2025 INSC 1158

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1755 OF 2010

SANJABIJ TARI ..... APPELLANT

VERSUS

KISHORE S. BORCAR & ANR. .....RESPONDENTS

J U D G M E N T

MANMOHAN, J.

1. The present Appeal has been filed challenging the *ex-parte* judgment and order dated 16th April 2009 passed by the High Court of Bombay at Goa acquitting the Respondent No.1-Accused under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act') and reversing the concurrent judgments of the Trial Court and the Sessions Court.

ARGUMENTS ON BEHALF OF APPELLANT-COMPLAINANT

2. Mr. Amarjit Singh Bedi, learned counsel for the Appellant-Complainant submitted that the High Court in exercise of its revisional jurisdiction erred in upsetting the conviction of the Respondent No.1-Accused under Section 138 of the NI Act based on categorical findings of facts rendered by both the Courts below that the dishonoured cheque had been issued in favour of the Appellant-Complainant in discharge of a legally enforceable debt.

3. He contended that there was no evidence on record to establish that the Appellant-Complainant did not have the financial means to advance a friendly loan of Rs.6,00,000/- (Rupees Six Lakhs) to the Respondent No.1-Accused . He emphasised that the Appellant-Complainant in his statement under oath had stated

that in order to oblige his friend/Respondent No.1-Accused , the Appellant-Complainant had arranged money from his father, who was a cloth merchant having two shops and even went to the extent of parting with a portion of the loan amount which he himself had borrowed from a financial institution.

4. He pointed out that the Respondent No.1-Accused during the course of arguments on sentencing before the Trial Court had prayed for leniency on the ground that he was ready to pay the cheque amount to the Appellant-Complainant within a reasonable time.

5. He further stated that though the Appellant-Complainant filed an application under Section 482 of the Code of Criminal Procedure ('Cr.P.C.') for recall of the impugned judgment by substantiating sufficient cause for the absence of his advocate on 16th April 2009, yet the learned Single Judge had been pleased to dismiss the said application holding that the Court had become *functus officio* and it had no jurisdiction under criminal law to recall the impugned order. He submitted that the High Court erred in not exercising its inherent powers to set aside the impugned judgment which, for all legal purposes, was an *ex-parte* order.

6. He lastly stated that if this Court were to set aside the impugned judgment of the High Court and restore the concurrent judgments of the Trial Court and Sessions Court, the Appellant-Complainant would accept the payment of outstanding amount in instalments as directed by the Trial Court.

ARGUMENTS ON BEHALF OF RESPONDENT NO.1-ACCUSED

7. *Per contra,* Mr. Ankit Yadav, learned counsel for the Respondent No.1-Accused stated that the Appellant-Complainant was being paid a salary of only Rs.2,300/- (Rupees Two Thousand and Three Hundred) per month at the relevant point of time, which was not even adequate to take care of his family, leave alone sufficient to advance a loan of Rs.6,00,000/- (Rupees Six Lakhs). He contended that the Appellant-Complainant was a highly indebted person who did not have any source of income other than his meagre salary and therefore, he did not have

the wherewithal to advance such a huge loan and that too without issuance of any kind of receipt.

8. He submitted that the accused can always rely on material and/or evidence filed by the complainant in order to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability. In support of his submission, he relied upon the judgment of this Court in ***Rangappa vs. Sri Mohan, (2010) 11 SCC 441***.

9. He further submitted that whenever the accused questions the financial capacity of the complainant in support of his probable defence, despite the presumption of a legally enforceable debt under Section 139 of the NI Act, the onus shifts back to the complainant to prove his financial capacity, more particularly, when it is a case of giving loan by cash and thereafter issuance of a cheque. In support of his submission, he relied upon the judgment of this Court in ***APS Forex Services Private Limited vs. Shakti International Fashion Linkers and Ors., (2020) 12 SCC 724***.

