

“18. From the above discussion following aspects emerge:

- i) Offence under [Section 138](#) of the Act is primarily a civil wrong. Burden of proof is on accused in view 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 the Cr.P.C. but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 Cr.P.C., 1973 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.
- ii) 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 debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court.
- iii) 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.
- iv) 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) Cr.P.C., 1973 to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 Cr.P.C., 1973 With this approach, prison sentence of more than one year may be required in all cases.
- v) Since evidence of the complaint can be given on affidavit, subject to the Court summoning the person giving affidavit and examining him and the banks slip being prima facie evidence of the dishonor 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 Cr.P.C., 1973 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.

19. In view of the above, we hold that where the cheque amount with interest and cost as assessed by the Court is paid by a specified date, the Court is entitled to close the proceedings in exercise of its powers under Section 143 of the Act read with Section 258 Cr.P.C., 1973 As already observed, normal rule for trial of cases under Chapter XVII of the Act is to follow the summary procedure and summons trial procedure can be followed where sentence exceeding one year may be necessary taking into account the fact that

compensation under Section 357(3) Cr.P.C., 1973 with sentence of less than one year will be adequate, having regard to the amount of cheque, conduct of the accused and other circumstances.

20. In every complaint under Section 138 of the Act, it may be desirable that the complainant gives his bank account number and if possible email ID of the accused. If email ID is available with the Bank where the accused has an account, such Bank, on being required, should furnish such email ID to the payee of the cheque. In every summons, issued to the accused, it may be indicated that if the accused deposits the specified amount, which should be assessed by the Court having regard to the cheque amount and interest/cost, by a specified date, the accused need 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 email, the Court can ascertain the objection, if any, of the complainant and close the proceedings unless it becomes necessary to proceed with the case. In such a situation, the accused's presence can be required, unless the presence is otherwise exempted subject to such conditions as may be considered appropriate. The accused, who wants to contest the case, must be required to disclose specific defence for such contest. It is open to the Court to ask specific questions to the accused at that stage. In case the trial is to proceed, it will be open to the Court to explore the possibility of settlement. It will also be open to the Court to consider the provisions of plea bargaining. Subject to this, the trial can be on day to day basis and endeavour must be to conclude it within six months. The guilty must be punished at the earliest as per law and the one who obeys the law need be held up in proceedings for long unnecessarily."

M/s.Meters and Instruments Pvt. Ltd. v. Kanchan Mehta (2017-4) PLR 409 (SC), (AIR 2017 SC 4594)