2026:PHHC:036785

CRR-2873-2025 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2873-2025 (O&M)

JUDGEMENT RESERVED ON	JUDGEMENT PRONOUNCED ON	OPERATIVE PART PRONOUNCED OR FULL	UPLOADED ON
19.01.2026	10.03.2026	FULL PRONOUNCED	10.03.2026

Sonu Kumar .....Petitioner

Versus

Kulbir Singh .....Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Amandeep Singh, Advocate
for the petitioner.

Mr. Viren Sibal, Advocate
Mr. Divyanshu Goyal, Advocate and
Mr. Himanshu, Advocate
for the respondent.

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Criminal Complaint No.	**Court**	**Date of Decision**
COMA-12287-2021	**JMIC, Ludhiana**	**03.10.2025**

Wait, and it withers, rush, and it dies
Only through prudence justice survives

1. Seeking setting aside of the impugned order dated 03.10.2025 passed by Ld. Judicial Magistrate Ist Class, Ludhiana whereby permission to examine a handwriting and fingerprint expert for the purpose of comparison of alleged signatures of Kulbir Singh on the Power of Attorney Ex.C-1 has been declined, the petitioner has come up before this Court by filing the present revision petition under §442 BNSS 2023.

2. Respondent – Kulbir Singh had filed a complaint under §138 of the NI Act before Ld. JMIC, Ludhiana, on the grounds of bouncing of a cheque amounting to Rs. 19,49,230/-, which was the accumulated liability of the accused-petitioner because of the business dealings, and the reason for dishonour was that the payment was stopped by the drawer.

3. Mr. Amandeep Singh, Ld. counsel for the accused/petitioner, submits that he would persuade the petitioner to settle the matter in Mediation, but he submits that first, his application for additional evidence must be adjudicated; however, he is not averse to Mediation, and he submits that keeping in view the long business relations between the parties, they would like to give Mediation a try.

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4. Mr. Viren Sibal, Ld. Counsel for the complainant/respondent opposed the application for further evidence and submits that the trial is at the fag-end. Counsel for the respondent has drawn the attention of this Court to Annexure P-9, the statement of the accused, Sonu Kumar, recorded under §313 CrPC. He submits that to delay a sure-shot conviction, the accused cooked up a story and filed an application for examining a Handwriting and Fingerprint Expert, which was rightly rejected, and now, to further delay the matter, he has come up before this Court.

5. I have heard counsel for the parties regarding the impugned order and the reasons for which the application for comparison of the signatures was filed and dismissed.

6. The impugned order is based on the application Annexure P-6, which was filed to seek permission to examine the Handwriting and Fingerprint Expert to compare the alleged signatures of Kulbir Singh on the Power of Attorney Ex. C1 with the alleged signatures of Kulbir Singh on the Register of Notary Public Ex. D1. In the said application, it was alleged that the Power of Attorney, which is shown to be attested by the Notary Public, does not contain the complainant's signature because the signatures do not match.

7. The complainant had filed a reply to the said application (Annexure P-7) and denied all the allegations. Vide impugned order dated October 03, 2025, the Ld. JMIC, Ludhiana, dismissed the said application.

8. In paragraph no. 4 of the impugned order, the trial court explicitly mentioned that 15 opportunities were availed by the accused to conclude his defence evidence, and after that, he further tried to delay the matter by filing an application for comparing the signatures by calling a Handwriting Expert. Further, the accused wanted to compare Ex. C1 with Ex. D1, which is a photocopy of that document. Thus, the signatures could have been compared only with the original and not with the photocopy. Perusal of the statement recorded under §313 CrPC reveals that the accused did not take any such stand regarding the wrong or forged signatures on the Power of Attorney, and in the statement under §313 CrPC, the accused did not take this kind of plea; as such, the application was an afterthought. Furthermore, the accused wants to compare the signatures with the photocopy, which cannot be permitted at this stage. On the face of it, it is undisputed that the trial is at the final stage, and the entire exercise is to delay the trial. Even otherwise, there is no illegality in the impugned order.

9. Before this Court dismisses the present petition on merits, the other request to send the matter to Mediation has to be considered. Counsel for the accused submits that if the matter is referred to Mediation, they assure to help conclude it at the earliest. Ld. Counsel

for the complainant also submits that they will make every effort to conclude the Mediation at the earliest and make earnest efforts to settle the matter.