10. He emphasised that the defence of the Respondent No.1-Accused that a blank cheque had been given to the Appellant-Complainant to enable him to obtain a loan from the bank was more than a probable defence to rebut the presumption under the NI Act, particularly, in view of the fact that the parties were known to each other.

REASONING

SCOPE AND INTENT OF CHAPTER XVII OF NI ACT

11. Having heard learned counsel for the parties, this Court is of the view that it is essential to first outline the scope and intent of Chapter XVII (Sections 138 to 148) of NI Act which has been inserted by Act 66 of 1988 w.e.f. 1st April 1989.

12. The Statement of Objects and Reasons of Act 66 of 1988 states, "….*to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of*

funds in the accounts or for the reason that it exceeds the arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers."

13. The provisions contained in Chapter XVII provide that where any cheque drawn by a person for the discharge of any liability is returned by the bank unpaid for the reason of the insufficiency of the amount of money standing to the credit of the account on which the cheque was drawn or for the reason that it exceeds the arrangements made by the drawer of the cheque with the banker for that account, the drawer of such cheque shall be deemed to have committed an offence. In that case, the drawer, without prejudice to the other provisions of the said Act, shall be punishable with 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.

14. Consequently, this Court is of the view that the intent behind introducing Chapter XVII is to restore the credibility of cheques as a trustworthy substitute for cash payment and to promote a culture of using cheques. Further, by criminalizing the act of issuing cheques without sufficient funds or for other specified reasons, the law promotes financial discipline, discourages irresponsible practices and allows for a more efficient and timely resolution of disputes compared to the previous pure civil remedy which was found to involve the payee in a long-drawn out process of litigation.

ONCE EXECUTION OF CHEQUE IS ADMITTED, PRESUMPTIONS UNDER SECTIONS 118 AND 139 OF THE NI ACT ARISE

15. In the present case, the cheque in question has admittedly been signed by the Respondent No.1-Accused . This Court is of the view that once the execution of the cheque is admitted, the presumption under Section 118 of the NI Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability arises against the accused. It is pertinent to mention that observations to the contrary by a two Judges Bench

in ***Krishna Janardhan Bhat vs. Dattatraya G. Hegde, (2008) 4 SCC 54*** have been set aside by a three Judges Bench in ***Rangappa*** (supra).

16. This Court is further of the view that by creating this presumption, the law reinforces the reliability of cheques as a mode of payment in commercial transactions.

17. Needless to mention that the presumption contemplated under Section 139 of the NI Act, is a rebuttable presumption. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability is on the accused/drawer of the cheque [See: ***Bir Singh vs. Mukesh Kumar, (2019) 4 SCC 197***].

18. The judgment of this Court in ***APS Forex Services Private Limited*** (supra) relied upon by learned counsel for the Respondent No.1-Accused only says that presumption under Section 139 of the NI Act is rebuttable and when the same is rebutted, the onus would shift back to the complainant to prove his financial capacity, more particularly, when it is a case of giving loan by cash. This judgment nowhere states, as was sought to be contended by learned counsel for the Respondent No.1-Accused, that in cases of dishonour of cheques, in lieu of cash loans, the presumption under Section 139 of the NI Act does not arise.

APPROACH OF SOME COURTS BELOW TO NOT GIVE EFFECT TO THE PRESUMTIONS UNDER SECTIONS 118 AND 139 OF NI ACT IS CONTRARY TO MANDATE OF PARLIAMENT

19. Recently, the Kerala High Court in ***P.C. Hari vs. Shine Varghese & Anr., 2025 SCC OnLine Ker 5535*** has taken the view that a debt created by a cash transaction above Rs. 20,000/- (Rupees Twenty Thousand) in violation of the provisions of Section 269SS of the Income Tax Act, 1961 (for short 'IT Act, 1961') is not a 'legally enforceable debt' unless there is a valid explanation for the same, meaning thereby that the presumption under Section 139 of the Act will not be attracted in cash transactions above Rs. 20,000/- (Rupees Twenty Thousand).

