**SUPREME COURT OF INDIA**

Indian Bank Association & Ors

Vs.

Union of India

W.P.(Civil)No.18 of 2013

(K.S. Radhakrishnan J.Vikramajit SenJJ.)

21.04.2014

**JUDGMENT**

**K.S. Radhakrishnan, J**.

1. This Writ Petition, under Article 32 of the Constitution of India, has been preferred by the Indian Banks' Association (IBA) along with Punjab National Bank and another, seeking the following reliefs :-

a. Laying down appropriate guidelines/directions to be followed by all Courts within the territory of India competent to try a complaint under Section 138 of the Negotiable Instruments Act, 1881 (the Act) to follow and comply with the mandate of Section 143 of the said Act read with Sections 261 to 265 of Criminal Procedure Code, 1973 (Cr.P.C.) for summary trial of such complaints filed or pending before the said Courts.

b. Issue a writ of mandamus for compliance with the guidelines of this Hon'ble Court indicating various steps to be followed for summary trial of complaints under Section 138 of the said Act and report to this Hon'ble Court.

c. Issue a writ of mandamus, directing the respondents, to adopt necessary policy and legislative changes to deal with cases relating to dishonor of cheqeus so that the same are expeditiously disposed off in accordance with the intent of the Act and the guidelines to be laid down by this Hon'ble Court.

2. The first petitioner, which is an Association of Persons with 174 banks/financial institutions as its members, is a voluntary association of banks and functions as think tank for banks in the matters of concern for the whole banking industry. The Petitioners submit that the issue raised in this case is of considerable national importance owing to the reason that in the era of globalization and rapid technological developments, financial trust and commercial interest have to be restored.

3. The Petitioners submit that the banking industry has been put to a considerable disadvantage due to the delay in disposing of the cases relating to Negotiable Instruments Act. The Petitioner banks being custodian of public funds find it difficult to expeditiously recover huge amount of public fund which are blocked in cases pending under Section 138 of the Negotiable Instruments Act, 1881. Petitioners submit that, in spite of the fact, Chapter XIV has been introduced in theNegotiable Instruments Act by Section 4 of the Banking, Public Financial Institutions andNegotiable Instruments Laws (Amendment) Act, 1988, to enhance the acceptability of cheques in settlement of liability by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds, the desired object of the Amendment Act has not achieved.

4. Legislature has noticed that the introduction of Sections 138 to 142 of the Act has not achieved desired result for dealing with dishonoured cheques, hence, it inserted new Sections 143 to 147 in the Negotiable Instruments Act vide Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 for speedy disposal of cases relating to dishonour of cheques through summary trial as well as making the offence compoundable. But, no uniform practice is seen followed by the various Magistrate Courts in the country, as a result of which, the object and purpose for which the amendments were incorporated, have not been achieved.

5. Cheque, though acknowledged as a bill of exchange under the Negotiable Instruments Act and readily accepted in lieu of payment of money and is negotiable, the fact remains that the cheque as a negotiable instrument started losing its credibility by not being honoured on presentation. Chapter XVII was introduced, as already indicated, so as to enhance the acceptability of cheques in settlement of liabilities. The Statement of Objects and Reasons appended with the Bill explaining the provisions of the new Chapter reads as follows :-

> "This clause [Clause (4) of the Bill] inserts a new Chapter XVII in the Negotiable Instruments Act, 1881. The provisions contained in the new Chapter provide that where any cheque drawn by a person for the discharge of any liability is returned by the bank unpaid for the reason of the insufficiency of the amount of money standing to the credit of the account on which the cheque was drawn or for the reason that it exceeds the arrangements made by the drawer of the cheque with the bankers for that account, the drawer of such cheque shall be deemed to have committed an offence. In that case, the drawer, without prejudice to the other provisions of the said Act, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both. The provisions have also been made that to constitute the said offence:

(a) such cheque should have been presented to the bank within a period of six months of the date of its drawal or within the period of its validity, whichever is earlier; and

(b) the payee or holder in due course of such cheque should have made a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the

cheque within fifteen days of the receipt of the information by him from the bank regarding the return of the cheque unpaid; and

