

LAW ON
NEGOTIABLE INSTRUMENTS ACT, 1881

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1. Nature Of Offence u/s 138 N.I. Act, 1881---Offence u/s 138 NI Act, 1881 is regulatory & 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

1A. Debt or liability—burden of proof of?---- 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 was on the accused/drawer. This they have to discharge in the trial. At this stage, merely on the basis of averments in the petition filed by them, the High Court could not have concluded that there was no existing debt or liability. See--- **MMTC Ltd. vs. Medchl Chemicals & Pharma (P) Ltd., AIR 2002 SC 182.**

1B. Proving legally recoverable debt must for constituting offence u/s 138---- Proving legally recoverable debt must for constituting offence u/s 138. See : **K. Subramani Vs. K. Damodara Naidu, (2015) 1 SCC 99.**

2(A). Demand Notice---- Sec. 138, proviso (b)—General Clauses Act, 1897—Sec. 27—Notice—Giving notice is **a condition precedent** for filing complaint u/s. 138—Not required that notice u/s. 138 be given by post only.

2(B). Service of legal notice on drawer within 30 days of receipt of information of dishonor of cheque mandatory ---- For the 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 the sending of this notice 15 days time is to be given to the noticee, from the date of receipt of the said notice to make the payment, if that is already not done. If notice fails to make the payment, the offence 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 time from the date of cause of action to file the complaint. See : **Kamlesh Kumar Vs. State of Bihar, 2014 (84) ACC 311 (SC)**

3. Presumption of service--- 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. See--- **V. Rajakumari vs. P. Subbarama Naidu, 2005 (51) ACC 13 (SC)**

Note: *In this case, the House of the address was reported “locked” by the postman.*

4. Notice – when refused---- Held by SC “It is well settled that a notice refused to be accepted by the addressee can be presumed to have been served on him. See---

1. **Harcharan Singh vs. Shivrani, 1981 (2) SCC 535**
2. **Jagdish Singh vs. Natthu Singh, 1992(1) SCC 647**

General Clauses Act, 1897—Sec. 27—Notice sent at correct address of sendee—Sender not responsible for non-service—onus lies upon sendee (accused) to show at trial of not having received notice. See---

1. **Jag Mohan vs. State of U.P., 2005(51) ACC 74 (All)**
2. **K. Bhaskaran vs. Sankaran Vaidhyam Balan, 1999 (39) ACC 844 (SC)**
3. **D. Vinod Shivappa vs. Nanda Belliappa, (2006) 6 SCC 456**

5. Burden on drawer/addressee to prove non-service of notice--- Sec. 138, proviso (b), (c) r/w Sec. 142—Notice through regd. post—presumption of service—in case of report on 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—Drawer may prove at trial by evidence that the endorsement was not correct. See---

1. **V. Raja Kumari vs. P. Subbarama Naidu, (2004) 8 SCC 774**
2. **Prem Chand Vijai Kumar vs. Yashpal Singh, (2005) 4 SCC 417**
3. **Sadanandan Bhadrans vs. Madhavan Sunil Kumar, (1998) 6 SCC 514**
4. **K. Bhaskaran vs. Sankaran Vaidhyam Balan, (1999) 7 SCC 510**
5. **Dalmia Cement (Bharat) Ltd. vs. Galaxy Traders, (2001) 6 SCC 463**

6(A). Death of complainant under NI Act, 1881---Complainant died during complaint's pendency under N.I. Act—application to continue prosecution can be made by a person who has a right to continue the prosecution including **L.Rs.** by themselves or through pleader—But Holder of Power of Attorney cannot be permitted to continue prosecution. See--- **Jimmy Jahangir Madan vs. Bolly Cariyappa Hindley (Dead), 2005 (51) ACC 23 (SC)**

6(B). Power of Attorney holder or LR can file complaint u/s 138 : Power of Attorney holder or LR can file complaint u/s 138. 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).**