20. However, this Court is of the view that any breach of Section 269SS of the IT Act, 1961 is subject to a penalty only under Section 271D of the IT Act, 1961. Further neither Section 269SS nor 271D of the IT Act, 1961 state that any transaction in breach thereof will be illegal, invalid or statutorily void. Therefore, any violation of Section 269SS would not render the transaction unenforceable under Section 138 of the NI Act or rebut the presumptions under Sections 118 and 139 of the NI Act because such a person, assuming him/her to be the payee/holder in due course, is liable to be visited by a penalty only as prescribed. Consequently, the view that any transaction above Rs.20,000/- (Rupees Twenty Thousand) is illegal and void and therefore does not fall within the definition of 'legally enforceable debt' cannot be countenanced. Accordingly, the conclusion of law in ***P.C. Hari*** (supra) is set aside.

21. This Court also takes judicial notice of the fact that some District Courts and some High Courts are not giving effect to the presumptions incorporated in Sections 118 and 139 of NI Act and are treating the proceedings under the NI Act as another civil recovery proceedings and are directing the complainant to prove the antecedent debt or liability. This Court is of the view that such an approach is not only prolonging the trial but is also contrary to the mandate of Parliament, namely, that the drawer and the bank must honour the cheque, otherwise, trust in cheques would be irreparably damaged.

NO DOCUMENTS AND/OR EVIDENCE LED WITH REGARD TO THE FINANCIAL INCAPACITY OF THE APPELLANT

22. It is pertinent to mention that in the present case, the Respondent No.1-Accused has filed no documents and/or examined any independent witness or led any evidence with regard to the financial incapacity of the Appellant-Complainant to advance the loans in question. For instance, this Court in ***Rajaram S/o Sriramulu Naidu (Since Deceased) Through LRs. vs. Maruthachalam (Since Deceased) Through LRs., (2023) 16 SCC 125*** has held that presumptions under Sections 118 and 139 of the NI Act can be rebutted by

the accused examining the Income Tax Officer and bank officials of the complainant/drawee.

WHEN THE EVIDENCE OF PW-1 IS READ IN ITS ENTIRETY, IT CANNOT BE SAID THAT THE APPELLANT-COMPLAINANT HAD NO WHEREWITHAL TO ADVANCE LOAN

23. Most certainly, the accused can rely upon the evidence adduced by the complainant to rebut the presumption with regard to the existence of a legally enforceable debt or liability, yet in the present case, when the evidence of Appellant-Complainant (PW-1) is read in its entirety, like it should be, it cannot be said that the Appellant-Complainant had no wherewithal to advance any loan to the Respondent No.1-Accused .

24. In fact, the Appellant-Complainant, in his statement, has stated that as the Respondent No.1-Accused was his friend, he had advanced part of the loan received by him and had also taken loan from his father to advance money to the Respondent No.1-Accused .

25. The Trial Court in its order and judgment dated 30th April 2007 has held that the Respondent No.1-Accused has failed to rebut the presumption under Sections 118 and 139 of the NI Act and that the Appellant-Complainant has proved the legally enforceable debt. The relevant portion of the Trial Court's order and judgment dated 30th April 2007 is reproduced hereinbelow:-

> "*11…Accused had not disputed his signature on the cheque. Complainant stated that he had advanced to accused amount of cheque in two different installments on two different occasions cannot be believed has no merit. Accused himself admitted his signature on the cheque and accused had failed to rebut the presumption in favour of the complainant as available under Negotiable Instruments Act, 1881.*
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> *12.As regard the contention of the Ld. Advocate for the accused that the complainant failed to show legally enforceable liability due to him by the accused has also no merit as there is cogent evidence of the complainant supported with documentary evidence as regard the*

cheque and its dishonour and its non payment by the accused inspite of the receipt of the notice to pay the same…."

