

CRL.OP(MD). Nos.19778, 19790, 19621, 19459, 19575, 19403, 19563, 19614 and 19620 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	30.01.2025
Delivered on	12.02.2025

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.OP(MD). Nos.19778, 19790, 19621, 19459, 19575, 19403, 19563,
19614 and 19620 of 2022

and

CrI.M.P.(MD) Nos.13428, 13371, 13597, 13435, 13606, 13189, 13233,
13389 of 2022

CrI OP(MD) No.19778 of 2022

1.M/s.Ultimate Computer Care
Rep. by its Proprietor
Apibo

2.Apibo ... Petitioners /Accused Nos.1 & 2

Vs.

M/s.S.M.K.Systems
Authorized Signatory and Proprietor
R.Saravanakumar

... 1st Respondent /
Complainant

COMMON PRAYER: Criminal Original Petitions filed under Section

482 of the Code of Criminal Procedure, to call for the entire records



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relating to C.C.Nos.122, 123, 130, 131, 132, 133, 134, 135 and 136 of 2022 pending on the file of the learned Judicial Magistrate, Aruppukottai, Viruthunagar District and quash the same against the above petitioners/accused.

For Petitioners : Mr.KA.Raamakrishnan
(in all petitions)

For Respondent : Mr.M.Jothibasu
(in all petitions)

COMMON ORDER

These criminal original petitions have been filed to quash the proceedings pending in C.C.Nos.122, 123, 130, 131, 132, 133, 134, 135 and 136 of 2022, on the file of the learned Judicial Magistrate, Aruppukotai.

2. The respondent in each quash petition has filed a private complaint against the petitioners for offence under Section 138 of the “Negotiable Instruments Act, 1881” (hereinafter referred to as the “NI Act” for brevity) on the ground that the respondent has supplied

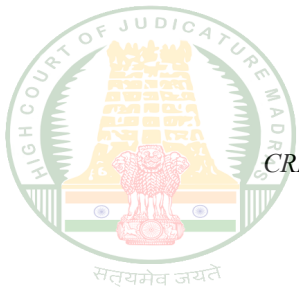


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materials to the petitioners and there was an enforceable liability towards which cheques were issued and when these cheques were presented, it was dishonored with endorsement “exceeds arrangement”. Thereafter, legal notice was issued and in some cases it was refused and in other cases, it was received and no reply notice was given nor the cheque amount was paid. The same resulted in the filing of individual private complaints which have been put to challenge in these quash petitions.

3. When the matter came up for hearing on 31.01.2025, this Court passed the following order:

*“The main ground that was urged by the learned counsel for the petitioner is that the subject cheques were alleged to have been issued for the period from 03.01.2022 to 27.04.2022 and whereas, during this period, the petitioner has made various payments which is reflected in the bank entries. Therefore, it was contended that where part payment has been made, the cheques cannot be presented unless an endorsement is made in the cheque as mandated under Section 56 of the Negotiable Instruments Act. The learned counsel in order to substantiate his submission relied upon the judgment of this Court in **Srinivasha Fashions Pvt. Ltd., & Srinivasa Exports International v. N.A.S.Periyasamy,***



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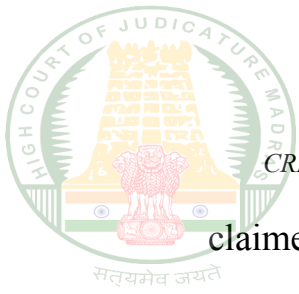
reported in 2024 (2) MWN (Cr.) DCC 5 (Mad.).

2. This Court normally does not look into the defense documents at the time of dealing with the quash petition. The only exception is where the materials that are relied upon are sterling in quality and is of unimpeachable character. The bank entries that have been put forth before this Court will fall under this category.

3. The learned counsel for the respondent sought for sometime. Post this case on 30.01.2025.”

4. The learned counsel for the respondent submitted that in none of these cases, the petitioners issued a reply notice and that apart, the various payments that were made by the petitioners is not relatable to any particular cheque and therefore, the operation of Section 56 of the Negotiable Instruments Act will not come into play.

