

Compounding of Cheque-Dishonour Cases: New Directions from the Supreme Court of India



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Introduction [1]:

In a world of friendly relations, a cheque, once a symbol of trust of sealed deals and fulfilled promises can sometimes bounce harder than the hopes of those who rely on it. In today's fast-paced world of business, loans, and informal credit, a dishonoured cheque doesn't just mark bank balances, it triggers lengthy court battles, wasted time, and mounting legal expenses.

To redress this, Section 147 of the Negotiable Instruments Act, 1881 ("NI Act/Act") states that every offence punishable under this Act is compoundable [2]. Compounding of offence refers to the legal mechanism by which the complainant and accused may agree to settle the dispute amicably and, upon court approval, discontinue the criminal prosecution.

Recognizing the burden these cases place on both the judiciary and the common man, the Hon'ble Supreme Court had previously in Damodar Prabhu vs. Sayed Babalal [3] case introduced the guidelines for compounding of dishonour cheque cases. The Court prescribed different cost slabs depending on when compounding occurred. Due to pendency of cheque dishonour cases, reduced interest rate and modified litigation costs, there was a need to update these guidelines. In a recent case Sanjabij Tari vs. Kishore S. Borcar, the Hon'ble Supreme Court introduced new guidelines for compounding of dishonour cheque cases and also modified cost graded system. The goal is to replace prolonged courtroom proceedings with quicker, fairer resolutions encouraging parties to reconcile, settle, and move on.

[1] The article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

[2] The Negotiable Instruments Act, 2013

[3] Criminal Appeal Nos. 964-966 OF 2010

New Guidelines by the Hon'ble Supreme Court

In *Sanjabij Tari vs. Kishore Borcar* [4], the complainant claims to have advanced a loan in cash to the accused and the accused issued a cheque which was dishonoured due to insufficiency of funds. After serving a notice to the accused, the Complainant has filed a criminal complaint. The Trial Court and Sessions Court convicted the accused. The Bombay High Court (Goa bench) acquitted the accused. The Complainant appealed to the Supreme Court. One of the issues before the Supreme Court was to introduce guidelines addressing the pendency of cheque bouncing cases. Hence, the Supreme Court introduced these guidelines.

The guidelines are as follows:

1. In all cases filed under Section 138 of NI Act, service of summons shall not be confined through prescribed usual modes but also served upon the accused by the complainant by email, WhatsApp and electronic means under Bharatiya Nagarik Suraksha Sanhita, 2023.
2. The Complainant shall file an affidavit of service before the Court. In the Event such affidavit is found to be false, the Court shall be at liberty to take appropriate action against the complainant in accordance with law.
3. To facilitate expeditious settlement of cases under Section 138 the Principal District and Sessions Judge of each District Court shall create and operationalise dedicated online payment facilities through secure QR codes or UPI links. The summons shall expressly mention that the accused has the option to make payment of the cheque amount at the initial stage itself directly through the said online link.
4. Each and every complaint under Section 138 of the NI Act shall contain synopsis in the given format which shall be filed immediately after the index.
5. There shall be no need to issue summons to the accused in terms of Section 223 of BNSS 2023, at the pre cognizance.

[4] Criminal Appeal No. 1755 of 2010

6.The Trial Courts shall record cogent and sufficient reasons before converting a summary trial to summons trial. The Court shall be at liberty to ask questions it deems appropriate under Section 274 of BNSS Act 2023 such as ownership, signature, delivery, liability, security cheque, loan repay, cheque altered or misused, willingness to compound.

7.The Court shall record the responses to the questions in the order – sheet in the presence of the accused and his/ her counsel and thereafter determine whether the case is fit to be tried summarily under chapter.

8.Wherever the Trial Court deems it appropriate it shall use its power to order payment interim deposit as early as possible under Section 143 A of the NI Act.

9.The High Courts shall ensure that after service of summons the matters are placed before the physical Courts. Exemptions from personal appearances should be granted only when facts so warrant. It is clarified that prior to the service of summons the matters may be listed before the digital Courts.

10.The High Court should set pecuniary limit realistic.

11.The District and Sessions Judge in Delhi, Mumbai and Calcutta shall maintain a dedicated dashboard reflecting pendency and progress of cases under Section 138 of NI Act. It should include disposal, adjournment, settlement rates and stage wise backlog. They should conduct monthly reviews of the functioning of Magistrates handling negotiable Instruments matters. A consolidated quarterly report shall be forwarded to the High Court.

12.The Chief Justices of Delhi, Mumbai and Calcutta are requested to form Committee on the Administrative side to monitor pendency and to ensure expeditious disposal of Section 138 NI Act cases. These committees should meet at least once a month and explore the option of appointing experienced Magistrates to deal with Section 138 of the NI Act cases and promoting mediation, holding of Lok Adalats and other alternative dispute resolution mechanisms in Section 138 NI Act cases.

The Court with the intent to revisit and tweak the cost system guidelines modified guidelines as under:

Stage of Compounding / Settlement	Compounding Cost	Total Amount Payable (Cheque + Cost)	Recipient
Before recording defence evidence	0%	Cheque amount only	Complainant
After defence evidence, before judgment	5%	Cheque amount + 5%	Complainant
During appeal / revision in lower court	7.50%	Cheque amount + 7.5%	Complainant
At Supreme Court / final stage	10%	Cheque amount + 10%	Complainant

Note- Compounding cost is equal to the % mentioned above in the table, of the cheque amount referred in the complaint under Section 138 of the NI Act.

Objective

- To reduce pendency of cases and to promote early settlement of cases before formal trial.
- To discourage unnecessary delay, Courts have introduced graded compounding cost systems.
- To ensure fairness and equity in commercial and financial transactions.

The new guidelines on compounding of dishonour of cheque offenses represent a significant advancement in resolving cheque bounce disputes efficiently and amicably. By encouraging early settlements, ensuring judicial oversight, and mandating time-bound resolutions, these guidelines help to reduce the burden on Courts and promote a more business-friendly atmosphere. Ultimately, the Courts provide both parties a fair opportunity to settle disputes without prolonged litigation, fostering trust and stability in commercial transactions. These also cover digital summons, online payment, complaint formats designed to reduce pendency and align cheque dishonour cases with the digital transformation of the justice system. Industry feedback is that the costs offered at advanced stage of hearing are very low as compared to the actual cost incurred by the complainant during court process.

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