26. The Sessions Court too specifically rejected the contention of the Respondent No.1-Accused that the Appellant-Complainant had no means to advance the loan of Rs.6,00,000/- (Rupees Six Lakhs) to the Respondent No.1-Accused. The relevant portion of the Sessions Court's judgment dated 17th September 2008 is reproduced hereinbelow:-

"*15…The contention of the accused, now in appeal, that the complainant had no means to sustain himself and was in debt to various institutions is not borne out from the records. No doubt, no documentary evidence is produced by the complainant nor any witness is there to prove that he gave Rs.6,00,000/- to the accused. But the circumstances, discussed above are such that the testimony of PW1 is sufficient to prove the said friendly loan transaction…"*

IN REVISIONAL JURISDICTION, HIGH COURT DOES NOT, IN THE ABSENCE OF PERVERSITY, UPSET CONCURRENT FACTUAL FINDINGS

27. It is well settled that in exercise of revisional jurisdiction, the High Court does not, in the absence of perversity, upset concurrent factual findings [See: ***Bir Singh*** (supra)]. This Court is of the view that it is not for the Revisional Court to re-analyse and re-interpret the evidence on record. As held by this Court in ***Southern Sales & Services and Others vs. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457***, it is a well-established principle of law that the Revisional Court will not interfere, even if a wrong order is passed by a Court having jurisdiction, in the absence of a jurisdictional error.

28. Consequently, this Court is of the view that in the absence of perversity, it was not open to the High Court in the present case, in revisional jurisdiction, to upset the concurrent findings of the Trial Court and the Sessions Court.

FAILURE OF ACCUSED TO REPLY TO NOTICE LEADS TO AN INFERENCE

29. Furthermore, the fact that the accused has failed to reply to the statutory notice under Section 138 of the NI Act leads to an inference that there is merit in

the Appellant-Complainant's version. This Court in ***Tedhi Singh vs. Narayan Dass Mahant, (2022) 6 SCC 735*** has held that the accused has the initial burden to set up the defence in his reply to the demand notice that the complainant did not have the financial capacity to advance the loan. The relevant portion of the said judgment is reproduced hereinbelow:-

> *"10. ... The proceedings under Section 138 of the NI Act is not a civil suit. At the time, when the complainant gives his evidence, unless a case is set up in the reply notice to the statutory notice sent, that the complainant did not have the wherewithal, it cannot be expected of the complainant to initially lead evidence to show that he had the financial capacity. To that extent, the courts in our view were right in holding on those lines. However, the accused has the right to demonstrate that the complainant in a particular case did not have the capacity and therefore, the case of the accused is acceptable which he can do by producing independent materials, namely, by examining his witnesses and producing documents. It is also open to him to establish the very same aspect by pointing to the materials produced by the complainant himself. He can further, more importantly, achieve this result through the cross-examination of the witnesses of the complainant. Ultimately, it becomes the duty of the courts to consider carefully and appreciate the totality of the evidence and then come to a conclusion whether in the given case, the accused has shown that the case of the complainant is in peril for the reason that the accused has established a probable defence."*
>
> (emphasis supplied)

30. This Court in ***MMTC Ltd. and Another vs. Medchl Chemicals & Pharma (P) Ltd. and Another, (2002) 1 SCC 234*** has specifically held that when a statutory notice is not replied, it has to be presumed that the cheque was issued towards the discharge of liability.

31. Also, after receipt of the legal notice, wherein the Appellant-Complainant alleged that the Respondent No.1-Accused's cheque had bounced, no complaint or legal proceeding was initiated by the Respondent No.1-Accused alleging that the cheque was not to be encashed. Consequently, the defence of financial

incapacity of Appellant-Complainant advanced by the Respondent No.1-Accused is an afterthought.

