



Sweeping Procedural Reforms under Section 138 of the Negotiable Instruments Act, 1881 by Supreme Court

Authored by: Lokesh Bhola, Managing Partner and Abhishekh Singh Chauhan, Associate

The Supreme Court in its landmark judgment *Sanjabij Tari v. Kishore S. Borcar & Another*¹ has not only reaffirmed fundamental principles governing proceedings under Section 138 of the Negotiable Instruments Act, 1881 ("**NI Act**"), but also issued an extensive set of procedural and substantive guidelines intended to streamline the handling of cheque dishonour cases across the country. The judgment is significant both for its reaffirmation of the presumptions under Sections 118 and 139 of the NI Act and for its pragmatic directions aimed at reducing the staggering pendency of such cases in courts.

Brief Facts

The Appellant, Sanjabij Tari, had advanced a friendly loan of Rs.6,00,000/- (Rupees Six Lakhs only) to the Respondent, Kishore S. Borcar, who issued a cheque towards repayment. The cheque was dishonoured for insufficiency of funds, leading to prosecution under Section 138 of the NI Act. Both the Trial Court and the Sessions Court convicted the Accused/Respondent, holding that the presumption under Sections 118 and 139 of the NI Act had not been rebutted. However, the Bombay High Court at Goa, in a revisional proceeding, acquitted the Accused/Respondent *ex-parte*, holding that the Complainant/Appellant lacked the financial capacity to extend the loan.

Challenging the High Court's decision, the Complainant/Appellant approached the Hon'ble Supreme Court, contending that the High Court had exceeded its revisional jurisdiction and ignored concurrent factual findings of the lower courts.

Findings and Reasoning of the Supreme Court

The Supreme Court allowed the Appeal, restoring the conviction and sentencing order of the Trial Court. It held that once the execution of the cheque is admitted, presumptions arise under Sections 118 and 139 of the NI Act that the cheque was issued for consideration and in discharge of a legally enforceable debt or liability. These presumptions, though rebuttable, place the initial onus on the accused to disprove the existence of such liability.

The Court rejected the Respondent's argument questioning the Complainant's/Appellant's financial capacity, noting that no independent evidence or witnesses had been produced to substantiate such a defence. It reiterated that mere suggestions or conjecture cannot rebut the statutory presumptions. The accused's defence that a blank signed cheque had been given to enable the complainant to obtain a loan from a bank was termed "unbelievable and absurd."

The Court further clarified that a cash transaction exceeding Rs.20,000/- (Rupees Twenty Thousand only) in contravention of Section 269SS of the Income Tax Act, 1961 does not render the debt legally unenforceable for the purpose of Section 138 NI Act proceedings. Breach of

¹ 2025 INSC 1158



Section 269SS may invite penalty under the Income Tax Act but does not invalidate the underlying transaction.

The Hon'ble Supreme Court strongly criticized the practice of certain courts treating Section 138 NI Act proceedings as mere civil recovery suits and disregarding the statutory presumptions. It emphasized that such an approach defeats the object of Chapter XVII of the NI Act, which is to enhance the credibility of cheques and ensure financial discipline.

Guidelines and Procedural Reforms Issued

Recognising the overwhelming pendency of cheque dishonour cases, constituting nearly half of the trial court caseload in metropolitan cities, the Hon'ble Apex Court issued a comprehensive set of directions to ensure expeditious and efficient disposal. These include:

The Court directed that summons in Section 138 NI Act complaints shall no longer be confined to traditional modes of service but must also be effected *dasti* by the complainant and through electronic means, including e-mail, WhatsApp, or similar applications, in accordance with the provisions of the *Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS)*. Complainants are required to furnish verified details of the accused such as e-mail and mobile number and to file an affidavit of service, with any false declaration inviting penal action.

Further, to facilitate early settlement, each District Court is to establish secure online payment mechanisms, such as QR codes or UPI links, enabling the accused to make immediate payment of the cheque amount upon receipt of summons.

Most notably, the Supreme Court introduced a new mandatory format to be followed in all Section 138 NI Act complaints. As set out in paragraph 36(D) of the judgment, every complaint must now begin with a standardised synopsis, to be filed immediately after the index and before the body of the complaint. This synopsis must contain essential particulars such as:

- details of the complainant and accused (including, where applicable, the names of directors or partners of a company or firm);
- cheque particulars (number, date, amount, and bank details);
- date and reason of dishonour;
- particulars of the statutory notice (including proof of service);
- date of accrual of cause of action and jurisdiction invoked;
- details of any other pending complaints between the same parties; and
- reliefs sought, including whether interim compensation under Section 143A is claimed.

The complainant or authorised representative must sign the synopsis, which shall henceforth form part of the record. The Court clarified that this format is intended to bring uniformity, reduce clerical delays, assist digital tracking, and facilitate efficient case management.

In addition, the Supreme Court endorsed the view of the Karnataka High Court that no pre-cognizance summons is required under Section 223 of the BNSS for complaints under the NI Act. The Court also emphasised that summary trial is the norm for such complaints, and that reasons must be recorded before converting them into summons trials.



To further expedite disposal, the trial court may, at the first appearance of the accused, record responses to key questions regarding ownership and issuance of the cheque, liability, and willingness to compound, under Section 251 CrPC / Section 274 BNSS. Courts have been encouraged to invoke Section 143A of the NI Act to order interim deposits and to promote compounding and mediation.

Finally, to ensure systemic oversight, each District and Sessions Judge in Delhi, Mumbai, and Kolkata is directed to maintain a digital dashboard reflecting pendency, monthly disposal rates, compounding statistics, and stage-wise progress of Section 138 cases.

All these procedural reforms, including the adoption of the new complaint format, are to be implemented by 1 November 2025.

Modified Compounding Guidelines

Recognising the fall in interest rates and the need for pragmatic reform, the Court revisited its earlier guidelines in *Damodar S. Prabhu v. Sayed Babalal H.* (2010) 5 SCC 663. It reduced the graded compounding costs as follows:

- **No Cost** if the accused pays the cheque amount before recording of defence evidence.
- **5% of Cheque Amount** if payment is made after defence evidence but before judgment.
- **7.5% of Cheque Amount** if payment is made before the Sessions Court or High Court.
- **10% of Cheque Amount** if payment is made before the Supreme Court.

The Court clarified that these measures are designed to promote early settlement, reduce docket pressure, and ensure that the purpose of Section 138 proceedings—recovery of money and preservation of commercial trust—is effectively achieved.

Conclusion

The judgment in *Sanjabij Tari v. Kishore S. Borcar and Another* represents a landmark moment in the evolution of cheque dishonour jurisprudence. It reinforces the statutory presumptions under the NI Act, curtails unwarranted judicial interference in revisional jurisdiction, and introduces a comprehensive administrative framework to ensure faster and more uniform handling of Section 138 NI Act cases.

By recognising the quasi-civil nature of such offences and linking enforcement with efficiency and settlement, the Supreme Court has sought to restore the cheque's status as a reliable instrument of commerce while simultaneously easing the strain on India's trial courts. The Court's introduction of a mandatory synopsis format for Section 138 complaints, coupled with its digital, procedural, and compounding reforms, marks a decisive step toward a more streamlined, technology-integrated, and settlement-oriented justice system.
