity and conduct of accused or any other circumstances. See : **M/S Meters and Instruments Private Ltd. Vs. Kanchan Mehta, AIR 2017 SC 4594.**

**14.3 Online payment of fine and cost by accused on conviction u/s 138 NI Act :** In every complaint u/s 138 of the NI Act, it may be desirable that complainant gives his bank account number and if possible e-mail ID of the accused. If e-mail ID is available with Bank where accused has account, such Bank, on being required, should furnish such e-mail ID to payee of cheque. In every summons, issued to accused, it may be indicated that if accused deposits specified amount, which should be assessed by Court having regard to cheque amount and interest/cost, by specified date, accused need not appear unless required and proceedings may be closed subject to any valid objection of complainant . If accused complies with such summons and informs Court and complainant by e-mail, Court can ascertain objection, if any, of complainant and close proceedings unless it becomes necessary to proceed with case. In such situation, accused's presence can be required, unless presence is otherwise exempted subject to such conditions as may be considered appropriate. Accused, who wants to contest case, must be required to disclose specific defence for such contest. It is open to Court to ask specific questions to accused at that stage. In case trial is to proceed, it will be open to Court to explore possibility of settlement. It will also be open to Court to consider provisions of plea bargaining. Subject to this, trial can be on day to day basis and endeavour must be to conclude it within six months. Guilty must be punished at the earliest as per law and one who obeys law need not be held up in proceedings for long unnecessarily. Payment of cheque amount with interest and cost by the accused as assessed by Court was made within the specified date. Court can close proceedings u/s 143 of the NI Act read with Section 258CrPC. (Para 19). See : **M/S Meters and Instruments Private Ltd. Vs. Kanchan Mehta, AIR 2017 SC 4594.**

**14.4 Administrative instructions of the Allahabad High Court vide C.L. No. 9959 Dated 13.07.2018 issued in compliance with the direction of the Supreme Court under order dated 05.10.2017 passed in Criminal Appeal No. 1731/2017, M/s Meters and Instruments Private Limited Vs. Kanchan Mehta : Said directions are as under :**

- (1) It shall be mandatory for the complainant to provide his bank account number with IFSC code. The complainant shall also provide his mobile number, e-mail address and the details of accused, such as mobile number, e-mail address and any other acceptable electronic means of communication, if available.
- (2) The Courts dealing with the cases under Section 138 of the Negotiable Instruments Act shall while issuing summons by post/authorized courier service, shall also issue summons by e-mail or any other recognized electronic means of communications, wherever possible, in the proforma annexed as annesure-1.
- (3) The summons shall specifically mention that if accused is willing to deposit the amount specified in the summons on or before the specified date on the specified bank account of the complainant, he need not appear before the Court.
- (4) The accused shall, after depositing he amount, inform the complainant as well as the Court by e-mail or otherwise.
- (5) The Court shall examine the interest rate payable by the accused as well as the cost and other expenses and shall mention the same in the summons. The summons shall mention that in case the accused is not agreeable to pay the said amount, he would, in case the offence is proved, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both.
- (6) If the accused makes an application for compounding of the offence at the first or second hearing of the case, compounding may be allowed by the court without imposing any costs on the accused. If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Court at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.
- (7) In case if the accused fails to deposit the amount mentioned in the summons and appears before the Court, he will be asked whether he is willing to pay the amount mentioned in the summons. An opportunity shall be provided by the Court to the accused for depositing the specific amount and if the accused deposites the same the court may drop the proceedings, even if the complainant is not agreeable.
- (8) If the accused is not willing to deposit the amount mentioned in the summons further steps may be taken by the Court to secure his presence in the Court. Also, if after due service of the summons the accused fails to appear before the Court, suitable steps may be taken by the Court to secure his presence in the court.

- (9) If the accused is not ready and willing to pay any amount, the Court shall record his statement forthwith and shall ask the accused whether he wants to cross examine the complainant and his witnesses.
- (10) If the accused desires to cross examine the complainant and his witnesses, the Court shall direct the complainant / his witnesses to appear for cross examination. The case thereafter shall be fixed for defence evidence.

In addition to the above mentioned procedure the Courts shall follow the directions given in judgment titled Criminal Appeal No. 1731, 1732 and 1733 of 2017, M/s Meters & Instruments Private Limited V/s Kanchan Mehta.

**15.1 Penalty u/s 138 NI Act:** After the amendment in the NI Act w.e.f. 6.2.2003, penalty provided for the offence u/s 138 of the NI Act is imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of the cheque or with both.