(c) The drawer of such cheque should have failed to make the payment of the said amount of money to the payee or the holder in due course of the cheque within fifteen days of the receipt of the said notice. It has also been provided that it shall be presumed, unless the contrary is proved, that the holder of such cheque received the cheque in the discharge of a liability. Defences which may or may not be allowed in any prosecution for such offence have also been provided to make the provisions effective. Usual provision relating to offences by companies has also been included in the said new Chapter. In order to ensure that genuine and honest bank customers are not harassed or put to inconvenience, sufficient safeguards have also been provided in the proposed new Chapter. Such safeguards are:

(a) That no court shall take cognizance of such offence except on a complaint, in writing, made by the payee or the holder in due course of the cheque;

(b) That such complaint is made within one month of the date on which the cause of action arises; and

(c) that no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate or a Judicial Magistrate of the First Class shall try any such offence."

6. The objectives of the proceedings of Section 138 of the Act are that the cheques should not be used by persons as a tool of dishonesty and when cheque is issued by a person, it must be honoured and if it is not honoured, the person is given an opportunity to pay the cheque amount by issuance of a notice and if he still does not pay, he must face the criminal trial and consequences. Section 138 of the Negotiable Instruments Act, 1881, is given below for easy reference :-

> "Dishonour of cheque for insufficiency, etc., of funds in the account. - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless-
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> (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice. Explanation.- For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

7. This Court in Electronics Trade & Technology Development Corporation Ltd., Secunderabad v. Indian Technologists & Engineers (Electronics) (P) Ltd. and Another (1996) 2 SCC 739, held as follows:

"The object of bringing Section 138 on statute appears to be to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. Despite civil remedy, Section 138 intended to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a book and induce the payee or holder in due course to act upon it. Section 138 draws presumption that one commits the offence if he issues the cheque dishonestly. It is seen that once the cueque has been drawn and issued to the payee and the payee has presented the cheque and thereafter, if any instructions are issued to the bank for non-payment and the cheque is returned to the payee with such an endorsement, it amounts to dishonour of cheque and it comes within the meaning of Section 138…."

8. In Goa Plast (P) Ltd. v. Chico Ursula D'Souza (2004) 2 SCC 235, this Court, while dealing with the objects and ingredients of Sections 138 and 139 of the Act, observed as follows :-

"The object and the ingredients under the provisions, in particular, Sections 138 and139 of the Act cannot be ignored. Proper and smooth functioning of all business transactions, particularly, of cheques as instruments, primarily depends upon the integrity and honesty of the parties. In our country, in a large number of commercial transactions, it was noted that the cheques were issued even merely as a device not only to stall but even to defraud the creditors. The sanctity and credibility of issuance of cheques in commercial transactions was eroded to a large extent. Undoubtedly, dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. Parliament, in order to restore the credibility of cheques as a trustworthy substitute for cash payment enacted the aforesaid provisions. The remedy available in a civil court is a long-drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee."

9. We have indicated, Sections 138 to 142 of the Act were found to be deficient in dealing with the dishonoured cheques. In the said circumstances, the legislature inserted new Sections 143 to 147by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002, which is brought into force w.e.f. 6th February, 2003. The object and reasons for the said Amendment Actare of some importance and are given below :-

> "1. The Negotiable Instruments Act, 1881 was amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 wherein a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque. These provisions were incorporated with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument. The existing provisions in theNegotiable Instruments Act,1881, namely, sections 138 to 142 in Chapter XVII have been found deficient in dealing with dishonour of cheques. Not only the punishment provided in the Act has proved to be inadequate, the procedure prescribed for the Courts to deal with such matters has been found to be cumbersome. The Courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act.
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> 2. A large number of cases are reported to be pending under sections 138 to 142 of the Negotiable Instruments Act in various courts in the country. Keeping in view the large number of complaints under the said Act pending in various courts, a Working Group was constituted to review section 138 of the Negotiable Instruments Act, 1881 and make recommendations as to what changes were needed to effectively achieve the purpose of that section.
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> 3. The recommendations of the Working Group along with other representations from various institutions and organisations were examined by the Government in consultation with the Reserve Bank of India and other legal experts, and a Bill, namely, the Negotiable Instruments (Amendment) Bill, 2001 was introduced in the Lok Sabha on 24th July, 2001. The Bill was referred to Standing Committee on Finance which made certain recommendations in its report submitted to Lok Sabha in November, 2001.
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> 4. Keeping in view the recommendations of the Standing Committee on Finance and other representations, it has been decided to bring out, inter alia, the following amendments in the Negotiable Instruments Act,1881, namely:—
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> (i) To increase the punishment as prescribed under the Act from one year to two years;
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> (ii) To increase the period for issue of notice by the payee to the drawer from 15 days to 30 days;

