

## HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

**ROC.No.14/SO/2022**

**Dated: 10/01/2022**

### **CIRCULAR No.1/2022**

Pursuant to the Order dated 16.04.2021 of the Hon'ble Supreme Court of India in *Suo Motu Writ Petition (Crl.) No.2 of 2020 titled In Re: Expeditious Trail of Cases Under Section 138 of N.I. Act, 1881* (2021 SCC OnLine SC 325), wherein High Courts have been requested to issue practice directions to all the Courts under their control to cut down delays in disposal of cases instituted for the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter "the Act"), the following Practice Directions are issued to all the Courts dealing with cases under Section 138 of the Act in the State of Andhra Pradesh.

#### **PRACTICE DIRECTIONS**

**1. Filing of complaint and scrutiny thereof:—** On the day when a complaint under Section 138 of the Act is presented, it shall be scrutinized and, if the complaint is accompanied by an affidavit, and the affidavit and documents, if any, are found to be in order, may take cognizance and direct issuance of summons. (*Indian Bank Assn. v. Union of India* (2014) 5 SCC 590).

**2. Averment that no other complaint filed:—** It is mandatory for the complainant to disclose that no other complaint has been filed in any other court in respect of the same transaction. Such a disclosure should be made on a sworn affidavit which should accompany the complaint filed under Section 200 of the Cr.P.C. (*Damodar S. Prabhu v. Sayed Babalal H.* (2010) 5 SCC 663).

**3. Physical presence of complainant or witnesses in court not mandatory to decide whether or not to issue process:—** It is open to Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the Act and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present before the Court, nor to examine the complainant or his witness upon oath for taking decision whether or not to issue process on the complaint. (*A.C. Narayanan v. State of Maharashtra* (2014) 11 SCC 790).

**4. Complaint may be filed by power-of-attorney holder:—** Filing a complaint under Section 138 of 'the Act' through power of attorney is perfectly legal and competent. (*A.C. Narayanan v. State of Maharashtra* (2014) 11 SCC 790).

**5. Power-of-attorney holder can prove the contents of the complaint:—** A power-of-attorney holder can depose and verify on oath before the court in order to prove the contents of the complaint. However, the power-of-attorney holder must have witnessed the transaction as an agent of the payee/holder in due course or possess due knowledge regarding the transaction. (*A.C. Narayanan v. State of Maharashtra*, (2014) 11 SCC 790).

**6. Specific assertion as to the knowledge of the power-of-attorney to be made:—** Complainant is required to make a specific assertion as to the knowledge of the power-of-attorney holder in the transaction explicitly in the complaint and the power-of-attorney holder who has no knowledge regarding the transactions cannot be examined as a witness in the case. (*A.C. Narayanan v. State of Maharashtra* (2014) 11 SCC 790).

**7. Power-of-attorney cannot delegate functions under the GPA:—** The functions under the general power of attorney cannot be delegated to another person without a specific clause permitting the same in the power of attorney. Nevertheless, the general power of attorney itself can be cancelled and be given to another person. (*A.C. Narayanan v. State of Maharashtra*, (2014) 11 SCC 790).

**8. Inquiry under Section 202(1) of the Cr.P.C., mandatory where accused resides beyond territorial jurisdiction:—** Where an accused resides beyond the territorial jurisdiction of the Court, it shall follow Section 202(1) of the Cr.P.C., which mandates inquiry for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused. (*In Re: Expeditious Trial of Cases under Section 138 N.I. Act* 2021 SCC OnLine SC 325)

**9. For such inquiry, evidence may be given by affidavit:—** For the purpose of such inquiry, evidence of the complainant may be given by affidavit, and evidence of witnesses on behalf of the complainant by affidavits shall be permitted. However, if the Magistrate himself holds such an inquiry, it is not compulsory that the Magistrate should examine witnesses. In suitable cases, Magistrate can examine documents for satisfaction as to the sufficiency of grounds for proceeding against the accused under Section 202 of the Cr.P.C. (*In Re: Expeditious Trial of Cases under Section 138 N.I. Act* 2021 SCC OnLine SC 325).

**10. Complainant to give his bank account number and e-mail ID of accused:—** In every complaint under Section 138 of 'the Act', it may be desirable that the complainant gives his bank account number and if possible e-mail ID of the accused. If e-mail ID is available with the bank where the accused has an account, such bank, on being required, should furnish such e-mail ID to the payee of the cheque. (*Meters and Instruments (P) Ltd. v. Kanchan Mehta* (2018) 1 SCC 560).