**15.2 Sentence already undergone when proper:** After settlement arrived at between the parties at the appellate stage, period of sentence may be reduced to already undergone. See: **Teevan Bose Vs. State of Kerala, (2004) 3 SCC 80**

**16.1 Deposit of fine a pre-condition for grant of bail u/s 389(3) CrPC by trial court :** It is the privilege of the accused to insist for bail even after the order of conviction and sentence u/s 389(3) CrPC if the amount of fine has been paid and quantum of punishment is less than three years especially when there is no other reason to refuse the discretionary relief. See : **Vijaykumar Shantilal Tadvi Vs State of Gujarat, 2008 CrLJ 935 (Gujarat)**

**16.2 Conditional bail granted by court u/s 389 CrPC can be cancelled for breach of conditions:** Conditional Bail granted by court u/s 389 CrPC can be cancelled for breach of conditions. See: **Surinder Singh Deswal Vs. Virender Gandhi, (2020) 2 SCC 514**

**16.3 Appellate court can order deposit of only part of the fine by the convict imposed by the trial court :** When a person was convicted under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment and fine and he moved the Superior Court for suspension of sentence the imposition of condition that part of the fine shall be remitted in Court within a specified time, was not improper. While suspending the

sentence for the offence under Section 138 of the Negotiable Instruments Act it is advisable that the Court imposes a condition that the fine part is remitted within a certain period. If the fine amount is heavy, the Court can direct at least a portion thereof to be remitted as the convicted person wants the sentence to be suspended during the pendency of the appeal. In the present case considering the total amount of fine imposed by the trial Court (twenty lacs of rupees) there is nothing unjust or unconscionable in imposing a condition, to remit amount of four lacs for suspending the sentence. See : **Stanny Felix Pinto Vs M/s. Jangid Builders Pvt. Ltd. & Another, AIR 2001 SC 659.**

- 17.1 Compensation:** The power u/s 357 (3) CrPC can be invoked only when the court chooses to impose a sentence of which fine does not form a part. When one of the accused is a company and , therefore, no substantive sentence of imprisonment can be imposed on the company. Following the rationale in Standard Chartered Bank Vs. Directorate of Enforcement, (2005) 4 SCC 530, the mandate of Section 357 (3) CrPC can certainly be read down as no sentence of imprisonment can be imposed on the company, a non-natural fictional person. What is possible alone can be invoked on the company u/s 357 (3) CrPC. The power u/s 357 (CrPC can hence be invoked against a non-natural person even when imposition of a substantive sentence imprisonment is impossible. The same can be recovered u/s 421 CrPC read with Section 431 CrPC. See:
- (i). Standard Chartered Bank Vs. Directorate of Enforcement, (2005) 4 SCC 530**
  - (ii).Kairali Marketing Vs. Pullengadi Service Co-operative Society, III (2007) BC 250 (Kerala).**

- 17.2 Awarding compensation by trial/appellate court to victim u/s 357 CrPC mandatory:** It is mandatory duty of criminal courts to apply its mind to question of awarding compensation u/s 357 CrPC in every case. This power is not ancillary to other sentences but in addition thereto. Use of the word “may” in section 357 CrPC does not mean that court need not consider applicability of Section 357 CrPC in every criminal case. Section 357 CrPC confers power coupled with duty on court to mandatorily apply its mind to question of awarding compensation in every criminal case. Court must also disclose that it has applied its mind to such question by recording reasons for awarding/refusing grant of compensation. Power given to courts u/s 357 CrPC is intended to re-assure the victim that he/she is not forgotten in criminal justice

system. Very object of Section 357 CrPC would be defeated if courts choose to ignore Section 357 CrPC and do not apply their mind to question of compensation. Courts are directed to remain careful in future as to their mandatory duty u/s 357 CrPC. Copy of order was directed to be forwarded to Registrar Generals of all High Court for its circulation amongst judges handling criminal trials and hearing criminal appeals. See : **Ankush Shivaji Gaikwad Vs. State of Maharashtra, (2013) 6 SCC 770.**