RESPONDENT NO.1-ACCUSED'S DEFENCE THAT A SIGNED BLANK CHEQUE WAS ISSUED TO ENABLE COMPLAINANT TO OBTAIN A LOAN IS UNBELIEVABLE

32. The High Court's finding that the Respondent No.1-Accused 's defence that a signed blank cheque was issued by him so as to enable his friend/Appellant-Complainant to obtain a loan from a bank was sufficient to rebut the presumptions under Sections 118 and 139 of the NI Act is unbelievable and absurd. This Court agrees with the Sessions Court's finding in the present case that, "*It is funny to say that for obtaining loan from the bank, one can show a cheque which is issued on an account in which there are not sufficient funds. The case of the accused is unbelievable*".

KEEPING IN VIEW THE MASSIVE BACKLOG OF CHEQUE BOUNCING CASES, THE FOLLOWING GUIDELINES ARE ISSUED

33. Before parting with this matter, this Court takes judicial notice of the fact that despite repeated directions by this Court in various judgments including ***Indian Bank Association and Others vs. Union of India and Others, (2014) 5 SCC 590, Damodar S. Prabhu vs. Sayed Babalal H., (2010) 5 SCC 663*** and ***In Re: Expeditious Trial of cases under Section 138 of NI Act 1881, (2021) 16 SCC 116***, pendency of cheque bouncing cases under the NI Act in District Courts in major metropolitan cities of India continues to be staggeringly high. For instance, the pendency of Section 138 cases as on 01st September 2025 in Delhi District Courts is 6,50,283 (Six Lakhs Fifty Thousand Two Hundred Eighty Three), Mumbai District Courts is 1,17,190 (One Lakh Seventeen Thousand One Hundred Ninety) and Calcutta District Courts is 2,65,985 (Two Lakhs Sixty Five Thousand Nine Hundred Eighty Five) [*Source: National Judicial Data Grid*]. This pendency is putting an unprecedented strain on the judicial system as in some States, cases under Section 138 of the NI Act constitute nearly fifty per cent

(50%) of the pendency in Trial Court (in Delhi Section 138 NI Act cases constitute 49.45% of total Trial Court pendency).

34. In ***P. Mohanraj and Others v. Shah Brothers Ispat Private Limited, (2021) 6 SCC 258***, this Court while re-iterating the position of law with regard to the nature of offence under Section 138 of the NI Act, has held as under:

> *"53. A perusal of the judgment in Ishwarlal Bhagwandas [S.A.L. Narayan Row v. Ishwarlal Bhagwandas, (1966) 1 SCR 190 : AIR 1965 SC 1818] would show that a civil proceeding is not necessarily a proceeding which begins with the filing of a suit and culminates in execution of a decree. It would include a revenue proceeding as well as a writ petition filed under Article 226 of the Constitution, if the reliefs therein are to enforce rights of a civil nature. Interestingly, criminal proceedings are stated to be proceedings in which the larger interest of the State is concerned. Given these tests,* ***it is clear that a Section 138 proceeding can be said to be a "civil sheep" in a "criminal wolf's" clothing, as it is the interest of the victim that is sought to be protected, the larger interest of the State being subsumed in the victim alone moving a court in cheque bouncing cases****, as has been seen by us in the analysis made hereinabove of Chapter XVII of the Negotiable Instruments Act."*
>
> (emphasis supplied)

35. Admittedly, the offence under Section 138 of the NI Act is quasi-criminal in character and is compoundable [See: ***Damodar S. Prabhu*** (supra)]. Recently, in ***Gian Chand Garg v. Harpal Singh & Anr.*** (**Criminal Appeal No. 3789 of 2025** dated 11th August 2025), a co-ordinate Bench of this Court has set aside concurrent convictions rendered by the Courts below on the ground that the proceeding under Section 138 of the NI Act is essentially a civil proceeding and it is open to the parties to enter into a voluntary compromise. Consequently, this Court is of the view that not only a voluntary compromise can bring the proceedings under Section 138 NI Act to an end, but the accused under the said offence are entitled to benefit under the Probation of Offenders Act, 1958 [See: ***Chellammal & Another vs. State Represented by the Inspector of Police, 2025 SCC OnLine SC 870***]. Observations to the contrary by Kerala HC in ***M.V.***