10. Before requesting the Trial Court concerned to refer the matter for Mediation, the scope of Mediation must be delved into.

11. Cheque bounce cases arise from the non-payment of a legally enforceable debt or liability, i.e., obligation or duty. In simple language, '*Drawer'* is the person who draws the cheque by putting signatures on it; the Bank which debits the account from which the drawer has issued the cheque is the '*Drawee'*, and the person in whose favor the cheque is issued is called '*Payee'*. Thus, the issuance of a cheque represents a promise by the drawer to discharge an existing financial obligation owed to the payee.

12. Cheques are commonly used as a convenient and reliable method of deferred payment in both commercial and personal transactions to facilitate smooth business dealings and reflect the mutual trust and confidence placed by one party in another.

13. Therefore, issuing a cheque is a solemn promise that the amount will be paid when presented. When such a cheque is returned unpaid due to insufficient funds or reasons attributable to the drawer, the law considers it a breach of financial trust. As a result, lengthy legal proceedings in these cheque bounce cases often cause delays, diminuate the amount involved, and result in financial loss for the complainant. This delay undermines the law's goal of providing compensation and adds to the burden on the justice system.

14. When India was ruled by the British, the Negotiable Instruments Act of 1881[1] was enacted in response to the growing complexity of trade in the 19th century. The Act was designed to provide legal certainty for financial instruments that serve as substitutes for cash-based transactions. The journey to the final Act was long and arduous, spanning fifteen years and four different drafts. Before the Act of 1881, the law governing negotiable instruments in India was fragmented. Indigenous commercial practices, such as *hundis*, were governed by local customs, while English mercantile law was selectively applied by courts in presidency towns (Calcutta, Madras, and Bombay). Even during the Medieval era, *Hundis* became highly sophisticated, facilitating long-distance trade without the physical movement of gold or silver.

15. The Preamble of the Negotiable Instruments Act of 1881 states that the purpose of the statute is to establish and modify the laws pertaining to promissory notes, bills of exchange, and cheques.

[1] §1. Local extent. Saving of usages relating to hundis, etc.—… nothing herein contained affects …any local usage relating to any instrument in an oriental language: Provided that such usages may be excluded by any words in the body of the instrument which indicate an intention that the legal relations of the parties thereto shall he governed by this Act.

16. A new Chapter XVII was added to the NI Act by the Amendment Act of 1988[2]. It took effect on April 01, 1989. This chapter included §138 to §142, and for the first time, a penal provision was incorporated into a statute dealing with Promissory Notes, Bills of Exchange, and Cheques. By the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act 2002, Chapter XVII was further amended, and, with effect from February 06, 2003, this Chapter now contains §138 to §147, in addition to certain amendments to §§138 to §142.

17. These changes have the effect of making the drawer of a cheque guilty of a crime and subject to punishment whenever the bank returns a cheque unpaid, either because there is not enough money in the account to honour the cheque or because it exceeds the amount arranged to be paid from that account by an agreement made with the bank, and is liable to be punished. The objective of Parliament [in bringing such amendments] was to strengthen the use of cheques, distinct from other negotiable instruments, as a mercantile tender, and therefore it became essential for an offence under Section 138 of the NI Act to be freed from the requirement of proving mens rea.[3] In the absence of Section 138[4] NI Act, the system of cheques would collapse because hardly any cheques would be honored.

18. However, the way Parliament knew of fortifying the fiction of liability under terms of the Act, including §138 and the accompanying Sections, which severely restrict defences, was turning a civil liability into a criminal offence.

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[2] Banking, Public Financial Institutions and Negotiable Instruments Law (Amendment) Act, 1988 (Act 66 of 1988).

[3] Supreme Court of India, *Dashrath Rupsingh Rathod v. State of Maharashtra,* [2014] 11 SCR 921; 2014-INSC-514, pg 947-948, Para H-A, Aug 01, 2014.