- 17.3 Compensation u/s 357 CrPC to be awarded to the victim of offence keeping in view his financial capacity mandatory :** Awarding compensation u/s 357 CrPC to the victim of offence by keeping in view his financial capacity is mandatory. See :
- (i) **Manohar Singh Vs. State of Rajasthan, 2015 (89) ACC 266.**
  - (ii) **Ankush Shivaji Gaikwad Vs. State of Maharashtra, 2013 (82) ACC 312 (SC).**
- 17.4 Victim Compensation Scheme 2011:** Relying on the directions of the Supreme Court issued in Laxmi Vs. Union of India, (2014) 4 SCC 427 and State of HP Vs. Rampal, (2015) 11 SCC 584, the Supreme Court, in the case noted below, while referring to the amended provisions of Section 357-A CrPC w.e.f. 31.12.2009 and the victim compensation scheme 2011, awarded Rs. 1,50,000/- as compensation to be paid by the convict to the injured victim of acid attack after his conviction for the offences u/s 326/34 IPC. See: **State of Himachal Pradesh Vs. Vijay Kumar, AIR 2019 SC 1543**
- 17.5 Reasons must be recorded for not granting compensation :** Trial court must record reasons why it is not possible to release the convict on probation. Similarly, grant of compensation to the victim is equally a part of just sentencing. Reason should be recorded for not granting compensation. A Trial Judge must be alive to alternate methods of mutually satisfactory disposition of a case. See : **State Vs. Sanjiv Bhalla, 2014 (86) ACC 938 (SC).**
- 17.6 Direction for imparting training to Judicial Officers at NJA, Bhopal regarding award of interim or final compensation u/s 357, 357-A CrPC to the victim of the offence at any stage of the criminal proceedings :** Apart from the sentence and fine/compensation to be paid by the accused, the Court has to award compensation by the State under Section 357-A when the accused is not in a position to pay fair

compensation as laid down by the Supreme Court in its (unreported) judgment dated 28.11.2014 delivered in Criminal Appeal No. 420 of 2012, Suresh Vs. State of Haryana. The Supreme Court in the case of Suresh had held thus : *"We are of the view that it is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factor as may be found relevant in the facts and circumstances of an individual case. We are also of the view that there is need to consider upward revision in the scale for compensation and pending such consideration to adopt the scale notified by the State of Kerala in its scheme, unless the scale awarded by any other State or Union Territory is higher. The States of Andhra Pradesh, Madhya Pradesh, Meghalaya and Telangana are directed to notify their schemes within one month from receipt of a copy of this order. We also direct that a copy of this judgment be forwarded to National Judicial Academy so that all judicial officers in the country can be imparted requisite training to make the provision operative and meaningful."*

See : **State of MP Vs. Mehtab, 2015 (89) ACC 306 (SC)**

- 17.7 Interim compensation:** Under Section 143A of the NI Act, the court can order the drawer of the cheque to pay interim compensation to the complainant. **But the amount of the interim compensation shall not exceed 20% of the amount of the cheque.**

**Note:** *Sections 143A and 148 inserted in 2018 in the NI Act by way of amendment have been made enforceable by the central Govt, w.e.f. 01.09.2018 vide Notification No.S.O.3995 (E),dated 16 August,2018.*

**17.8 Appellate court u/s 148 of the NI Act can order convict/appellant to deposit minimum 20% of the fine or compensation awarded by the trial court during pendency of appeal:**

Appellate court u/s 148 of the NI Act can order convict/appellant to deposit minimum 20% of the fine or compensation awarded by the trial court during pendency of appeal. Such amount can any time during the pendency of appeal be released by the appellate court to the complainant.

**17.9 Section 148 of NI Act inserted in 2018 to have retrospective effect:** It has been held by the Supreme Court that Section 148 of the NI Act inserted in 2018 shall have retrospective effect in respect of appeals filed against conviction and sentence in complaints which were filed prior to 01. 09.2018 i. e. date of enforcement of Section 148. See:

- (i). Criminal Appeal No.917-944/ 2019, Surinder Singh Dewal Vs. Virender Gandhi. (SC)
- (ii). W.P. No. 258-260/2019, Ajay Vinodchandra Shah Vs. State of Maharashtra,

**17.10 Compounding of appeal permissible:** With the insertion of Section 147 in the Negotiable Instruments Act, 1881 since 6.2.2003 all the offences under this Act are now compoundable and even an appeal can also be compounded by the parties. See:

- (i). **Sudhir Kumar vs. Manakkandi M. Kunhiraman, AIR 2008 (NOC) 1005 (Kerala) (D.B.)**
- (ii). **K. Gyan Sagar vs. Ganesh Gupta, 2007 (57) ACC 784 (SC)**
- (iii). **Shailesh Shyam Parsekar vs. Babban, 2005 (53) ACC 306 (SC)**
- (iv). **K.J.B.L. Rama Reddy vs. Annapurna Seeds, (2005) 10 SCC 632**
- (v). **Kishore Kumar vs. J.K. Corp. Ltd., (2004) 13 SCC 494**
- (vi). **M. Rangaswamaih vs. R. Shettappa, 2002 Cr.L.J. 4792 (Karnataka)**
- (vi). **Mohan Reddy vs. Jairaj D. Bhal Rao, 1996 Cr.L.J. 1010 (A.P.)**
- (vii). **Naimesh Pandya vs. State of Gujarat, 1998 Cr.L.J. 4424 (Guj.)**