***Nalinakshan vs. M. Rameshan & Anr. 2009 All MR (Cri) Journal* 273** are set aside.

36. Keeping in view the massive backlog of cheque bouncing cases and the fact that service of summons on the accused in a complaint filed under Section 138 of the NI Act continues to be one of the main reasons for the delay in disposal of the complaints as well as the fact that punishment under the NI Act is not a means of seeking retribution but is more a means to ensure payment of money and to promote credibility of cheques as a trustworthy substitute for cash payment, this Court issues the following directions:-

A. In all cases filed under Section 138 of the NI Act, service of summons shall not be confined through prescribed usual modes but shall also be issued *dasti* i.e. summons shall be served upon the accused by the complainant in addition. This direction is necessary as a large number of Section 138 cases under the NI Act are filed in the metropolitan cities by financial institutions, by virtue of Section 142(2) of the NI Act, against accused who may not be necessarily residing within the territorial jurisdiction of the Court where the complaint has been filed. The Trial Courts shall further resort to service of summons by electronic means in terms of the applicable Notifications/Rules, if any, framed under sub-Sections 1 and 2 of Section 64 and under Clause (i) of Section 530 and other provisions of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS, 2023') like Delhi BNSS (*Service of Summons and Warrants)* Rules, 2025. For this purpose, the complainant shall, at the time of filing the complaint, provide the requisite particulars including e-mail address, mobile number and/or WhatsApp number/messaging application details of the accused, duly supported by an affidavit verifying that the said particulars pertain to the accused/respondent.

B. The complainant shall file an affidavit of service before the Court. In the event such affidavit is found to be false, the Court shall be at liberty to take appropriate action against the complainant in accordance with law.

C. In order to facilitate expeditious settlement of cases under Section 138 of the NI Act, the Principal District and Sessions Judge of each District Court shall create and operationalise dedicated online payment facilities through secure QR codes or UPI links. The summons shall expressly mention that the Respondent/Accused has the option to make payment of the cheque amount at the initial stage itself, directly through the said online link. The complainant shall also be informed of such payment and upon confirmation of receipt, appropriate orders regarding release of such money and compounding/closure of proceedings under Section 147 of the NI Act and/or Section 255 of Cr.P.C./278 BNSS, 2023 may be passed by the Court in accordance with law. This measure shall promote settlement at the threshold stage and/or ensure speedy disposal of cases.

D. Each and every complaint under Section 138 of the NI Act shall contain a synopsis in the following format which shall be filed immediately after the index (at the top of the file) i.e. prior to the formal complaint:-

Complaint under Section 138 of the Negotiable Instruments Act, 1881

I. Particulars of the Parties

(i) Complainant: _____

(ii) Accused: _____

(In case where the accused is a company or a firm then Registered Address, Name of the Managing Director/Partner, Name of the signatory, Name of the persons vicariously liable)

II. Cheque Details

(i) Cheque No. _____

(ii) Date: _____

(iii) Amount: _____

(iv) Drawn on Bank/Branch: _____
(v) Account No.: _____

III. Dishonour

(i) Date of Presentation: _____
(ii) Date of Return/Dishonour Memo: _____
(iii) Branch where cheque was dishonoured:_____
(iv) Reason for Dishonour: _____

IV. Statutory Notice

(i) Date of Notice: _____
(ii) Mode of Service: _____
(iii) Date of Dispatch & Tracking No.: _____
(iv) Proof of Delivery & date of delivery: _____
(v) Whether served:_____
(vi) If Not, reasons thereof:_____
(vii) Reply to the Legal Demand Notice, if any_____

V. Cause of Action

(i) Date of accrual: _____
(ii) Jurisdiction invoked under Section 142(2): _____
(iii) Whether any other complaint under section 138 NI Act is pending between the same parties, If Yes, in which court and the date and year of the institution.