[4] §138. 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 be extended to two years, 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—
(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, 5[within thirty 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 of other liability" means a legally enforceable debt or other liability

19. In P. Mohanraj & Ors. v. Ms. Shah Brothers Ispat Pvt. Ltd. [2021] 14 SCR 204, Mar 01, 2021, a three-Judge Bench of the Hon'ble Supreme Court holds,

> [43]. A perusal of this judgment would show that a civil proceeding is not necessarily a proceeding which begins with the filing of a suit and culminates in execution of a decree. It would include a revenue proceeding as well as a writ petition filed under Article 226 of the Constitution, if the reliefs therein are to enforce rights of a civil nature. Interestingly, criminal proceedings are stated to be proceedings in which the larger interest of the State is concerned. Given these tests, it is clear that a Section 138 proceeding can be said to be a "civil sheep" in a "criminal wolf's" clothing, as it is the interest of the victim that is sought to be protected, the larger interest of the State being subsumed in the victim alone moving a court in cheque bouncing cases, as has been seen by us in the analysis made hereinabove of Chapter XVII of the Negotiable Instruments Act.

20. In Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corporation of India Ltd., 2023(4) SCR 986, pg997; 2023-INSC-232, a three-Judge Bench of the Hon'ble Supreme Court holds [Majority View],

> [16]. We have no hesitation in coming to the conclusion that the scope of nature of proceedings under the two Acts and quite different and would not intercede each other. In fact, a bare reading of Section 14 of the IBC would make it clear that the nature of proceedings which have to be kept in abeyance do not include criminal proceedings, which is the nature of proceedings under Section 138 of the N.I. Act. We are unable to appreciate the plea of the learned counsel for the Appellant that because Section 138 of the N.I. Act proceedings arise from a default in financial debt, the proceedings under Section 138 should be taken as akin to civil proceedings rather than criminal proceedings. We cannot lose sight of the fact that Section 138 of the N.I. Act are not recovery proceedings. They are penal in character. A person may face imprisonment or fine or both under Section 138 of the N.I. Act. It is not a recovery of the amount with interest as a debt recovery proceedings would be. They are not akin to suit proceedings.

21. In the current consumption-driven economies, the governments occupy a distinctively insulated position where almost every commercial transaction benefits the government, irrespective of whether private parties gain or lose. Whenever a product or service is sold, the government derives revenue in the form of tax at the point of sale. This tax has to be paid whether the seller ultimately makes a profit, incurs a loss, or even fails to recover the consideration. The sale of goods leads to consumption, which in turn stimulates manufacturing and supply chains, increases employment and production, generating multiple layers of direct and indirect taxation. Thus, once a sale occurs, the State's revenue is secured in advance, independent of the commercial outcome for the parties. So, when a cheque fails, the government's revenue position remains unaffected, and the burden disproportionately falls on both the drawer and the holder. Taxes once paid are not refunded merely because the payment failed at the counter.

22. In this scenario, the state is never truly a loser. Its primary concern is the continuous circulation of money within the economy. This explains the government's policy of pressing paddles on consumption cycles, whereby companies are encouraged to sell through easy credit, EMIs, advance payments, and post-dated instruments. Such mechanisms stimulate demand and ensure that transactions occur, even if the risk is quietly transferred to private parties.

23. While the drawer faces criminal prosecution, the holder is forced into a time-consuming legal process to recover what was owed; as such, time becomes the silent adversary. Even if the accused is convicted, the sentence neither restores the time nor the purchasing power of the money, which would have depreciated due to inflation or the erosion caused by the devaluation of the currency during prolonged litigation.

24. The modifications to the Negotiable Instruments Act, 1881[5] were brought to enhance the credibility of commercial transactions and instill confidence in the use of negotiable instruments, especially cheques, and not to reduce courts into recovery agencies. Unfortunately, overburdened courts, especially in India, are flooded with such cases, consuming judicial time that could be better spent on more disputes requiring authoritative adjudication.

25. The cheque bounce cases are quasi-criminal in nature: punitive yet primarily aimed at compensating the holder of the cheque for the dishonoured amount. In such a scenario, Mediation offers a more rational, humane, and economically sound alternative. Early-stage Mediation can ensure quicker recovery for the cheque holder and preserve business relationships. It acknowledges the practical reality that the State has already secured its revenue, while the private parties bear the real loss caused by delay. In this way compensatory objective of the law can be achieved without burdening the justice delivery system.

26. §147 of the Negotiable Instruments Act, 1881, makes all the offences under the Act compoundable, as the provision reads as follows:

> §147. Offences to be compoundable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.

