

**Offence under [Section 138](#) of the Act is primarily a civil wrong.**

**Meters and Instruments (P) Ltd. v. Kanchan Mehta**, (2018) 1 SCC 560, Court noticed the object of Section 138 and the amendments made to Chapter XVII, and summarised the case law as follows:

**“6.** The object of introducing Section 138 and other provisions of Chapter XVII in the Act in the year 1988 [Vide the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988] was to enhance the acceptability of cheques in the settlement of liabilities. The drawer of cheque is made liable to prosecution on dishonour of cheque with safeguards to prevent harassment of honest drawers. The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 to amend the Act was brought in, inter alia, to simplify the procedure to deal with such matters. The amendment includes provision for service of summons by speed post/courier, summary trial and making the offence compoundable.

**7.** This Court has noted that the object of the statute was to facilitate smooth functioning of business transactions. The provision is necessary as in many transactions cheques were issued merely as a device to defraud the creditors. Dishonour of cheque causes incalculable loss, injury and inconvenience to the payee and credibility of business transactions suffers a setback. [*Goaplast (P) Ltd. v. Chico Ursula D’Souza*, (2004) 2 SCC 235, p. 248, para 26 : 2004 SCC (Cri) 499] At the same time, it was also noted that nature of offence under Section 138 primarily related to a civil wrong and the 2002 Amendment specifically made it compoundable. [*Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd.*, (2008) 2 SCC 305 : (2008) 1 SCC (Civ) 542 : (2008) 1 SCC (Cri) 351] The offence was also described as “regulatory offence”. The burden of proof was on the accused in view of presumption under Section 139 and the standard of proof was of “preponderance of probabilities”. [*Rangappa v. Sri Mohan*, (2010) 11 SCC 441, p. 454, para 28 : (2010) 4 SCC (Civ) 477 : (2011) 1 SCC (Cri) 184] The object of the provision was described as both punitive as well as compensatory. The intention of the provision was to ensure that the complainant received the amount of cheque by way of compensation. Though proceedings under Section 138 could not be treated as civil suits for recovery, the scheme of the provision, providing for punishment with imprisonment or with fine which could extend to twice the amount of the cheque or to both, made the intention of law clear. The complainant could be given not only the cheque amount but double the amount so as to cover interest and costs. Section 357(1)(b) CrPC provides for payment of compensation for the loss caused by the offence out of the fine. [*R. Vijayan v. Baby*, (2012) 1 SCC 260, p. 264, para 9 : (2012) 1 SCC (Civ) 79 : (2012) 1 SCC (Cri) 520] Where fine is not imposed, compensation can be awarded under Section 357(3) CrPC to the person who suffered loss. Sentence in default can also be imposed. The object of the provision is not merely penal but to make the accused honour the negotiable instruments. [*Lafarge Aggregates & Concrete India (P) Ltd. v. Sukarsh Azad*, (2014) 13 SCC 779, p. 781, para 7 : (2014) 5 SCC (Cri) 818]”

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**“18.** From the above discussion the following aspects emerge:

**18.1. Offence under Section 138 of the Act is primarily a civil wrong.** Burden of proof is on the accused in view of presumption under Section 139 but the standard of such proof is “preponderance of probabilities”. The same has to be normally tried summarily as per provisions of summary trial under CrPC but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 CrPC will apply and the court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

**18.2. 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 is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the court.**

**18.3.** Though compounding requires consent of both parties, even in absence of such consent, the 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.

**18.4.** Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143, 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 further fact that apart from the sentence of imprisonment, the court has jurisdiction under Section 357(3) CrPC to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 CrPC. With this approach, prison sentence of more than one year may not be required in all cases.

**18.5.** Since evidence of the complaint can be given on affidavit, subject to the court summoning the person giving affidavit and examining him and the bank’s slip being prima facie evidence of the dishonour of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per Section 264 CrPC. The scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances.”

(emphasis supplied)