



THE HIGH COURT OF KERALA

Ernakulam-682031

Email: d1section.hc-ker@gov.in

Phone: 0484 2562985

Fax: 0484 256245

DI-3/ 24938 / 2020

Dated: 26.07.2021

OFFICIAL MEMORANDUM

Sub: Practice directions and other guidelines for speedy trial of cases under Section 138 of Negotiable Instruments Act, 1881-reg.

Ref: Order dated 16.04.2021 of the Honourable Supreme Court in Suo Motu W.P(CrI) No.2/2020 titled *In Re: expeditious Trial of cases under Section 138 of NI Act, 1881*

.....

The Honourable Supreme Court, vide order cited above, has issued a set of directions to expedite the trial of cheque dishonour cases under Section 138 NI Act. In line with the order of the Honourable Apex Court mentioned above, the following directions are issued for strict compliance.

1(i) Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.

31/7
1(ii) For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.

1(iii) The Trial Court shall treat service of summons in one complaint under section 138 N.I. Act forming part of a transaction, as deemed service in respect of all complaints filed before the same Court relating to dishonor of cheques issued as part of the same transaction.

1(iv) The Magistrate having jurisdiction to try offences under the Negotiable Instruments Act, 1881 (in short, N.I. Act), shall record cogent and sufficient reasons before converting a trial of complaint under Section 138 of the N.I. Act from summary trial to summons trial in exercise of power under the second proviso of section 143 of N.I. Act. Due care and caution shall be exercised in this regard, and the conversion of summary trial to summons trial shall not be in a mechanical manner.

1(v) The Appellate Courts before which appeals against the judgments in complaints under Section 138 of N.I. Act are pending are directed to make an effort to settle the disputes through mediation.

The Honourable Supreme Court has also observed that

2(i) Judgments of the Court in **Adalat Prasad v Rooplal Jindal and others (2004) 7 SCC 338** and **Subramaniam Sethuraman v State of Maharashtra (2004) 13 SCC 324** have interpreted the law correctly and the order reiterates that there is no inherent power of Trial Courts to review or recall the issue of summons. This does not affect the power of the Trial Court under Section 322 of the Code to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint.

2(ii) Section 258 of the Code is not applicable to complaints under Section 138 of the Act and findings to the contrary in **Meters and Instruments Private Ltd and Another v Kanchan Mehta and others (2018) 1 SCC 560** do not lay down correct law. To conclusively deal with this aspect, amendment to the Act empowering

nder
ce

the Trial Courts to reconsider/recall summons in respect of complaints under Section 138 shall be considered by the Committee constituted by the Court on 10.03.2021.

(By Order)



P.G. Ajithkumar

Registrar (District Judiciary)

To

The District Judges and the Chief Judicial Magistrates

(They shall bring the matter to the notice of the Judicial officers in their districts)

Copy to:

The Director, Kerala Judicial Academy, Athani

Sri. G. Unnikrishnan, Secretary, Rule Committee,
GTWRA 1, 33/1947, 'Vigneswaram', Ganapathy Temple Road,
Edappally, Ernakulam - 682024.

The ARS, High Court (2 copies)

The stock file