VI. Relief Sought

(i) Summoning of accused and trial under Section 138 NI Act_____
(ii) Whether Award of Interim compensation under Section 143A of NI Act sought _____

VII. Filed through:

Complainant/Authorized Representative"

E. Recently, the High Court of Karnataka in ***Ashok Vs. Fayaz Aahmad, 2025 SCC OnLine Kar 490*** has taken the view that since NI Act is a special enactment, there is no need for the Magistrate to issue summons to the accused before taking cognizance (under Section 223 of BNSS) of complaints filed under Section 138 of NI Act. This Court is in agreement

with the view taken by the High Court of Karnataka. Consequently, this Court directs that there shall be no requirement to issue summons to the accused in terms of Section 223 of BNSS i.e., at the pre-cognizance stage.

F. Since the object of Section 143 of the NI Act is quick disposal of the complaints under Section 138 by following the procedure prescribed for summary trial under the Code, this Court reiterates the direction of this Court in ***In Re: Expeditious Trial of cases under Section 138 of NI Act*** (supra) that the Trial Courts shall record cogent and sufficient reasons before converting a summary trial to summons trial. To facilitate this process, this Court clarifies that in view of the judgment of the Delhi High Court in ***Rajesh Agarwal vs. State and Anr., 2010 SCC OnLine Del 2511***, the Trial Court shall be at liberty (at the initial post cognizance stage) to ask questions, it deems appropriate, under Section 251 Cr.P.C. / Section 274 BNSS, 2023 including the following questions:-

(i) Do you admit that the cheque belongs to your account? *Yes/No*
(ii) Do you admit that the signature on the cheque is yours? *Yes/No*
(iii) Did you issue/deliver this cheque to the complainant? *Yes/No*
(iv) Do you admit that you owed liability to the complainant at the time of issuance? *Yes/No*
(v) If you deny liability, state clearly the defence:
    (a) Security cheque only;
    (b) Loan repaid already;
    (c) Cheque altered/misused;
    (d) Other (specify).
(vi) Do you wish to compound the case at this stage? *Yes/No*

G. The Court shall record the responses to the questions in the order-sheet in the presence of the accused and his/her counsel and thereafter determine whether the case is fit to be tried summarily under Chapter XXI of the Cr.P.C. / Chapter XXII of the BNSS, 2023.

H. Wherever, the Trial Court deems it appropriate, it shall use its power to order payment of interim deposit as early as possible under Section 143A of the NI Act.

I. Since physical courtrooms create a conducive environment for direct and informal interactions encouraging early resolution, the High Courts shall ensure that after service of summons, the matters are placed before the physical Courts. Exemptions from personal appearances should be granted only when facts so warrant. It is clarified that prior to the service of summons the matters may be listed before the digital Courts.

J. Wherever cases under Section 138 of the NI Act are permitted to be heard and disposed of by evening courts, the High Courts should ensure that pecuniary limit of the cheque amount is realistic. For instance, in Delhi, the jurisdiction of the evening courts to hear and decide cases of cheque amount is not exceeding Rs.25,000/-. In the opinion of this Court, the said limit is too low. The High Courts should forthwith issue practice directions and set up realistic pecuniary benchmarks for evening Courts.

K. Each District and Sessions Judge in Delhi, Mumbai and Calcutta shall maintain a dedicated dashboard reflecting the pendency and progress of cases under Section 138 of the NI Act. The dashboard shall include, inter alia, details regarding total pendency, monthly disposal rates, percentage of cases settled/compounded, average number of adjournments per case and the stage-wise breakup of pending matters. The District and Sessions Judges in aforesaid jurisdictions shall conduct monthly reviews of the functioning of Magistrates handling NI Act matters. A consolidated quarterly report shall be forwarded to the High Court.