6(C). 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).**

7. Penalty u/s. 138 N.I. Act—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 (w.e.f. 6/2/2003)

8(A). Ingredients to constitute an offence u/s. 138 N.I. Act---(A) For constituting an offence u/s. 138 of the N.I. Act, 1881, the following ingredients must be satisfied---

- (1) A cheque must be drawn;
- (2) It must be presented and returned unpaid inter alia with the remarks “insufficient funds”;
- (3) A notice for payment should be served on the accused;
- (4) 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)

8(B) Complaint filed u/s 338 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 338 before expiry of 15 days from date on which notice was served on 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 Three-Judge Bench in Yogendra Pratap Singh Vs. Savitri Pandey.

8(C) Ingredients of offense u/s 138 of the NI Act : According to the Bombay High Court the points for determination of offense u/s 138 must involved at least five ingredients which are as under ...

- 1) 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
- 2) That cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.
- 3) That 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
- 4) 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 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.

5) The drawer of such cheque fails to make payment of the said amount of money to the payer or the holder in due course of the cheque within 30 days of the receipt of the said notice.

See.... **Smt.Kiran Yugalkishore Bhattad Vs. Smt. Sushila Ramcharan Kattamwar, AIR 2010 (NOC) 778(Bom).**

8(D) Ingredients of offence u/s 138 N.I. Act--- The ingredients of an offence u/s 138 of the N.I. 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 15 days 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 cheques within 15 days (now 30 days w.e.f 06.2.2003) of the receipt of said notice. See---

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

8(E). 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.

9. (A) Liability of Director & non-Director :

(B) Ingredients to be pleaded in complaint

Sec. 138, 141—It is necessary to specifically aver in complaint u/s. 141 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—cannot be deemed to be in-charge of and responsible for the company for conduct of its business—Even a non-Director can be liable u/s. 141. 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)**

9(C). 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 Cr.P.C. 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 malafide, court may direct registration of case against the complainant for malicious prosecution. See---

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

2. **Sabitha Ramamurthy vs. RBSC, AIR 2006 SC 3086**

3. **2007 Cr.L.J. 2442 (SC)**

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

(C) 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 N I 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).**

10. When only Director made party – Not the company—Not fatal---
Complaint for offence u/s. 138—Mere Managing Director of the firm made accused and not the company—not fatal—**serving notice on company not necessary.** See---

- 1. **Avneet Singh vs. State of U.P., 2005 (53) ACC 402 (All)**
- 2. **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.,(para 43)*

11. Stop payment instruction—effect?--- Complaint u/s. 138 N.I. Act—Provision u/s. 138 to attract even if a cheque is dishonoured because of stop payment instruction to the Bank. See---

- 1. **Avneet Singh vs. State of U.P., 2005 (53) ACC 402 (All)**
- 2. **Modi Cements Ltd. vs. Kuchil Kumar Nandi, 1998 (36) ACC 593 (SC)**
- 3. **K.K. Sridharthan vs. T.P. Praveena Chandran, (1996) 6 SCC 369**

12. Refer to drawer--- Where the cheque was return by the bank with the endorsements like **refer to drawer, in sufficiency of funds, account closed**, it has been held that the provisions of Sec. 138 N.I. Act would be attracted. See---

1. **1996 Cr.L.J. 1223**
2. **(1992) 2 Crimes 1145 (Delhi)**
3. **1992 Cr.L.J. 4048 (AP—D.B.)**

12(A) 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 dishonoured. Therefore such a defence is not allowed as per Sec. 140 of the Act. Therefore were are of the view that 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 cheques. It will, if permitted, undoubtedly, defeat that the intent behind Sec. 140 of the Act. See--- **State of Punjab Vs. Subhash Chander, 2004 Cr LJ 414 (Kerala High Court-DB)**

12(B) Account Number when not mentioned in the cheque---If the account number is not mentioned in the cheque, Sec. 138 N.I. 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 tallying--- 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 N.I. Act are not made out. See : **Vinod Tanna vs. Zaheer Siddiqui, 2002 (1) JIC 407 (SC)**

14(A). Cause of action to complaint—when arises--- Sec. 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. See--- **D. Vinod Shivappa vs. Nanda Belliappa, (2006) 6 SCC 456**

14(B).15 days time contemplated under proviso (c) to Sec. 138 commences from the date of receipt of notice or endorsement asto—Not claimed, unclaimed, locked, refused, not found, not available etc.