**17.11 Section 320 CrPC not to apply to NI Act:** Compounding of offenses u/s 147 of the NI Act is not governed by Section 320 CrPC in view of non-obstante clause in Sec 147 of the NI Act. See: **Damodar S. Prabhu Vs. Sayed Babalal H, AIR 2010 SC 1907.**

**17.12 Cost on late compounding of offense u/s 138:** Terming the tendency of parties to go for compounding at late stage of proceedings u/s 138/147 of the NI Act as putting unnecessary strain on judicial system, the Supreme Court has directed the courts to

impose graded costs u/s 35 on litigants to encourage them to go for early compounding.

See: **Damodar S. Prabhu Vs. Sayed Babalal H, 2010 CRLJ 2860 (SC)**

- 17.13 Conviction u/s 138 to be set aside after compounding:** Once a person is allowed to compound a case as provided for u/s 147 of the NI Act, 1881, the conviction u/s 138 of the said Act should also be set aside. See: **K.M. Ibrahim vs. K.P. Mohammed, 2009 (7) Supreme 627**
- 17.14 Court can suo motu compound case and close proceedings even without consent of parties if complainant has been fully compensated:** Though compounding requires consent of both parties, even in absence of such consent, Court, in interests of justice, on being satisfied that complainant has been duly compensated, can in its discretion close proceedings and discharge accused. See: **M/S Meters and Instruments Private Ltd. Vs. Kanchan Mehta, AIR 2017 SC 4594.**
- 18.1 Section 420 IPC and Section 138 NI Act:** Existence of fraudulent intention at the time of making transaction or promise or misrepresentation is necessary for the offence u/s 420 IPC. Mere failure of the accused to keep up the promise not sufficient to prove the existence of such intention right from the beginning. See: **K.C. Builders vs. Assistant Commissioner, Income Tax, (2004) 2 SCC 731**
- 18.2 Conviction u/s 138 and 420 IPC on same fact not be recorded:** It may be noticed that there is a difference between language used in Article 20(2) of the Constitution of India and Section 300(1) of the CrPC. It can be seen that Section 300(1) CrPC is wider than Article 20(2) of the constitution. While Article 20(2) of the Constitution only states that 'no one can be prosecuted and punished for the same offence more than once', Section 300(1) CrPC states that no one can be tried and convicted for the same offence or for the different offence but on the same facts. Where accused was already convicted u/s 138 of the Negotiable Instruments Act, 1881, he could not be again tried or punished on the same facts u/s 420 IPC or any other provision of the IPC or any other Statute. Although the offences are different but facts are same. Hence, Section 300(1) CrPC applies. Consequently, the prosecution u/s 420 IPC was barred by Section 300(1) CrPC. See: **Kolla Veera Raghav Rao vs. Gorantla Venketeswara Rao, AIR 2011 SC 641.**

- 19 Return of money subsequent to the initiation of criminal proceedings does not absolve the accused of criminal liability:** Once an offence is committed, any deposit or payment made by the accused subsequent thereto will not absolve him of the liability of criminal offence. See: **Rajneesh Agarwal vs. Amit J. Bhalla, 2001 JIC 704 (SC)**
- 20 Arbitration proceedings not to bar prosecution u/s 138:** A complaint u/s 138 of the NI Act, 1881 is not barred merely because the complainant had already taken recourse to arbitration proceedings. Quashing of complaint u/s 482 CrPC on such a ground has been held improper. See: **M/s Sri Krishna Agencies vs. State of A.P., AIR 2009 SC 1011**
- 21 Withdrawal of complaint and non-execution of NBW:** Section 256 CrPC applies in respect of withdrawal of complaint involving an offence u/s 138 of the NI Act. If NBW was already issued against the accused and thereafter withdrawal of the complaint is prayed by the complainant, the Magistrate should not insist appearance of the accused and NBW should not be executed. Complaint in such cases should be ordered to be withdrawn. See: **Birju Thomas vs. State of Kerala, 2001 C.LJ 790 (Kerala)**
- 22 Death of complainant and its effect:** If the Complainant dies during the pendency of the complaint under the NI Act, an application to continue the prosecution can be made by a person who has a right to continue the prosecution including the legal representatives of the deceased complainant by themselves or through pleader. See: **Jimmy Jahangir Madan vs. Bolly Cariyappa Hindley (Dead), 2005 (51) ACC 23 (SC)**
- 23 Legal representatives not liable u/s 138 NI Act:** Criminal liability cannot be fastened to the heirs and legal representatives of a person guilty u/s 138 of the NI Act. See: **Bhupinder Lima Vs. State of A.P., (2000) 99 Comp Cases 424.**
- 24.1 Court of place where cheque was delivered or where drawee maintains account has jurisdiction under NI Act :** Taking a different view than what has been held by the Supreme Court in Dashrath Rupsingh Rathod Vs. State of Maharashtra, 2014 (86) ACC 882 (SC), a subsequent Division Bench of the Supreme Court, in the case noted below, has ruled that the court of place where cheque was delivered or where drawee maintains account has jurisdiction under NI Act. See : **M/S. Bridgestone India Pvt. Limited Vs. Inderpal Singh, 2016 (92) ACC 898 (SC)**

