

Trial of Cheque Bounce Cases

PRACTICE DIRECTIONS/GUIDELINES

Supreme Court/High Court

By
R. Swaroop

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The penal provisions introduced in Negotiable Instruments Act 1881 by incorporating Chapter XVII in the Act, for sure, curtailed the instances of issuing cheques light heartedly or in a playful manner or with dishonest intention and increased the acceptability of the cheques, but the confidence that the new penal provisions generated in the trading community in receiving payment through cheque with a sense of security, faded soon. The punishment provided in the Act proved to be inadequate to deter defaulters and the procedure prescribed for the Courts to deal with such matters was found to be too cumbersome to dispose of such cases expeditiously in a time bound manner. And over the years, Courts were inundated with complaints filed under Section 138 of the Act which could not be decided within a reasonable period and remained pending for a number of years. As per the 213th Report of the Law Commission of India (submitted on 24th November 2008), more than 38 lakh cheque bouncing cases were pending before various Courts in the country as of October 2008. And this was putting an unprecedented strain on our judicial system.

Realizing that the introduction of penal provisions has not achieved desired result for dealing with dishonoured cheques, several changes were made by amending existing provisions and adding new provisions in Chapter XVII of the Act, through legislative amendments, aimed at simplifying the procedure to deal with such

matters and speeding up trials, and even punishment for offenders was enhanced for effective deterrence. But despite all these legislative exercises, there was no sign of any respite from delay in disposal of cases. Taking notice of the situation the Supreme Court issued various guidelines/directions over the years aimed at speedy disposal of these cases and clearance of backlog in courts, but to no avail. The situation did not improve and courts continued to struggle with the humongous pendency of complaints. Disproportionately large number of cheque bounce cases being filed and, gargantuan pendency of these cases in trial Courts across the country for over 15 and 20 years, at present choking our criminal justice system, especially at the level of Magistrates' Courts, and has an adverse effect on disposal of other criminal cases. Thus, while object of incorporating Chapter XVII in the Act introducing penal provisions was to lend credibility to cheque transactions, the effect was that it put enormous burden on the Courts' dockets.

In *Makwana Mangaldas Tulsidas v. State of Gujarat*, AIR 2020 SC 2447: (2020) 4 SCC 695: (2020) 2 SCC (Cri) 630: 2020 (2) ALD (Crl) 628 (SC), while hearing a Criminal Petition submitted in 2016 on dishonour of cheque, a Division Bench of Supreme Court consisting of Chief Justice of India, *S.A. Bobde*, and *L. Nageswara Rao*, J. noted that a dispute of such nature has remained pending for 15 years in various courts, taking judicial time and space up till the

Supreme Court. And that a matter which is supposed to be disposed of summarily by the trial Court in six months, took seven years for this case to be disposed of at trial Court level. Alarmed by long delay in disposal of cheque bounce cases and concerned with pendency of large number of these cases at various levels, which had an adverse effect in disposal of other criminal cases, the Division Bench of the Supreme Court decided to examine the reasons for the delay in disposal of such cases. And directed the Registry to register a *Suo Moto Writ Petition (Criminal)* captioned as “Expeditious Trial of Cases under Section 138 of the Negotiable Instruments Act 1881” and appointed Senior Counsel, *Sidharth Luthra* as *Amici Curiae* and requested *K. Parmeshwar*, Counsel to assist him and during hearing referred the matter to a five-Judge Constitution Bench. The Constitution Bench led by Chief Justice *S.A. Bobde* based on findings and recommendations made by *Amici Curiae* in its preliminary report submitted to Court, the Apex Court passed order dated 16-04-2021 [reported in 2021 (1) ALD (CrI) 921 (SC)] giving a slew of directions to expedite the trial of cheque dishonour cases across the country and requesting High Courts to issue practice directions to all the Courts under their control to streamline the procedure being adopted in cases instituted for the offence of dishonour of cheques under Section 138 of the Negotiable Instruments Act 1881. Pursuant thereto, High Courts including the High Court for the State of Telangana, issued a set of practice directions based on directions/guidelines issued by the Supreme Court in various judgments including those in “Expeditious Trial of Cases under Section 138 of the Negotiable Instruments Act 1881”, to be complied with by the Magistrates and Trial Courts

having jurisdiction to try offences relating to cheque dishonour under Section 138 of the Negotiable Instruments Act 1881, in the State.

All those judgments of the Supreme Court of India, wherein such directions are issued and the order in “Expeditious Trial of Cases under Section 138 of the Negotiable Instruments Act 1881” [reported in 2021 (1) ALD (CrI) 921 (SC)] whereby the High Courts are directed to issue Practice Directions, are compiled and elaborately discussed in the SECOND CHAPTER of this Book, while the THIRD CHAPTER deals with Practice directions issued by High Court for the State of Telangana – The judgments of the Supreme Court referred to in these Practice Directions but not forming part of Second Chapter are discussed at length. Text of Full Judgments discussed in Second and Third Chapters is reproduced in Annexures appended to respective chapters. While FIRST CHAPTER, which is Introductory, takes stock of all the legislative measures taken to deal with Cheque Bounce cases, beginning with incorporation of Chapter XVII in the Act by Act 66 of 1988 introducing penal provisions under Sections 138 to 142, addition of Sections 143 to 147 and amending of Sections 138, 141 and 142 by Amendment Act No.55 of 2002 to the 2015 Amendment (No.26 of 2015) by which Section 142 was further amended and a new Section 142A was inserted, in the FOURTH CHAPTER apart from reproducing full text of Negotiable Instruments Act 1881, all relevant statutory provisions of other Acts to which reference is made in Second and Third Chapters are extracted for ready reference. It is hoped that this book will serve as a handbook of Practice Directions/Guidelines for trial of cheque bounce cases.