(iii) To provide discretion to the Court to waive the period of one month, which has been prescribed for taking cognizance of the case under the Act;

(iv)To prescribe procedure for dispensing with preliminary evidence of the complainant;
(v) To prescribe procedure for servicing of summons to the accused or witness by the Court through speed post or empanelled private couriers;

(vi) To provide for summary trial of the cases under the Act with a view to speeding up disposal of cases;

(vii) To make the offences under the Act compoundable;

(viii) to exempt those directors from prosecution under section 141 of the Act who are nominated as directors of a company by virtue of their holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government, or the State Government, as the case may be;

(ix) To provide that the Magistrate trying an offence shall have power to pass sentence of imprisonment for a term exceeding one year and amount of fine exceeding five thousand rupees;

(x) To make the Information Technology Act, 2000 applicable to the Negotiable Instruments Act,1881 in relation to electronic cheques and truncated cheques subject to such modifications and amendments as the Central Government, in consultation with the Reserve Bank of India, considers necessary for carrying out the purposes of the Act, by notification in the Official Gazette; and

(xi) To amend definitions of "bankers' books" and "certified copy" given in the Bankers' Books Evidence Act,1891.

5. The proposed amendments in the Act are aimed at early disposal of cases relating to dishonour of cheques, enhancing punishment for offenders, introducing electronic image of a truncated cheque and a cheque in the electronic form as well as exempting an official nominee director from prosecution under the Negotiable Instruments Act,1881.
6. The Bill seeks to achieve the above objects."

10. Section 143 of the Act introduced by 2002 Amendment reads as follows:-

"143. Power of Court to try cases summarily.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Chapter.
| |shall be tried by a Judicial Magistrate of the first class or| | | |by a Metropolitan Magistrate and the provisions of Sections | | | |262 to 265 (both inclusive) of the said Code shall, as far as| | | |may be, apply to such trials: | | | | | | | |Provided that in the case of any conviction in a summary | | | |trial under this section, it shall be lawful for the | | | |Magistrate to pass a sentence of imprisonment for a term not | | | |exceeding one year and an amount of fine exceeding five | | | |thousand rupees: | | | | | | | |Provided further that when at the commencement of, or in the | | | |course of, a summary trial under this section, it appears to | | | |the Magistrate that the nature of the case is such that a | | | |sentence of imprisonment for a term exceeding one year may | | | |have to be passed or that it is, for any other reason, | | | |undesirable to try the case summarily, the Magistrate shall | | | |after hearing the parties, record an order to that effect and| | | |thereafter recall any witness who may have been examined and | | | |proceed to hear or rehear the case in the manner provided by | | | |the said Code. | | | | | | | |(2) The trial of a case under this section shall, so far as | | | |practicable, consistently with the interests of justice, be | | | |continued from day to day until its conclusion, unless the | | | |Court finds the adjournment of the trial beyond the following| | | |day to be necessary for reasons to be recorded in writing. | | | | | | | |(3) Every trial under this section shall be conducted as | | | |expeditiously as possible and an endeavour shall be made to | | | |conclude the trial within six months from the date of filing | | | |of the complaint." | |

11. Section 145 of the Act deals with the evidence on affidavit and reads as follows :

"145. Evidence on affidavit.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974.) the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions, be read in evidence in any enquiry, trial or other proceeding under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein."

12. The scope of Section 145 came up for consideration before this Court in Mandvi Cooperative Bank Limited v. Nimesh B. Thakore (2010) 3 SCC 83, and the same was explained in that judgment stating that the legislature provided for the complainant to give his evidence on affidavit, but did not provide the same for the accused. The Court held that even though the legislature in their wisdom did not deem it proper to incorporate a word "accused" with the word "complainant" in Section 145(1), it does not mean that the Magistrate could not allow the complainant to give his evidence on affidavit, unless there was just and reasonable ground to refuse such permission.