5. The learned counsel for the petitioners submitted that in nine private complaints, 23 cheques are involved and the sum total of all those cheques works out to Rs.4,72,041/-. Towards this liability, the petitioners have made various payments for the period from 11.01.2022 to 22.02.2022 to the tune of Rs.4,47,941/-. Therefore, the total liability as

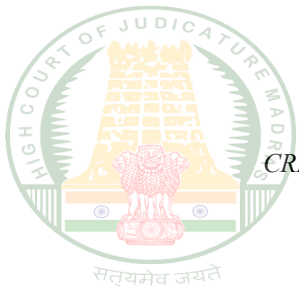


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claimed by the respondent is unsustainable and Section 56 of the Negotiable Instruments Act will clearly apply to the facts of the present case.

6. While dealing with the above submission, this Court has to rely upon the judgment of the Supreme Court in ***Dashrathbhai Trikambhai Patel v. Hitesh Mahendrabhai Patel***, reported in **2022 (6) CTC 467**. The relevant portions are extracted hereunder:

“9. Under Section 56 read with Section 15 of the Act, an endorsement may be made by recording the part-payment of the debt in the cheque or in a note appended to the cheque. When such an endorsement is made, the instrument could still be used to negotiate the balance amount. If the endorsed cheque when presented for encashment of the balance amount is dishonoured, then the drawee can take recourse to the provisions of Section 138. Thus, when a part-payment of the debt is made after the cheque was drawn but before the cheque is encashed, such payment must be endorsed on the cheque under Section 56 of the Act. The cheque cannot be presented for encashment without recording the part payment. If the unendorsed cheque is dishonoured on presentation, the offence under Section 138 would not be attracted since the cheque does not represent a legally enforceable



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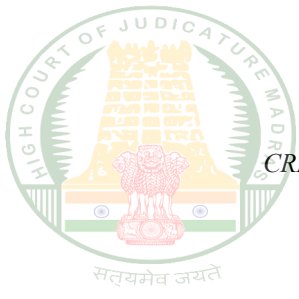


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debt at the time of encashment.

30. In view of the discussion above, we summarise our findings below:

- (i) For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation;*
- (ii) If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque;*
- (iii) When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section – 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under Section 138 will stand attracted;*
- (iv) The first respondent has made part-payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the 'legally enforceable debt' on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds; and*



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(v) *The notice demanding the payment of the 'said amount of money' has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138. Since in this case, the first respondent has not committed an offence under Section 138, the validity of the form of the notice need not be decided."*

7. On a careful reading of the above judgment, it is seen that when a part-payment of the debt in the cheque is paid by the drawer of the said cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made can only be used to negotiate the balance amount. It is thus clear that the amounts that are paid must be relatable to the concerned cheque which is sought to be put against the accused persons.

8. In the case in hand, certain payments have been made by the petitioners for the period from 11.01.2022 to 22.02.2022. The cheques have been issued for the period from 03.01.2022 to 27.04.2022. Unless

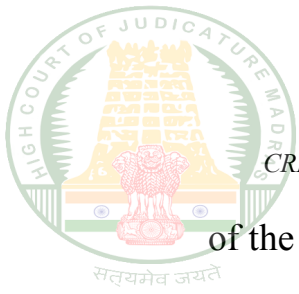


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and otherwise there is a direct correlation between the payment made

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relatable to the concerned cheque, Section 56 of the Act will not stand attracted. The concept behind Section 56 of the Act is that the cheque is given for a higher sum and whereas, by the time it is presented a part-payment is made and therefore, the cheque for the higher sum does not reflect the actual liability and therefore to negotiate and receive the balance amount, the endorsement is insisted on the cheque as prescribed under Section 56 of the Act. If the payments made are not directly relatable to any cheque that has been issued and those are regular payments which were made in the course of business, the question of discharge becomes a question of fact which can be dealt with only in the course of trial. It is not possible for this Court to make any roving enquiry to relate the payments to the cheques in question, while exercising jurisdiction under Section 482 of Cr.P.C. This is more so since the cheques which were issued for the period from 03.01.2022 to 27.04.2022 are nearly 23 in number, and the bank statement relied upon is for the period from 11.01.2022 to 22.02.2022. Obviously, these entries cannot be correlated with any particular cheque. When that is not possible, the operation of Section 56 of the Act will not come to the aid



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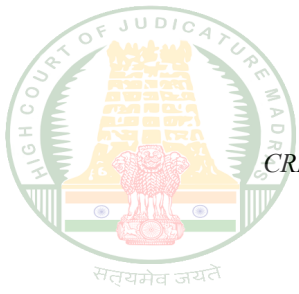
of the petitioners.