L. The Chief Justices of Delhi, Bombay and Calcutta are requested to form Committee on the Administrative side to monitor pendency and to ensure expeditious disposal of Section 138 of the NI Act cases. These Committees should meet at least once a month and explore the option of

appointing experienced Magistrates to deal with Section 138 of the NI Act cases as well as promoting mediation, holding of Lok Adalats and other alternative dispute resolution mechanisms in Section 138 NI Act cases.

37. It is pertinent to mention that this Court framed guidelines for compounding offences under the NI Act nearly fifteen years back in ***Damodar S. Prabhu*** (supra). The relevant portion of the said Judgment is reproduced hereinbelow:-

> "***THE GUIDELINES***
>
> *(i) In the circumstances, it is proposed as follows:*
>
> *(a) That directions can be given that the writ of summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.*
>
> *(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate 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.*
>
> *(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.*
>
> *(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.*
>
> *xxx xxx xxx*
>
> *24. We are also conscious of the view that the judicial endorsement of the abovequoted Guidelines could be seen as an act of judicial law-making and therefore an intrusion into the legislative domain. It must be kept in mind that Section 147 of the Act does not carry any guidance on how to proceed with the compounding of offences under the Act. We have already explained that the scheme contemplated under Section 320 CrPC*

cannot be followed in the strict sense. In view of the legislative vacuum, we see no hurdle to the endorsement of some suggestions which have been designed to discourage litigants from unduly delaying the composition of the offence in cases involving Section 138 of the Act.

25. The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the court is spent on the trial of these cases and the parties are not liable to pay any court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. Even though the imposition of costs by the competent court is a matter of discretion, the scale of costs has been suggested in the interest of uniformity. The competent court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance. Bona fide litigants should of course contest the proceedings to their logical end.

26. Even in the past, this Court has used its power to do complete justice under Article 142 of the Constitution to frame guidelines in relation to the subject-matter where there was a legislative vacuum."

38. Since a very large number of cheque bouncing cases are still pending and interest rates have fallen in the last few years, this Court is of the view that it is time to '*revisit and tweak the guidelines*'. Accordingly, the aforesaid guidelines of compounding are modified as under:-

(a) If the accused pays the cheque amount before recording of his evidence (namely defence evidence), then the Trial Court may allow compounding of the offence without imposing any cost or penalty on the accused.

(b) If the accused makes the payment of the cheque amount post the recording of his evidence but prior to the pronouncement of judgment by the Trial Court, the Magistrate may allow compounding of the offence on payment of additional 5% of the cheque amount with the Legal Services Authority or such other Authority as the Court deems fit.

(c) Similarly, if the payment of cheque amount is made before the Sessions Court or a High Court in Revision or Appeal, such Court may compound the offence on the condition that the accused pays 7.5% of the cheque amount by way of costs.

(d) Finally, if the cheque amount is tendered before this Court, the figure would increase to 10% of the cheque amount.

39. This Court is of the view that if the Accused is willing to pay in accordance with the aforesaid guidelines, the Court may suggest to the parties to go for compounding. If for any reason, the financial institutions/complainant asks for payment other than the cheque amount or settlement of entire loan or other outstanding dues, then the Magistrate may suggest to the Accused to plead guilty and exercise the power under Section 255(2) and/or 255(3) of the Cr.P.C. or 278 of the BNSS, 2023 and/or give the benefit under the Probation of Offenders Act, 1958 to the Accused.

CONCLUSION

40. Keeping in view the aforesaid findings, the appeal is allowed. The impugned order passed by the High Court dated 16th April, 2009 is set aside and the judgment as well as the orders of Trial Court and Sessions Court are restored with a direction to the Respondent No.1-Accused to pay Rs.7,50,000/- (Rupees Seven Lakhs Fifty Thousand) in 15 (fifteen) equated monthly instalment of Rs.50,000/- (Rupees Fifty Thousand) each. The High Courts and District Courts shall implement the aforesaid guidelines not later than 01st November, 2025.

…….J.
[MANMOHAN]

…….J.
[N.V. ANJARIA]

New Delhi;
September 25, 2025