- 24.2 Territorial jurisdiction of court and place of enquiry are trial for offence u/s 138 :**  
Return of cheque by the drawee bank alone constitutes commission of offence and indicates where the offence is committed. Place, situs and venue of judicial enquiry and trial of offence must logically be restricted to where the drawee bank is located. See : **Dashrath Rupsingh Rathod Vs. State of Maharashtra, 2014 (86) ACC 882 (SC)**
- 25.1 Standard of proof in cases under NI Act:** Offence u/s 138 of the Act is primarily civil wrong. Burden of proof is on accused in view of presumption u/s 139 but standard of such proof is 'preponderance of probabilities'. Same has to be normally tried summarily as per provisions of summary trial under CrPC but with such variation as may be appropriate to the proceedings under Chapter XVII of Act. Thus read, principle of Section 258 CrPC will apply and Court can close proceedings and discharge accused on satisfaction that cheque amount with assessed costs and interest is paid and if there is no reason to proceed with punitive aspect. See : **M/S Meters and Instruments Private Ltd. Vs. Kanchan Mehta, AIR 2017 SC 4594.**
- 25.2 Following procedure under Section 200 & 202 CrPC not necessary for Magistrate while passing summoning order for offences under NI Act :** Sections 143, 144, 145 and 147 of the NI Act, 1881 have overriding effect on the Code of Criminal Procedure. **Section 145 of the NI Act** allows that the evidence of the complainant is to be given on an affidavit, that is in the absence of the accused. Sections 142 to 147 of the NI Act lay down a kind of Special Code for the trial of the offences under chapter XVII of the NI Act. The Magistrate is therefore not required to observe the provisions contained in Sections 200 and 202 CrPC. See:
- (i) **M/s Mandvi Co-operative Bank Ltd. Vs. Nimesh B. Thakore, 2010 (68) ACC 670 (SC)**
- (ii) **Sachin Agarwal Vs. State of UP and others, 2011 (75) ACC 482 (All)**
- 25.3 Evidence of complainant and his witnesses u/s 200 and 202 CrPC can be taken on affidavit u/s 145 of the NI Act :** According to Section 145 of the NI Act, evidence of the complainant and his witnesses u/s 200 and 202 CrPC can be taken on affidavit.
- (i). **M/S Meters and Instruments Private Ltd. Vs. Kanchan Mehta, AIR 2017 SC 4594.**
- (ii). **Kunapareddy Vs. Kunapareddy Swarna Kumari, AIR 2016 SC 2519.**