27. The corresponding procedural provision for compounding is §359 BNSS, 2023, which reads as follows:

> 359. (1) The offences punishable under the sections of the Bharatiya Nyaya Sanhita, 2023 specified in the first two columns of the Table next

[5] vide the Amendment Act 66 of 1988.

following may be compounded by the persons mentioned in the third column of that Table:—
xxx

(2) The offences punishable under the sections of the Bharatiya Nyaya Sanhita, 2023 specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table:—

xxx

(3) When an offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) or where the accused is liable under sub-section (5) of section 3 or section 190 of the Bharatiya Nyaya Sanhita, 2023, may be compounded in like manner.

(4) (a) When the person who would otherwise be competent to compound an offence under this section is a child or of unsound mind, any person competent to contract on his behalf may, with the permission of the Court, compound such offence;

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 of such person may, with the consent of the Court, compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) A High Court or Court of Session acting in the exercise of its powers of revision under section 442 may allow any person to compound any offence which such person is competent to compound under this section.

(7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section.

28. The provision of §147 of the Negotiable Instruments Act, 1881, is akin to §359(1) BNSS, 2023, which implies that at any stage, be it trial, appeal, or revision, the parties can compound without the permission of the Court. Had the legislative intention been to compound with the permission of the Court, then a specific restriction must have been put in place similar to §359(2) BNSS, 2023. The non obstante clause in §147 of the NI Act clearly reflects the unfettered legislative intention to let the litigants compound the criminal offence. The legislative intention is not to make people suffer incarceration

merely because their cheques bounced. The jurisprudence behind the NI Act is that all business transactions are honoured. These proceedings intend to recover the cheque amount by showing the teeth of a penal clause. Therefore, the offence can be compounded by the holder of the cheque against the drawer of the cheque at any stage. No permission of the Court is required when the parties have compounded the matter, and the criminal complaint is pending before the Trial Court (i.e., the Judicial Magistrate), i.e., the final judgment has not been pronounced. However, once the judgment of conviction has been pronounced, the order of conviction and sentence can only be set aside by an Appellate Court, i.e., a Court higher in the hierarchy. Needless to say, under §528[6] BNSS, 2023, which replicates old §482 of CrPC, 1973, the High Courts possess inherent powers, and this power is notwithstanding the Appellate jurisdiction of the High Court.

29. It means that when parties compound the matter after the judgment of the conviction by the Judicial Magistrate, the judgment of conviction and sentence can only be set aside by a Sessions Court; by the High Court in case of conviction being upheld by a Sessions Court; and certainly, by the Supreme Court at any stage. It implies that even after the judgment of conviction, to meet the objectives of the NI Act, the Courts shall permit the compounding of the offence under the NI Act. And for this, the concerned Court must be informed of the settlement between the parties.

30. In Gian Chand Garg v. Harpal Singh, SLP(Cr) No. 8050 of 2025, Aug 11, 2025, the Hon'ble Supreme Court holds,

> [11]. Once the complainant has signed the compromise deed accepting the amount in full and final settlement of the default sum the proceedings under Section 138 of the NIAct cannot hold water, therefore, the concurrent conviction rendered by the Courts below has to be set-aside.

31. Unfortunately, as India advances digitally, it has overlooked and undermined the humble paper cheque by not discontinuing it as has been done in majority of the countries. The massive success of the Unified Payments Interface (UPI) could have fully replaced the paper cheques had these been abolished. Further, there is a system in place to take care of violations of scheduled digital payments by the enactment of the Payments and Settlement Systems Act, 2007. The reality is that cheque holders often turn Courts into recovery agents by paying minimal court fees, which in some states are as low as INR 2!

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[6] §528. Nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

32. The goal of swift justice has been undermined by the large volume of §138 cases that have flooded criminal courts over time. The concern before this Court is a plethora of complaints pending before the Judicial Magistrates, a plenitude of appeals against conviction and acquittal pending before the Sessions Courts, and a copious number of criminal revisions that are filed and pending before the High Courts.

33. Section 143 of the NI Act, after the amendment Act No. 55 of 2002, w.e.f. 6-2-2003, empowers the Courts to try cases under the Act summarily, and it reads as follows:

> **143. Power of Court to try cases summarily.—(*1*)** Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) 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.