14(C).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 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 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 Cr. P. C. but with such variation as may be appropriate to proceedings under Chapter XVII of Act. Thus read, principle of Section 258 Cr. P. C. 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 S. 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) Cr. P. C. to award suitable compensation with default sentence u/S. 64 IPC and with further powers of recovery under Section 431 Cr.P.C. 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 S. 264 Cr. P. C. Scheme is to follow summary procedure except where exercise of power under second proviso to S. 143 becomes necessary, where sentence of one year may have to be awarded and compensation u/S. 357(3) is considered inadequate, having regard to 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(D).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 earliest as per law and one who obeys law need not be held up in proceedings for long unnecessarily. **(Para 20)**

14(C) Criminal P.C. (2 of 1974), S.258- Negotiable Instruments Act (26 of 1881), S.138, S.143- Cheque dishonour cases - Closure of proceedings - Payment of cheque amount with interest and cost by accused as assessed by Court within specified date - Court can close proceedings u/S. 143 of Act of 1881 read with S. 258 of Criminal P. C. (Para 19). See : **M/S Meters and Instruments Private Ltd. Vs. Kanchan Mehta, AIR 2017 SC 4594.**

14(D). **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 titled 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 the 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 deposits 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.

5(A).Prosecution on 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 N.I. 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).**

15(B).Second presentation of cheque after issue of notice—No?---- 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---

- 1. **D. Vinod Shivappa vs. Nanda Belliappa, (2006) 6 SCC 456**
- 2. **Dalmia Cement (Bharat) Ltd. vs. Galaxy Traders, (2001) 6 SCC 463**

16. 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---

- 3. **D. Vinod Shivappa vs. Nanda Belliappa, (2006) 6 SCC 456**
- 4. **Dalmia Cement (Bharat) Ltd. vs. Galaxy Traders, (2001) 6 SCC 463**

17. Compounding of appeal—permissible--- (A) with the insertion of Sec. 147 in the Negotiable Instruments Act, 1881, all the offences under this Act are now compoundable and even an appeal can also be compounded by the parties. See---

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

(B) Sec 320 CrPC. not to apply to NI Act..... Compounding of offenses under the NI Act is not governed by Sec 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.**

(C) 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 SC 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-A. 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 N.I. 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**

18. Sec. 420 IPC & Sec. 138 N.I. Act, 1881---

(A) 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**

(B) Conviction u/s 138 & 420 IPC on same fact not be recorded... It may be noticed that there is a difference between language used in Art. 20(2) of the Constitution of India and S. 300(1) of CrPC. It can be seen that S. 300(1) of CrPC is wider than Art. 20(2) of the constitution. While, Art. 20(2) of the Constitution only states that ‘no one can be prosecuted and punished for the same offence more than once’ S. 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 or any, other provision of IPC or any other Statute. Although the offences are different but facts are same. Hence, S. 300(1) of CrPC applies. Consequently, the prosecution u/s 420 IPC was barred by S. 300(1) CrPC. See--**Kolla Veera Raghav Rao vs. Gorantla Venketeswara Rao, AIR 2011 SC 641.**

(C) 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)**

19. Presumption of liability u/s. 139--- (A) Section 139 of the 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 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 on an issue notwithstanding that there is no evidence or insufficient evidence. See---

