

## Supreme Court Lays Down Guidelines for Speedy Trial and Compounding in Cheque Bounce Cases: An Analysis of *Sanjabij Tari v. Kishore S. Borcar*

Authors: **Vasanth Rajasekaran\*** and **Harshvardhan Korada\*\***

### Introduction

In a recent case titled *Sanjabij Tari vs. Kishore S. Borcar*<sup>1</sup>, the Supreme Court has taken a landmark step toward modernising and reforming the procedure and delivery of justice in cheque bounce cases. Section 138 of the Negotiable Instruments Act, 1881 ("**NI Act**") is a punitive provision intended to preserve the credibility of cheques and secure the timely recovery of a legally enforceable debt. In practice, these cases often get mired in procedural delays because courts tend to treat these matters as ordinary civil disputes.

The Supreme Court has now addressed these bottlenecks head-on by laying down a set of guidelines/directions with practical and technology-driven solutions, such as service of summons by electronic means, online payments for speedy settlement of cheque dishonour cases, and standard formats for complaints. The judgment has also modified guidelines for compounding and probation in cheque dishonour cases.

The Supreme Court has notably held that a cash loan of Rs.20,000 or more doesn't cease to be a '*legally enforceable debt*' under Section 138 of the NI Act just because it violates Section 269SS of the Income Tax Act, 1961 ("**IT Act**").

### Brief Facts

Sanjabij Tari ("**Appellant-Complainant**") had advanced a cash loan of Rs.6 lakhs to Kishore S. Borcar ("**Respondent No.1-Accused**"). The Appellant-Complainant had arranged money from his father, who was a cloth merchant having two shops. Respondent No.1- Accused stated that the Appellant-Complainant was earning only Rs.2,300 per month at the relevant point of time, which was not even adequate to take care of his family. 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. Respondent No.1-Accused took the defence that a blank cheque had been given to the Appellant-Complainant to enable him to obtain a loan from the bank.

Upon dishonour of the cheque, criminal proceedings under Section 138 of NI Act were initiated. The Trial Court and the Sessions Court convicted the Respondent. However, the High Court in revision set aside the conviction, holding that the complainant did not have the financial capacity. The High Court accepted the defence that a blank cheque was given for the purpose of obtaining a loan from a bank.

The Complainant filed the appeal against the ex parte judgment dated 16 April 2009 of the Bombay High Court, whereby the High Court acquitted the Respondent-Accused under Section 138 of the NI Act.

### Observations of the Supreme Court

<sup>1</sup> CRIMINAL APPEAL NO. 1755 OF 2010.

## On the Objective of Chapter XVII of NI Act

The Supreme Court noted that Chapter XVII of the NI Act provides 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 such a case, the drawer 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.

The Supreme Court took 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.*" The Court further noted that by criminalising 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.*"

The Supreme Court observed 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/drawer of cheque. However, the 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, when it is a case of giving loan by cash (in view of Section 269SS of the IT Act).

## Cheque Bounce Case Maintainable for Cash Loans Above Rs.20,000: Interplay of Section 269SS Income Tax Act and Section 139 Negotiable Instruments Act

The Apex Court overruled the decision of the Kerala High Court in ***P.C. Hari v. Shine Varghese & Anr.***<sup>2</sup>, where it was held that a debt created through a cash transaction above Rs. 20,000 in violation of Section 269SS of the IT Act is not a legally enforceable debt unless validly explained, and thus the presumption under Section 139 of the NI Act would not apply.

The Supreme Court noted 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... state that any transaction in breach thereof will be illegal, invalid or statutorily void."*

The Court observed that 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. The Apex Court therefore stated that the view that any transaction above Rs.20,000 is illegal and void and does not fall within the definition of 'legally enforceable debt', cannot be countenanced.

<sup>2</sup> P.C. Hari v. Shine Varghese & Anr., 2025 SCC OnLine Ker 5535.

The Supreme Court further noted with concern that some courts below have failed to give effect to the presumptions under Sections 118 and 139 of the 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. The Court emphasised 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.

On the nature of the offence under Section 138 of the NI Act, the Apex Court relied upon ***P. Mohanraj and Others v. Shah Brothers Ispat Private Limited***<sup>3</sup>, wherein it was held that "*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.*"

On the question of financial incapacity, the Court observed that the accused had filed no documents or evidence to establish the complainant's inability to advance the loan. Referring to *Rajaram v. Maruthachalam*<sup>4</sup>, it reiterated that presumptions under Sections 118 and 139 can only be rebutted by cogent evidence, such as examining bank or income tax officials. The Supreme Court reaffirmed 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.

The Supreme Court observed that the failure of the accused 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. The Apex Court referred to ***Tedhi Singh v. Narayan Dass Mahant***<sup>5</sup>, wherein it was 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. Reliance was also placed on ***MMTC Ltd. and Another v. Medchl Chemicals & Pharma (P) Ltd. and Another***<sup>6</sup>, which held that when a statutory notice is not replied to, it has to be presumed that the cheque was issued towards the discharge of liability.

The Supreme Court noted that after receiving the legal notice regarding the dishonour of the cheque, the Accused didn't initiate any complaint or legal proceeding to allege that the cheque was not intended to be encashed. Therefore, the defence of financial incapacity of the Complainant raised by the Respondent was held to be an afterthought.

The Court agreed with the finding of the Sessions Court that it was absurd and funny to say that for obtaining a loan from the bank, one can show a cheque which is issued on an account in which there are insufficient funds.