- 25.4 Affidavits given by complainant and his witnesses at initial stage can be read as evidence at all further stages of trial:** Since evidence of complaint can be given on affidavit, subject to Court summoning person giving affidavit and examining him and bank's slip being prima facie evidence of dishonour of cheque, it is unnecessary for Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. Manner of examination of person giving affidavit can be as per Section 264 CrPC. Scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 of the NI Act becomes necessary, where sentence of one year may have to be awarded and compensation u/s 357(3) CrPC is considered inadequate, having regard to the amount of cheque, financial capacity and conduct of accused or any other circumstances. See : **M/S Meters and Instruments Private Ltd. Vs. Kanchan Mehta, AIR 2017 SC 4594.**
- 25.5 Evidence given by complainant and his witnesses through affidavit u/s 145 should be admissible, relevant and not hearsay:** Evidence given by complainant and his witnesses through affidavit u/s 145 should be admissible, relevant and not hearsay. See: **Mandvi Co-operative Bank Ltd. Vs. Nimesh B Thakore, AIR 2010 SC 1402**
- 25.6 Affidavit and cross examination of deponent u/s 145 NI Act :** Under Section 145 of the NI Act, 1881, subject to just exceptions, court may allow the complainant to give evidence by way of affidavit. Such an evidence by way of affidavit has been made admissible in evidence in any inquiry, trial or other proceedings under CrPC. The deponent of an affidavit summoned u/s 145(2) of the NI Act can be only cross-examined and not examined -in -chief. See: **Radhey Shyam Garg v. Naresh Kumar Gupta, AIR 2010 SC 3210**
- 25.7 Evidence on affidavit by complainant or his witness permissible u/s 145 (1) of the NI Act:** Complainant or his witnesses can adduce their evidence on affidavit u/s 141(1) of the NI Act. See: **M/s Mandvi Co-op Bank Ltd Vs. Nimesh B. Thakore, AIR 2010 SC 1402**
- 25.8 Complainant and his witnesses cannot be again summoned for their examination in chief in court after they file their affidavits as evidence:** Complainant and his witnesses cannot be again summoned for their examination in chief in court after they file their affidavits as evidence. They may only be cross-examined by the accused and

thereafter re-examined. See: **Radhey Shyam Garg Vs. Naresh Kumar Gupta, III(2010) BC 552 (SC).**

**25.9 Following procedure under Section 200 & 202 CrPC not necessary for Magistrate while passing summoning order for offences under NI Act :** Sections 143, 144, 145 and 147 of the NI Act, 1881 have overriding effect on the Code of Criminal Procedure. Section 145 of the NI Act allows that the evidence of the complainant is to be given on an affidavit, that is in the absence of the accused. Sections 142 to 147 of the NI Act lay down a kind of Special Code for the trial of the offences under chapter XVII of the NI Act. The Magistrate is therefore not required to observe the provisions contained in Sections 200 and 202 CrPC. See:

- (i) **M/s Mandvi Co-operative Bank Ltd. Vs. Nimesh B. Thakore, 2010 (68) ACC 670 (SC)**
- (ii) **Sachin Agarwal Vs. State of UP and others, 2011 (75) ACC 482 (All)**

**25.10 Accused cannot be allowed to tender his evidence on affidavit u/s 141(1):** An accused cannot be allowed to tender his evidence on affidavit u/s 141(1) of the NI Act. See; **M/s Mandvi Co-op Bank Ltd Vs. Nimesh B. Thakore, AIR 2010 SC 1402**

**25.11 An act should be done in the manner prescribed or not at all:** Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are necessarily forbidden. This rule squarely applies where the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other way. Where law requires a thing to be done in a certain manner, it has to be done in that manner or not at all. A power must be exercised in the manner provided by law. This is what the maxim "*ex pressio unius est exclusio alterius*" means. See :

- (i). **J. Jayalithaa Vs State of Karnataka, (2014) 2 SCC 401.**
- (ii). **Dhananjaya Reddy Vs State of Karnataka, (2001) 4 SCC 9 (Para 23)**
- (iii). **Ram Chandra Keshav Adke Vs. Govind Toti Chavare, AIR 1975 SC 915 (Three-Judge Bench).**
- (iv). **State of UP Vs. Singhara Singh, AIR 1964 SC 358.**

**25.12 Procedure other than statutory procedure cannot be adopted even if there is unanimous understanding among the authorities :** A procedure other than the statutory procedure cannot be adopted even if there is unanimous understanding of the Central Govt. and the State Governments on a non-statutory procedure. All methods other than statutory methods are necessarily forbidden. What cannot be done directly cannot be done indirectly to defeat the statutory scheme. See : **Manohar Lal Sharma Vs. Principal Secretary & Others, (2014) 9 SCC 516 (Three-Judge Bench).**

**25.13 Procedural irregularities not to be allowed to defeat the ends of justice :** Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application for substitution or other relief should not entail automatic dismissal or rejection unless the relevant statute or rule so mandates. Procedural defects or irregularities which are curable should not be allowed to defeat the substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use. Procedural law is not to be tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.