1. **Rohitbhai Jivanlal Patel Vs. State of Gujrat, AIR 2019 SC 1876**
2. **Smt. P.Leelavathi Vs. Shankarnarayana Rao, AIR 2019 SC 1938**
3. **M/s. Kumar Exports vs. M/s. Sharma Carpets, 2009 (1) Supreme 231**
4. **K.N. Beena Vs. Muniyappan, AIR 2001 SC 2895**

5. Hiten P. Dalal Vs. Bratindranath Banerjee, AIR 2001 SC 3897(Three-Judge Bench)

(B) Presumption u/s 139 of the N.I. Act---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**

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. See--- **M/s. Sri Krishna Agencies vs. State of A.P., AIR 2009 SC 1011**

21. Withdrawal of complaint & non-execution of NBW--- Sec. 256 Cr.P.C. applies in respect of withdrawal of complaint involving an offence u/s. 138 of the N.I. 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 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 Cr.L.J. 790 (Kerala)**

22(A). Affidavit of complainant and his witnesses u/s 200 and 202 CrPC can be taken on affidavit : Affidavit of complainant and his witnesses u/s 200 and 202 CrPC can be taken on affidavit. See : **Kunapareddy Vs. Kunapareddy Swarna Kumari, AIR 2016 SC 2519.**

22(B). Affidavit & cross examination of deponent u/s 145 NI Act : U/s 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) can be only cross

examined and not examined in chief. See **Radhe Shyam Garg v. Naresh Kumar Gupta, AIR 2010 SC 3210**

(B) Evidence on affidavit by complainant or his witness permissible u/s

141(1) 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**

(C) Accused can not be allowed to tender his evidence on affidavit u/s

141(1)..... An accused can not 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**

23. Competent complainant alone to file complain on behalf of firm Where the complaint was filed by the complainant claiming himself to be soul proprietor of 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)**

24. Following procedure under Section 200 & 202 CrPC not necessary for Magistrate while passing summoning order for offences under NI Act :

Sections 143, 144, 145 & 147 of the NI Act, 1881 have overriding effect on the Code of Criminal Procedure. Section 145 allows that the evidence of the complainant is to be given on an affidavit that is in the absence of the accused. Section 142 to 147 of the NI Act lays 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 Section 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. 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)**

26(A). Court of place where cheque 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).**

26(B). Territorial jurisdiction of court and place of enquiry are trial for offence u/s 138 : Return of cheque by the drawee bank alone constitute 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)**

27. NEGOTIABLE INSTRUMENTS (AMENDMENT) ORDINANCE, 2015 (No. 6 OF 2015) Amending Sections 6, 142 and inserting new Section 142A in the Negotiable Instruments Act, 1881 w.e.f. 15-06-2015, an Ordinance titled **NEGOTIABLE INSTRUMENTS (AMENDMENT) ORDINANCE, 2015** has been issued by the President of India under article 123(1) of the Constitution of India on 15-06-2015 and the same has come into force at once i.e. w.e.f. 15-06-2015. The entire text of the said Ordinance is as under:

MINISTRY OF LAW AND JUSTICE
(Legislative Department)
New Delhi, the 15th June, 2015/Jayistha 25, 1973(Saka)
THE NEGOTIABLE INSTRUMENTS (AMENDMENT)
ORDINANCE, 2015
No. 6 OF 2015

Promulgated by the President in the Sixty-sixth Year of the Republic of India.
the President is pleased to promulgate the following Ordinance:-

1.(2) It shall come into force at
 Amendment 3. In the principal Act, 142 shall be numbered as sub-section of section 142 section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:-

(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,-

(a) if the cheque is delivered for collection through and account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation- "For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account"

Validation for transfer of pending cases: 4. In the principal Act, after section 142, the following section shall be inserted, namely:-

"142A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgement, decree, order or directions of any court, all cases arising out of section 138 which were pending in any court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the court having jurisdiction under sub-section 142 as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1), and complaint is pending in that court, subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section

142 before which the first case was filed and is pending, as if that subsection had been in force at all material times."

PRANAB MUKHERJEE,
President.