13. This Court while examining the scope of Section 145 in Radhey Shyam Garg v. Naresh Kumar Gupta (2009) 13 SCC 201, held as follows :-

> "If an affidavit in terms of the provisions of Section 145 of the Act is to be considered to be an evidence, it is difficult to comprehend as to why the court will ask the deponent of the said affidavit to examine himself with regard to the contents thereof once over again. He may be cross-examined and upon completion of his evidence, he may be re-examined. Thus, the words "examine any person giving evidence on affidavit as to the facts contained therein, in the event, the deponent is summoned by the court in terms of sub-section (2) of Section 145 of the Act", in our opinion, would mean for the purpose of cross-examination. The provision seeks to attend a salutary purpose."

14. Considerable time is usually spent for recording the statement of the complainant. The question is whether the Court can dispense with the appearance of the complainant, instead, to take steps to accept the affidavit of the complainant and treat the same as examination-in-chief.Section 145(1) gives complete freedom to the complainant either to give his evidence by way of affidavit or by way of oral evidence. The Court has to accept the same even if it is given by way of an affidavit. Second part of Section 145(1) provides that the complainant's statement on affidavit may, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceedings.Section 145 is a rule of procedure which lays down the manner in which the evidence of the complainant may be recorded and once the Court issues summons and the presence of the accused is secured, an option be given to the accused whether, at that stage, he would be willing to pay the amount due along with reasonable interest and if the accused is not willing to pay, Court may fix up the case at an early date and ensure day-to-day trial.

15. Section 143 empowers the Court to try cases for dishonour of cheques summarily in accordance with the provisions of Section 262 to 265 of the Code of Criminal Procedure, 1973. The relevant provisions being Sections 262 to 264 are extracted hereinbelow for easy reference :

> "262. Procedure for summary trials.
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> (1) In trials under this Chapter, the procedure specified in this Code for the trial of summons- ease shall be followed except as hereinafter mentioned.
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> (2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.
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> 263.Record in summary trials.- In every case tried summarily, the Magistrate shall enter, in such form as the State Government may direct, the following particulars, namely:-

(a) the serial number of the case:

(b) the date of the commission of the offence;

(c) the date of the report or complaint;
(d) the name of the complainant (if any);

(e) the name, parentage and residence of the accused;

(f) the offence complained of and the offence (if any) proved, and in cases coming under clause (ii), clause (iii) or clause (iv) of sub- section (1) of section 260, the value of the property in respect of which the offence has been committed;

(g) The plea of the accused and his examination (if any);

(h) The finding;

(i) The sentence or other final order

(j) The date on which proceedings terminated. 264. Judgment in cases tried summarily. – In every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding."

16. We have indicated that under Section 145 of the Act, the complainant can give his evidence by way of an affidavit and such affidavit shall be read in evidence in any inquiry, trial or other proceedings in the Court, which makes it clear that a complainant is not required to examine himself twice i.e. one after filing the complaint and one after summoning of the accused. Affidavit and the documents filed by the complainant along with complaint for taking cognizance of the offence are good enough to be read in evidence at both the stages i.e. pre-summoning stage and the post summoning stage. In other words, there is no necessity to recall and re- examine the complaint after summoning of accused, unless the Magistrate passes a specific order as to why the complainant is to be recalled. Such an order is to be passed on an application made by the accused or under Section 145(2) of the Act suo moto by the Court. In summary trial, after the accused is summoned, his plea is to be recorded under Section 263(g) Cr.P.C. and his examination, if any, can be done by a Magistrate and a finding can be given by the Court underSection 263(h) Cr.P.C. and the same procedure can be followed by a Magistrate for offence of dishonour of cheque since offence under Section 138 of the Act is a document based offence. We make it clear that if the proviso (a), (b) & (c) to Section 138 of the Act are shown to have been complied with, technically the commission of the offence stands completed and it is for the accused to show that no offence could have been committed by him for specific reasons and defences.