- (a) The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.
- (b) The object is to expedite the hearing and not to scuttle the same.
- (c) Justice delayed may amount to justice denied, but justice hurried may amount to justice buried.
- (d) Actus curiae neminem gravabit (an act of court shall prejudice no man)
- (e) Lex non cogit ad impossibilia (the law does not compel a man to do what he cannot possibly perform) See:
  - (i) **Ashok Kumar Kalra Vs. Surendra Agnihotri, (2020) 2SCC 394 (Three-Judge Bench).**
  - (ii) **Shaikh Salim Haji Abdul Khayumsab vs. Kumar & ors., 2006 (1) ARC 334 (SC)**
  - (iii) **Uday Shankar Triyar vs. Ram Kalewar Prasad Singh, 2006 (1) ARC 1 (SC) (Three-Judge Bench)**

**25.14 Procedural defects when fatal?:** The procedural defects or lapses would not vitiate the proceedings except under the following circumstances:

- (i) where the statute prescribing the procedure, also prescribed specifically the consequence of non-compliance.
- (ii) where the procedural defect is not rectified even after it is pointed out and due opportunity is given for rectifying it.
- (iii) where the non-compliance or violation is proved to be deliberate or mischievous.

- (iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court.
- (v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant. See : **Uday Shankar Triyar vs. Ram Kalewar Prasad Singh, 2006 (1) ARC 1 (SC) (Three-Judge Bench).**

**25.15 An accused can examine himself u/s 315 CrPC as a defence witness:** An accused can examine himself u/s 315 CrPC as a defence witness. Equal treatment should be given to the evidence of PWs and the DWs. Standard and parameter for evaluation of evidence is the same whether it is a PW or DW.

**25.16 Burden to prove that there was no subsisting debt or liability lies on accused:** There is no requirement 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/drawer. This they have to discharge in the trial. Merely on the basis of averments in the petition filed by the accused u/s 482 CrPC, the High Court could not have concluded that there was no existing debt or liability. Such question could have been tried and decided only at trial. See: **MMTC Ltd. Vs. Medchl Chemicals & Pharma (P) Ltd., AIR 2002 SC 182.**

**25.17 Hand writing expert's evidence can be permitted by Magistrate to be produced:** Where signature on the cheque was denied by the drawer/ accused, it has been held that Magistrate has power to order production of hand writing expert's opinion u/s 73 of the Evidence Act. See: **Kalyani Baskar (Mrs.) Vs. M. S. Sampooram (Mrs.), (2007) 2 SCC 258**

**25.18 Mere exhibiting of a document cannot dispense with its proof :** As per the provisions of Sections 63 and 65 of the Evidence Act, a party is required to lay down factual foundation to establish the right to give secondary evidence where the original document cannot be produced. Admissibility of a document does not amount to its proof. Mere marking of an exhibit on the document does not dispense with its proof. See : **Kaliya Vs. State of M.P., 2013 (83) ACC 160 (SC).**

**25.19 Non-exhibition of documents only a procedural lapse:** Non-exhibition of documents is only a procedural lapse. Non-exhibition of documents cannot disentitle a claim when otherwise sufficient evidence is adduced and the documents established the fact in

controversy. See: **Vimla Devi Vs National Insurance Company Limited, (2019) 2 SCC 186**

**25.20 Exhibited or non-exhibited documents: Documents not proved but exhibited and proved but not exhibited—effect? :** Mere production and marking of a document as exhibit is not enough. It's execution has to be proved by admissible evidence. Mere marking of a document as exhibit by Court cannot be held to be a due proof of it's contents. But where the documents produced are admitted by the opposite party, signatures on them are also admitted and they are thereafter marked as exhibits by the Court, then their correctness cannot be questioned by the opposite party and then no further burden rests on party producing the document to lead additional evidence in proof of the writing on the document and its execution. If secondary evidence (Photostat copies etc.) are filed, objection as to admissibility thereof can be raised even after the document has been marked as an exhibit or even in appeal or revision. But when the objection is not directed against the admissibility of the secondary document but only against the mode of proof thereof on the ground of irregularity or insufficiency, it can be raised when the evidence is tendered but not after the document has been admitted in evidence and marked as an exhibit. Once the document has been admitted in evidence and marked as exhibit, objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular, cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. See :

- (i) **Narbada Devi Gupta Vs. Birendra Kr. Jaiswal, (2003) 8 SCC 745**
- (ii) **Smt. Sudha Agarwal Vs. VII ADJ, Ghaziabad, 2006 (63) ALR 659 (Allahabad)**
- (iii) **R.V.E. Venkatachala Gounder Vs. Arulmigu Viswesaraswami, (2003) 8 SCC 752**
- (iv) **Sait Tarajee Vs. Khimchand Vs. Yelamarti Satyam, AIR 1971 SC 1865.**
- (v) Judgment dated 03.01.2017 of the Division Bench of the Allahabad High Court in Civil Appeal No. 790/2008, New Okhla Industrial Development Authority Vs. Kendriya Karmachari Sahkari Grih Nirman Samiti Ltd..