**11. Complaint to be initially registered as Summary Trial Case:—** Every complaint filed under Section 138 of 'the Act' shall initially be registered as a Summary Trial Case. (*Indian Bank Assn. v. Union of India*, (2014) 5 SCC 590 and *In Re: Expeditious Trial of Cases under Section 138 N.I. Act* 2021 SCC OnLine SC 325).

**12. Service of summons:—** Magistrate should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address given by the complainant. Court, in appropriate cases, may take the assistance of the police or the nearby court to serve summons on the accused. For appearance, a short date be fixed. If the summons is received back unserved, immediate follow-up action be taken. (*Indian Bank Assn. v. Union of India* (2014) 5 SCC 590).

**13. Summons to indicate compounding of offence:—** It is to be indicated in the summons to the accused that the accused may make an application for compounding of the offence at the first hearing of the case and, if such an application is made, court may pass appropriate orders at the earliest. (*Indian Bank Assn. v. Union of India* (2014) 5 SCC 590).

**14. Summons to contain amount to be deposited for closure of proceedings even without appearance of accused:—** In every summons issued to the accused, it may be indicated that if the accused deposits the amount, which should be assessed by the court having regard to the cheque amount and interest/cost, specified in the summons by the date specified therein, the accused need not appear unless required, and proceedings may be closed subject to any valid objection of the complainant. If the accused complies with such summons and informs the court and the complainant by e-mail, court can ascertain objections, if any, of the complainant and close the proceedings unless it becomes necessary to proceed with the case. In such a situation, presence of the accused can be required, unless presence is otherwise exempted subject to such conditions as may be considered appropriate. (*Meters and Instruments (P) Ltd. v. Kanchan Mehta* (2018) 1 SCC 560).

**15. Service of summons in one complaint forming part of a transaction to be deemed service in other complaints relating to the same transaction:—** Court shall treat the service of summons in one complaint under Section 138 of 'the Act' forming part of a transaction as deemed service in respect of all the complaints filed before the same court relating to dishonor of cheques issued as part of the said transaction. (*In Re: Expeditious Trial of Cases under Section 138 N.I. Act* 2021 SCC OnLine SC 325).

**16. Court to direct accused to furnish bail bond:—** Court should direct the accused, when he appears, to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251 of the Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) of 'the Act' for recalling a witness for cross-examination. (*Indian Bank Assn. v. Union of India* (2014) 5 SCC 590).

**17. Magistrate has no power to review or recall process:—** Trial Court is not conferred with power either to review or recall the order of issuance of process. (*In Re: Expeditious Trial of Cases under Section 138 N.I. Act* 2021 SCC OnLine SC 325).

**18. Where trial court lacks jurisdiction to try the case, proceedings to be stayed and case to be submitted to the Chief Judicial Magistrate or to the Magistrate having jurisdiction:—** In case the Trial Court lacks jurisdiction to issue process for the complaint, proceedings shall be stayed and the case shall be submitted to the Chief Judicial Magistrate or such other Magistrate having jurisdiction, in exercise of the power under Section 322 of the Cr.P.C. (*In Re: Expeditious Trial of Cases under Section 138 N.I. Act* 2021 SCC OnLine SC 325).

**19. Accused to disclose specific defence if contests the case:—** The accused, who wants to contest the case, must be required to disclose specific defence for such contest. (*Meters and Instruments (P) Ltd. v. Kanchan Mehta* (2018) 1 SCC 560).

**20. Trial shall normally be summary:—** Procedure for trial of cases under Chapter XVII of 'the Act' has normally to be summary. Discretion of the Magistrate under the second proviso to Section 143 of 'the Act' to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the fact that apart from the sentence of imprisonment, court has jurisdiction under Section 357(3) of the Cr.P.C., to award suitable compensation with default sentence under Section 64 of the IPC with further power of recovery under Section 431 of the Cr.P.C., and having regard to the amount of the cheque, financial capacity and conduct of the accused or any other circumstances. With this approach, prison sentence of more than one year may not be required in all cases. (*Meters and Instruments (P) Ltd. v. Kanchan Mehta* (2018) 1 SCC 560).