## **Guidelines by the Supreme Court for Speedy Trial of Cheque Bounce Cases: No Pre-Cognisance Summons Required**

<sup>3</sup> P. Mohanraj and Others v. Shah Brothers Ispat Private Limited, (2021) 6 SCC 258.

<sup>4</sup> Rajaram v. Maruthachalam, (2023) 16 SCC 125.

<sup>5</sup> Tedhi Singh v. Narayan Dass Mahant, (2022) 6 SCC 735.

<sup>6</sup> MMTC Ltd. and Another v. Medchl Chemicals & Pharma (P) Ltd. and Another#, (2002) 1 SCC 234.

The Supreme Court, keeping in view the massive backlog of cheque bouncing cases under Section 138 of the NI Act, the delays caused in service of summons, and the object of the law being recovery of money and maintenance of credibility of cheques rather than retribution, has framed the following guidelines:

- A. Service of summons shall not be confined to ordinary modes but shall also include dasti service by the complainant and service by electronic means (email, WhatsApp, etc.), with details verified by affidavit.
- B. The complainant must file an affidavit of service.
- C. Online payment facilities (through QR code/UPI links) shall be created by District Courts, with the option to pay at the initial stage itself for speedy settlement.
- D. Every complaint must contain a synopsis in a particular format.
- E. No requirement of issuing summons at the pre-cognizance stage under Section 223 BNSS for Section 138 complaints.
- F. Trial Courts must record reasons before converting a summary trial into a summons trial, and may put direct questions under Section 251 CrPC/274 BNSS to the accused (e.g., about issuance, signature, liability, defence, compounding).
- G. Courts must record responses of the accused in the order-sheet and decide whether the case can be tried summarily.
- H. Courts should exercise power under Section 143A NI Act to order interim deposit at the earliest.
- I. After service of summons, matters should be placed before physical Courts. Exemption from personal appearance to be granted only if warranted.
- J. Evening Courts for NI Act cases should have realistic pecuniary limits (higher than existing low thresholds such as Rs.25,000).
- K. Dedicated dashboards for monitoring pendency and disposal of Section 138 cases shall be maintained in Delhi, Mumbai and Calcutta; District Judges to conduct monthly reviews and forward quarterly reports to the High Court.
- L. Chief Justices of Delhi, Bombay and Calcutta shall form Committees to monitor pendency, ensure expeditious disposal, promote mediation, Lok Adalats and ADR for Section 138 cases.

### **Accused in Cheque Bounce Cases Can Avail Probation of Offenders Act**

The Supreme Court observed that in cases of compounding of offence under Section 138 of the NI Act, if the accused is willing to pay in accordance with the prescribed guidelines, "*the Court may suggest to the parties to go for compounding.*" However, "*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".*

## Guidelines for Compounding Cheque Dishonour Cases

The Supreme Court modified the guidelines on compounding offences under the NI Act by revising those laid down in ***Damodar S. Prabhu v. Sayed Babalal H<sup>7</sup>***. The modified guidelines are as follows:

- (a) If the accused pays the cheque amount before recording of his defence evidence, the Trial Court may allow compounding of the offence without imposing any cost or penalty.
- (b) If the accused pays the cheque amount after recording of his defence evidence but before pronouncement of judgment, the Magistrate may allow compounding on payment of an additional 5% of the cheque amount to the Legal Services Authority or any other authority as the Court deems fit.
- (c) If the payment of the cheque amount is made before the Sessions Court or 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) If the cheque amount is tendered before the Supreme Court, the cost payable shall be 10% of the cheque amount.

## Decision

The Supreme Court allowed the appeal and set aside the impugned order passed by the High Court with a direction to Respondent No.1-Accused to pay Rs.7,50,000 in monthly instalments.

## Comments

The Supreme Court has bolstered the presumptions under Sections 118 and 139 of the NI Act. The accused cannot lightly rely on afterthought defences like alleged financial incapacity of the complainant; only cogent documentary or oral evidence can rebut these presumptions. This protects the integrity of transactions by means of cheques. Perhaps, most importantly, the Court has cleared up confusion over cash loans above Rs.20,000 by ruling that a technical violation of Section 269SS of the IT Act wouldn't make a debt legally unenforceable under the NI Act.

By allowing electronic service via WhatsApp or email, integrating UPI/QR payments, the Court has taken a long-overdue step toward digital justice. These changes should reduce delays and make it easier for ordinary people to resolve disputes without getting caught in months of red tape.

---

<sup>7</sup> Damodar S. Prabhu vs. Sayed Babalal H., (2010) 5 SCC 663.

The revised compounding guidelines reward early payment of debts and even allow for probation of offenders. This makes the law fairer and more flexible, without compromising the rights of creditors.

By encouraging the use of ADR and mediation, the Court is aiming to clear the massive backlog of cases. This is good news for both creditors and the courts, who have struggled for years with slow-moving NI Act proceedings.

\* **Vasanth Rajasekaran** is the Founder and Head of Trinity Chambers, Delhi.

\*\* **Harshvardhan Korada** is a Counsel at Trinity Chambers, Delhi.

For any query, help or assistance, please reach out at [info@trinitychambers.in](mailto:info@trinitychambers.in) or visit us at [www.trinitychambers.in](http://www.trinitychambers.in).

## Authors



**Vasanth Rajasekaran**  
Founder & Head  
[vasanth@trinitychambers.in](mailto:vasanth@trinitychambers.in)



**Harshvardhan Korada**  
Counsel  
[harshvardhan@trinitychambers.in](mailto:harshvardhan@trinitychambers.in)