17. Procedure for summary case has itself been explained by this Court in Nitinbhai Saevantilal Shah and another v. Manubhai Manjibhai Panchal and another (2011) 9 SCC 638, wherein this Court held as under :

> "12. Provision for summary trials is made in Chapter XXI of the Code. Section 260 of the Code confers power upon any Chief Judicial Magistrate or any Metropolitan Magistrate or any Magistrate of the First Class specially empowered in this behalf by the High Court to try in a summary way all or any of the offences enumerated therein.Section 262 lays down the procedure for summary trial and sub-section (1) thereof inter alia prescribes that in summary trials the procedure specified in the Code for the trial of summons case shall be followed subject to the condition that no sentence of imprisonment for a term exceeding three months is passed in case of any conviction under the chapter. The manner in which the record in summary trials is to be maintained is provided in Section 263 of the Code. Section 264 mentions that in every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding. Thus, the Magistrate is not expected to record full evidence which he would have been, otherwise required to record in a regular trial and his judgment should also contain a brief statement of the reasons for the finding and not elaborate reasons which otherwise he would have been required to record in regular trials."

18. Amendment Act, 2002 has to be given effect to in its letter and spirit. Section 143 of the Act, as already indicated, has been inserted by the said Act stipulating that notwithstanding anything contained in the Code of Criminal Procedure, all offences contained in Chapter XVII of the Negotiable Instruments Act dealing with dishonour of cheques for insufficiency of funds, etc. shall be tried by a Judicial Magistrate and the provisions of Sections 262 to 265 Cr.P.C. prescribing procedure for summary trials, shall apply to such trials and it shall be lawful for a Magistrate to pass sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding Rs.5,000/- and it is further provided that in the course of a summary trial, if it appears to the Magistrate that the nature of the case requires passing of the sentence of imprisonment exceeding one year, the Magistrate, after hearing the parties, record an order to that effect and thereafter recall any witness and proceed to hear or rehear the case in the manner provided in Criminal Procedure Code.

19. This Court in Damodar S. Prabhu v. Sayed Babalal H. (2010) 5 SCC 663, laid down certain guidelines while interpreting Sections 138 and 147 of the Negotiable Instruments Act to encourage litigants in cheque dishonour cases to opt for compounding during early stages of litigation to ease choking of criminal justice system for graded scheme of imposing costs on parties who unduly delay compounding of offence, and for controlling of filing of complaints in multiple jurisdictions relatable to same transaction, which have also to be borne in mind by the Magistrate while dealing with cases under Section 138 of the Negotiable Instruments Act.

20. We notice, considering all those aspects, few High Courts of the country have laid down certain procedures for speedy disposal of cases under Section 138 of the Negotiable Instruments Act. Reference, in this connection, may be made to the judgments of the Bombay High Court in KSL and Industries Ltd. v. Mannalal Khandelwal and The State of Maharashtra through the Office of the Government Pleader (2005) CriLJ 1201, Indo International Ltd. and another v. State of Maharashtra and another (2005) 44 Civil CC (Bombay) and Harischandra Biyani v. Stock Holding Corporation of India Ltd. (2006) 4 MhLJ 381, the judgment of the Calcutta High Court in Magma Leasing Ltd. v. State of West Bengal and others (2007) 3 CHN 574 and the judgment of the Delhi High Court in Rajesh Agarwal v. State and another (2010) ILR 6 Delhi 610.

21. Many of the directions given by the various High Courts, in our view, are worthy of emulation by the Criminal Courts all over the country dealing with cases under Section 138 of the Negotiable Instruments Act, for which the following directions are being given :-
DIRECTIONS:

1) Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.

2) MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant. Court, in appropriate cases, may take the assistance of the police or the nearby Court to serve notice to the accused. For notice of appearance, a short date be fixed. If the summons is received back un-served, immediate follow up action be taken.

3) Court may indicate in the summon that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, Court may pass appropriate orders at the earliest.

4) Court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) for re- calling a witness for cross-examination.
(5) The Court concerned must ensure that examination-in-chief, cross- examination and re-examination of the complainant must be conducted within three months of assigning the case. The Court has option of accepting affidavits of the witnesses, instead of examining them in Court. Witnesses to the complaint and accused must be available for cross-examination as and when there is direction to this effect by the Court.

22. We, therefore, direct all the Criminal Courts in the country dealing with Section 138 cases to follow the above-mentioned procedures for speedy and expeditious disposal of cases falling underSection 138 of the Negotiable Instruments Act.

23. Writ Petition is, accordingly, disposed of, as above.