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9. In the light of the above discussion, this Court does not find any ground to quash the proceedings pending before the Court below. It is made clear that the petitioners can raise all the grounds before the Court below and the same will be considered on its own merits and in accordance with law. Any observations made by this Court in this order will have no bearing and it is left open to the trial Court to deal with the case on its own merits and in accordance with law.

10. Before parting with these cases, this Court cannot help but observe that this case has now remained pending on the file of the Magistrate for nearly 3 years. Judicial notice can be taken of the fact that cases under Section 138 of the Negotiable Instruments Act, 1881 are clogging the Magistrate Courts for years on account of various reasons. The very purpose of the introduction of Chapter XVII of the Negotiable Instruments Act, 1881 would be defeated on account of the delay involved in the disposal of such matters.

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11. The Supreme Court has, from time to time, sought to address the problem by issuing various directions. In ***Indian Bank Assn. v. Union of India, (2014) 5 SCC 590***, directions were issued as regards the scrutiny of complaints, taking cognizance and issuance of summons etc. A few years later in ***Meters and Instruments (P) Ltd. v. Kanchan Mehta, (2018) 1 SCC 560***, directions were given by the Supreme Court for service of summons, expeditious trial, compounding etc. Shortly thereafter, in ***Makwana Mangaldas Tulsidas v. State of Gujarat, (2020) 4 SCC 695*** the Supreme Court directed that a suo motu writ petition be registered to give directions for expeditious trial of cases under Section 138. The matter was, thereafter, placed before a Constitution Bench in ***Re: Expeditious Trial of Cases Under Section 138 of NI Act, 1881, In re, (2021) 16 SCC 116***, and further directions were issued. The High Court was, thereafter, directed to issue practice directions as regards certain aspects.

12. It was pointed out by the Supreme Court that as on 13-4-2022, this pendency has increased to 33,44,290. This is an increase in pendency of 7,37,124 cases in a period of just over 5 months. As per the data

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available on 8-11-2021, the NI Act cases contribute to 8.81% of the total criminal cases pending in the courts. Further, 11.82% of the total criminal cases that are stagnating are due to appearance/service related issues in NI Act cases.

13. Despite the aforesaid directions which are undoubtedly law within the meaning of Article 141 of the Constitution, this Court has found, time and again, that there is a considerable slip between the law as declared and the law that is practically administered day-to-day in the Magistrate Courts. Lack of effective oversight mechanisms have resulted in a situation where the directions of the Supreme Court have largely remained paper directives. That apart, though the Supreme Court in ***Re: Expeditious Trial of Cases Under Section 138 of NI Act, 1881, In re, (2021) 16 SCC 116***, has requested the High Court to issue practice directions, no further action has been taken despite the passage of nearly 4 years.

14. To remedy this very unfortunate state of affairs, this Court has thought it fit to issue the following directions, consolidating the earlier

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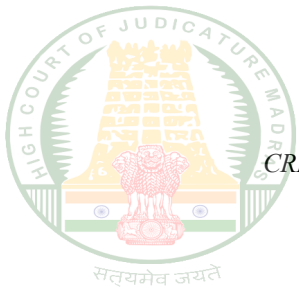


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directions of the Supreme Court in *Indian Bank Assn. v. Union of India*, (2014) 5 SCC 590, *Meters and Instruments (P) Ltd. v. Kanchan Mehta*, (2018) 1 SCC 560 and *Re: Expeditious Trial of Cases Under Section 138 of NI Act, 1881, In re*, (2021) 16 SCC 116.