**26.1 Summary trial or summons trial:** According to Section 143 of the NI Act, all offences under the NI Act are to be tried summarily in accordance with the procedure u/s 262 to 265 CrPC.

**26.2 Magistrate has discretion to try case under NI Act either summarily or as summons case:** Procedure for trial of cases under Chapter XVII of Act has normally to be summary. Discretion of Magistrate under second Proviso to Section 143 of the NI Act to hold that it was undesirable to try case summarily as sentence of more than one year may have to be passed, is to be exercised after considering further fact that apart from sentence of imprisonment, Court has jurisdiction u/s 357(3) CrPC to award

suitable compensation with default sentence u/s 64 IPC and with further powers of recovery under Section 431 CrPC. With this approach, prison sentence of more than one year may not be required in all cases. **M/S Meters and Instruments Private Ltd. Vs. Kanchan Mehta, AIR 2017 SC 4594.**

- 26.3 A criminal case triable summarily has been tried as warrant triable case by Magistrate. Whether trial stands vitiated?:**No. Provided no prejudice is shown to have been caused to the accused and proper opportunity to defend himself was given to the accused against the accusations leveled against him. See: **Radhey Shyam Aggarwal vs. State NCT, Delhi, AIR 2009 SC 1712**
- 27.1 Statement u/s 313 CrPC can be made basis of conviction :** It is settled principle of law that the statement of an accused made u/s 313 CrPC can be the basis for conviction. See :
- (i).Dharnidhar vs. State of U.P., (2010) 7 SCC 759.**
  - (ii).State of Maharashtra Vs. Sukhdev Singh,(1992) 3 SCC 700.**
  - (iii).Narain Singh Vs. State of Punjab, (1964) 1 CRLJ 730(SC) (Theree-Judge Bench).**
- 27.2 Admission of guilt made by accused in statement u/s 313 CrPC can be taken into consideration by the court:** If an accused admits u/s Section 313 CrPC any incriminating circumstance appearing in evidence against him , there is no warrant that those admissions should altogether be ignored merely on the ground that such admissions were advanced as a defence strategy. A statement made by accused u/s Section 313 CrPC even if it contains inculpatory admissions cannot be ignored and the court may where there is sufficient evidence available proceed to enter a verdict of guilt. See:**Paul Vs. State of Kerala, (2020) 3 SCC115**
- 27.3 Statement of accused u/s 313 CrPC can be used as evidence against the accused :** Statement of accused u/s 313 CrPC which is supportive of the case of the prosecution can be used as evidence against the accused. See : **Brajendra Singh Vs. State of MP, 2012 (77) ACC 992 (SC).**
- 27.4. Accused has right to maintain silence during examination u/s 313 CrPC:** The accused has a duty to furnish an explanation in his statement under Section 313 CrPC regarding any incriminating material that has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the Court, then the accused may choose to maintain silence or even remain in complete denial when his statement under Section 313 CrPC is being recorded.

However, in such an event the Court would be entitled to draw an inference including such adverse inference against the accused as may be permissible in accordance with law. See :

**(i) Phula Singh Vs. State of Himachal Pradesh, AIR 2014 SC 1256.(para 6)**

**(ii)Surya Baksh Singh Vs. State of UP, 2014 (84) ACC 379 (SC).**

**27.5 Direction to the JTRI, UP, Lucknow to train the judicial officers to frame proper questions u/s 313 CrPC on all incriminating circumstances of the case :** In the case noted below, a Division Bench of the Hon'ble Allahabad High Court has directed that the JTRI, UP, Lucknow must ensure that proper training is given to Judicial Officers on framing proper questions u/s 313 CrPC for examination of the accused so that the entire circumstances of the case are put to the accused and they cannot claim the benefit of being inadequately questioned about the incriminating circumstances of the case. Kindly See : **Judgment & order dated 28.08.2014 of the Hon'ble Allahabad High Court passed in Capital Case No. 574/2013, Akhtar Vs. State of UP.**

**28 Filing civil suit not a bar against prosecution u/s 138:**After receipt of notice u/s 138 of the NI Act,, mere filing of civil suit by the accused cannot empower him to seek quashing or stay of criminal proceeding. See: **L. P. Electronics Vs. Tirupati Electro Marketing, III (2010) BC 49 (Orissa).**

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