**21. Discretion to convert to summons trial to be exercised with due care and caution and mechanical conversion shall be avoided:—** Discretion conferred by the second proviso to sub-section (1) of Section 143 of 'the Act' to convert summary trial to summons trial is to be exercised with due care and caution and cogent and sufficient reasons shall be recorded before such conversion. Mechanical conversion shall be avoided. (*In Re: Expeditious Trial of Cases under Section 138 N.I. Act* 2021 SCC OnLine SC 325).

**22. Court has no power to discharge the accused under Section 258 of the Cr.P.C:—** The judgment in *Meters and Instruments Private Limited Vs. Kanchan Mehta* {(2018) 1 SCC 560} in so far as it conferred power on the trial Court to discharge an accused is not good law as held in *In Re: Expeditious Trial of Cases Under Section 138 Negotiable Instruments Act*. The words "as far as may be" in Section 143(1) of 'the Act' are used only in respect of applicability of Sections 262 to 265 of the Cr.P.C., for summary procedure to be followed for trials under Chapter XVII of the Act but do not confer power to discharge the accused. Hence, Magistrate has no power to discharge the accused either in a summary trial or a summons trial. (*In Re: Expeditious Trial of Cases under Section 138 N.I. Act*).

**23. Affidavits in lieu of chief-examination:—** Court has option of accepting affidavits of witnesses instead of examining them in the court. Witnesses to the complaint and the accused must be available for cross-examination as and when there is direction to this effect by the court. (*Indian Bank Assn. v. Union of India* (2014) 5 SCC 590).

**24. Affidavit of complaint to contain formal proof of documents:—** Affidavit of the complainant may also contain formal proof of the documents. In case, however, accused raises any objections with regard to the validity or sufficiency of the proof of the documents submitted along with the affidavit and if the objections are sustained by the court, it is always open to the



prosecution to have the witness concerned summoned and get the lacuna in the proof of the documents corrected. (*Mandvi Cooperative Bank Ltd. v. Nimesh B. Thakore* (2010) 3 SCC 83).

**25. Accused not to be permitted to file chief-examination in the form of affidavit:—** Accused shall not be permitted to file his chief examination evidence in the form of affidavit. (*Mandvi Cooperative Bank Ltd. v. Nimesh B. Thakore*, (2010) 3 SCC 83).

**26. Appellate Court to make effort to settle dispute through mediation:—** Court before which appeals against judgments in complaints under Section 138 of 'the Act' are pending shall make efforts to settle the disputes through mediation. (*In Re: Expeditious Trial of Cases under Section 138 N.I. Act*).

**27. Compounding to be encouraged at initial stage:—** The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged, but compounding at a later stage is not debarred subject to appropriate compensation as may be found acceptable to the parties or the court. (*Meters and Instruments (P) Ltd. v. Kanchan Mehta* (2018) 1 SCC 560)

**28. Plea bargaining to be considered:—** It will also be open to the court to consider the provisions of plea bargaining. (*Meters and Instruments (P) Ltd. v. Kanchan Mehta*, (2018) 1 SCC 560).

**29. Even in the absence of consent, compounding may be permitted:—** Though compounding requires consent of both parties, even in the absence of such consent, court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused, in exercise of its powers under Section 143 of 'the Act' read with Section 258 of the Cr.P.C., where the cheque amount with interest and costs as assessed by the court is paid by a specified date. (*Meters and Instruments (P) Ltd. v. Kanchan Mehta*, (2018) 1 SCC 560)

**30. Trial to be on day-to-day basis and endeavour to conclude it within six months:—** Trial can be on day-to-day basis and endeavour must be to conclude it within six months. (*Meters and Instruments (P) Ltd. v. Kanchan Mehta* (2018) 1 SCC 560).

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REGISTRAR (JUDICIAL)

**To:**

1. The Principal Private Secretary to the Hon'ble the Chief Justice, High Court of Andhra Pradesh {with a request to place the circular before the Hon'ble the Chief Justice for His Lordship's kind perusal}.
2. All the Personal Secretaries to the Hon'ble Judges {with a request to place the circular before Hon'ble Judges for their Lordships' kind perusal}.
3. All the Unit Heads in the State {with a request to circulate the circular to all the Judicial Officers in their respective units}.
4. All the Registrars, High Court of Andhra Pradesh, Amaravati.
5. The Member Secretary, A.P.State Legal Services Authority, High Court Buildings, Amaravati.
6. The Sections Officers, E-Section and O.P.Cell.