I. ENTERTAINING COMPLAINTS

- Upon filing of the complaint and supporting documents, the Court shall scrutinize the complaint under Section 138 of the Negotiable Instruments Act, 1881 and the accompanying affidavit and documents.
- The Registry of the Court shall ensure that the complaint and documents are also accompanied by a process memorandum under Rule 29(13) of the Criminal Rules of Practice, 2019 with sufficient number of copies of complaint for service on each accused together with duly stamped envelopes and acknowledgement cards/proof of delivery bearing the address of the accused persons as shown in the complaint for the purpose of dispatching the same by Speed Post with proof of delivery or Registered Post with Acknowledgment Due.
- At the stage of numbering the complaint, scrutiny must be limited



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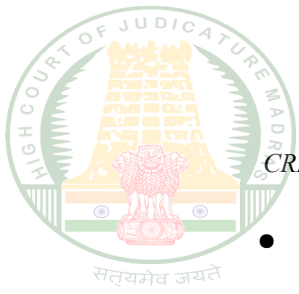
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to examining whether the complaint is as per the prescribed format with necessary averments to constitute an offence under Section 138, and is accompanied by the requisite documents and process memorandum. The Court is not required to conduct a roving enquiry into any other aspect(s).

- The practice of receiving complaints and adjourning the same for long periods under the pretext of “check and call” shall be strictly avoided. If scrutiny cannot be completed by the next working day, it should be completed in no more than 7 working days thereafter.

II. ISSUANCE OF PROCESS

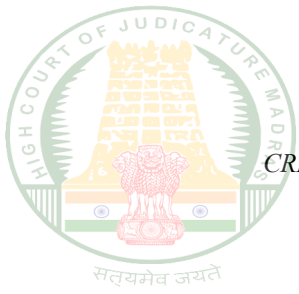
- Before issuing process, the Magistrate is not bound to call upon the complainant to remain present before the Court and to examine him upon oath. As a rule, the Magistrate may rely upon the verification in the form of affidavit filed by the complainant in support of the complaint, which shall be treated as a sworn statement, to issue process. In exceptional cases, such as where the Court entertains a genuine doubt about the veracity of the statements made in the complaint etc., it may summon the complainant and witnesses, if any and examine them on oath.



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- Where the accused or some of them reside outside the territorial jurisdiction of the Court, the Magistrate shall conduct an inquiry as mandated by Section 225 BNSS, 2023 and proceed against such accused only upon being satisfied that there are sufficient grounds to proceed against him/them. The requisite satisfaction must be demonstrable from the order issuing process.
- Section 225(2) of the Code is inapplicable to complaints under Section 138 in respect of examination of witnesses on oath. The evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses. In suitable cases, the Magistrate can examine documents for satisfaction as to the sufficiency of grounds for proceeding under Section 225.
- The Court should adopt a pragmatic and realistic approach while issuing process. In cases of juristic entities, except in cases where the Director/Partner etc is a signatory to the cheque, in respect of other accused who are sought to be roped in with the aid of Section 141 of the N.I Act, 1881, the Magistrate shall not issue process unless he is satisfied about the complicity of such accused



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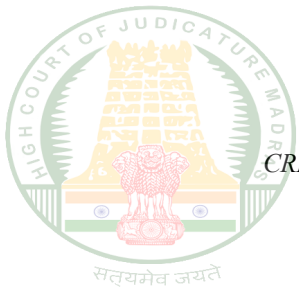
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having regard to the express averments in the complaint as to how and in what manner such person/accused is involved in the day to day affairs/Management of the company.

- Having regard to the fact that the N.I Act has prescribed a special procedure, it is a special law within the meaning of Section 5 of the BNSS, 2023. Hence, the procedure of hearing the accused at the stage of taking cognizance as prescribed in the proviso to Section 223 BNSS shall not apply to complaints under Section 138 of the N.I Act, 1881.

III. SUMMONS

- Upon issuance of process, summons shall be issued through RPAD. In addition, the Court may issue summons to the email address of the accused and witness, if available, as contemplated under Rule 29(20) of the Criminal Rules of Practice, 2019.
- In exceptional cases, the Court may direct service of summons through the police. Where the Police is not able to serve summons, it shall be returned to the Court on the date mentioned in the summons together with an affidavit sworn by the police concerned detailing the steps taken by him for effecting service on the

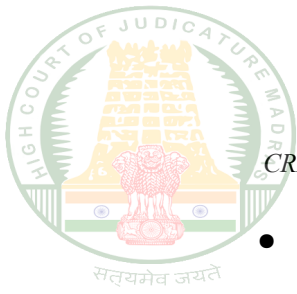


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witness or accused, as the case may be, as required by Rule 29(11)

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- For notice of appearance, a short date, no later than 4 weeks must be fixed. If the summons is received unserved, immediate follow-up action must be taken by directing the complainant to pay the process charges afresh within one week. If no steps are taken, the complaint shall be dismissed under Section 226 BNSS.
- If summons is returned with the endorsement that the accused or the witness refused to take delivery of summons, the Court issuing the summons may declare under Section 144 (2) of the N.I Act that the summons has been duly served.
- Where multiple complaints forming part of a transaction are filed against the same accused in the same Court, the Court may treat service of summons in one complaint under Section 138 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. The Court must ensure that all such cases are tagged and posted together on the same day for every hearing.



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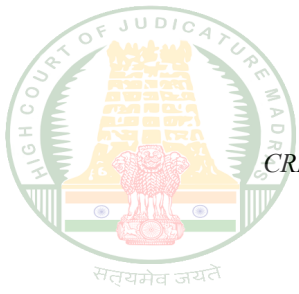
- On the administrative side, the High Court may explore the possibility of extending the N-STEP facility for service of summons which is currently used for civil cases to cases under the Negotiable Instruments Act, 1881 having regard to the fact that the offence has been held to be quasi-criminal in character.

IV. INTERIM COMPENSATION

- Where interim compensation is sought for, the Court shall consider the same expeditiously keeping in mind the guidelines issued in *Rakesh Ranjan Shrivastava v. State of Jharkhand, (2024) 4 SCC 419*.

V. APPEARANCE OF THE ACCUSED

- Upon appearance of the accused, the Court shall obtain a bond under Section 91 of the BNSS for his appearance.
- In view of Section 145(1) of the N.I Act, 1881, the evidence of the complainant, tendered on affidavit may, subject to all just exceptions, be read in evidence in any enquiry, trial or other proceeding.
- The Court may inform the accused on the first date of hearing that he has the option of settling the dispute with the complainant by



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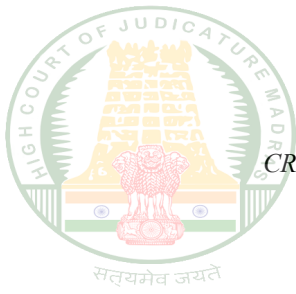
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tendering the cheque amount, provided that the complainant is willing for such settlement. If the accused person opts for such settlement, the Court shall fix a date and time and refer the case to the nearest Mediation Centre. If the dispute remains unresolved for a maximum of 30 days after the date of first hearing before the Mediation Centre, the matter shall be referred back to Court to be decided on merits. If any offer for settlement is given thereafter, the terms of settlement shall be given to the Court and the parties shall not be relegated to the Mediation Centre all over again.

- If the matter is settled before the Mediation Centre or before the Court, an order compounding the offence shall be passed in terms of Section 147 of the N.I Act, 1881.

VI. TRIAL

- Procedure for trial of cases under Chapter XVII of the Act must, in the first instance, be summary in nature. Under the first proviso to Section 143, the Magistrate may pass a sentence of imprisonment for a term not exceeding one year and impose a fine exceeding five thousand rupees. However, the Magistrate may also exercise discretion under the second proviso to Section 143, to hold that it

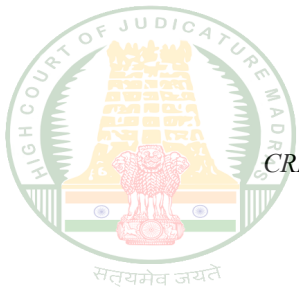


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is undesirable to try the case summarily. This course of action is, however, the exception and the Magistrate may bear in mind that apart from the sentence of imprisonment, the court has jurisdiction under Section 395 BNSS to award suitable compensation. As such, a sentence of more than one year may not be required in all cases. (See **Meters and Instruments (P) Ltd. v. Kanchan Mehta, (2018) 1 SCC 560**).

- While following the summary trial procedure, where the accused does not plead guilty, the Court is only required to record the substance of the evidence followed by a judgment containing a brief statement of the reasons for the finding. Copious extracts from judgments on well settled aspects like presumption under Section 139 NI Act etc must be avoided.
- The statutory scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of more than one year may have to be awarded and compensation under Section 395 BNSS is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other

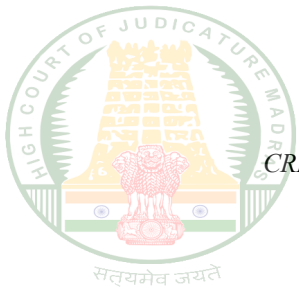


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attendant circumstances.

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- Should it become necessary to convert a summary trial into a summons case, the Magistrate must record an order to that effect as required by the second proviso to Section 143 of the N.I Act.
- Upon the appearance of the accused, the Court shall pass an order fixing dates for examination of defense witnesses, if any, after hearing the parties or their counsel. Such order will be furnished to the counsel or the parties free of cost and must be simultaneously uploaded by the trial courts. It will be the duty of all concerned to stick to the schedule, and adjournments/re-scheduling of dates shall not be granted unless for strong and exceptional reasons, and that too upon imposition of costs.
- The Court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months from the date of commencement of trial.
- As pointed out by the Supreme Court in *V. Baharuni v. State of Gujarat, (2014) 10 SCC 494* “all the subordinate courts must make an endeavour to expedite the hearing of cases in a time-bound



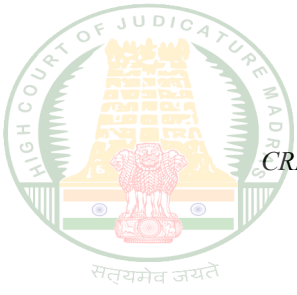
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manner which in turn will restore the confidence of the common man in the justice-delivery system. When law expects something to be done within prescribed time-limit, some efforts are required to be made to obey the mandate of law.” Accordingly, every effort shall be taken to complete the proceedings within the time frame fixed under Section 143(3) of the Negotiable Instruments Act, 1881.

15. These directions shall come into force from 03.03.2025, and shall hold the field until appropriate practice directions are issued by the High Court pursuant to the directions of the Supreme Court in *Expeditious Trial of Cases Under Section 138 of NI Act, 1881, In re, (2021) 16 SCC 116*.

16. The Registrar General shall circulate this judgment to all Principal District Judges in the State who, in turn, shall ensure that they are transmitted to all Judicial Magistrates under their jurisdiction, for strict compliance. The Principal District Judges shall, thereafter, file a compliance report before the Registrar General or before **02.06.2025**.



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17. In the result, these criminal original petitions are dismissed and there shall be a direction to the learned Judicial Magistrate, Aruppukottai, to dispose of C.C.Nos.122, 123, 130, 131, 132, 133, 134, 135 and 136 of 2022, within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

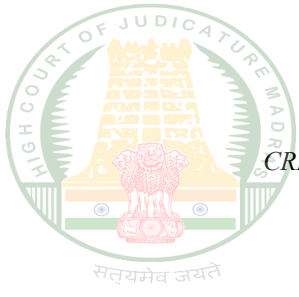
18. The Registry is directed to place a copy of this order before the Hon'ble Chief Justice with a request that suitable directions may be issued on the administrative side to consider the extension of N-STEP facility for service of summons in Section 138 NI Act cases and in respect of the observation made, supra, in paragraph 15.

19. Post on **09.06.2025** for reporting compliance of the directions set out in paragraph 16, supra.

12.02.2025

NCC : Yes
Index : Yes
Internet : Yes
PKN

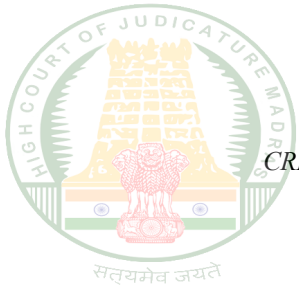
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The Judicial Magistrate, Aruppukottai.



CRL.OP(MD). Nos.19778, 19790, 19621, 19459, 19575, 19403, 19563, 19614 and 19620 of 2022



WEB COPY

N.ANAND VENKATESH,J.

PKN

Order made in
CRL.OP(MD). Nos.19778, 19790, 19621, 19459, 19575, 19403, 19563,
19614 and 19620 of 2022

12.02.2025