34. In Sanjabij Tari v. Kishore S. Borcar & Anr, CrA 1755-2010, 2025-INSC-1158, Sep 25, 2025, the Hon'ble Supreme Court holds,

> [36E] Recently, the High Court of Karnataka in Ashok Vs. Fayaz Aahmad, 2025 SCC OnLine Kar 490 has taken the view that since NI Act is a special enactment, there is no need for the Magistrate to issue summons to the accused before taking cognizance (under Section 223 of BNSS) of complaints filed under Section 138 of NI Act. This Court is in agreement with the view taken by the High Court of Karnataka. Consequently, this Court directs that there shall be no requirement to issue summons to the accused in terms of Section 223 of BNSS i.e., at the pre-cognizance stage.

35. The Latin maxim *Festinatio justitiae est noverca infortunii*[7] means hasty justice is the stepmother of misfortune. Therefore, justice should be fast enough to heal, yet slow enough to hear. Justice that is tardy undermines constitutional protections, while justice that is hasty compromises procedural equity, and what is required is a judicious balance between the two. Although cases tried summarily are not to be tried hastily, yet the strict-liability offences have to be differentiated from the petty offences. Since haste in justice is a denial of justice, the Justice should not be too fast to miss a lie, nor too slow to let it die.

36. However, §118 of NI Act draws a presumption in favour of the holder of the cheque.

37. The combination of the statutory rule to try cases quickly and the presumption under §118[8] and §139[9] of the NI Act, in all possibilities and practicalities make it an open-and-shut case when it comes to the drawer of the cheque.

38. The NI Act, as it stands today, clearly reflects the government's intention to increase commercial transactions and ensure that the transaction amount is received by the seller or service provider. They added §138, but the snake, which was given fangs to scare, has started biting by filling prison beds, and even extending beyond the corridors by taking the valuable Court time.

39. Offence under Section 138 of the Act is primarily a civil wrong.[10] What must be

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[7] Black, *Black's law dictionary : definitions of the terms and phrases of American and English jurisprudence ancient and modern : Black, Henry Campbell, 1850-1927; Free Download, Borrow, and Streaming; Internet Archive:* https://archive.org/details/blackslawdiction00henr/page/620/mode/2up?q=Festinatio+justitiae

[8] **118. Presumptions as to negotiable instruments.**—Until the contrary is proved, the following presumptions shall be made:—
(*a*) **of consideration:**—that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;
(*b*) **as to date:**—that every negotiable instrument bearing a date was made or drawn on such date;
(*c*) **as to time of acceptance:**—that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;
(*d*) **as to time of transfer:**—that every transfer of a negotiable instrument was made before its naturity;
(*e*) **as to order of indorsements:**—that the indorsements appearing upon a negotiable instrument were made in the order in which they appear then on;
(*f*) **as to stamp:**— that a lost promissory note, bill of exchange or cheque was duly stamped;
(*g*) **that holder is a holder in due course:**—that the holder of a negotiable instrument is a holder in due course: provided that, where the instrutment has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

[9] **139. Presumption in favour of holder.**—It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section138 for the discharge, in whole or in part, of any debt or other liability.

remembered is that the dishonour of a cheque can be best described as a regulatory offence that has been created to serve the public interest in ensuring the reliability of these instruments—The impact of this offence is usually confined to the private parties involved in commercial transactions.[11]

40. In this background, the reflection of the finest legislative wisdom dazzles in the preamble of the Mediation Act, 2023, which reads as follows:

> An Act to promote and facilitate mediation, especially institutional mediation, for resolution of disputes, commercial or otherwise, enforce mediated settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as acceptable and cost effective process and for matters connected therewith or incidental thereto.

41. It shall be appropriate to extract the relevant provisions of the Mediation Act, 2023, which read as follows:

> §3(*i*) "mediator" means a person who is appointed to be a mediator, by the parties or by a mediation service provider, to undertake mediation, and includes a person registered as mediator with the Council.
>
> §3(*h*) "mediation" includes a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as mediator, who does not have the authority to impose a settlement upon the parties to the dispute;
>
> §6. Disputes or matters not fit for mediation.—(1) A mediation under this Act shall not be conducted for resolution of any dispute or matter contained in the indicative list under the First Schedule:
>
> Provided that nothing contained herein shall prevent any court, if deemed appropriate, from referring any dispute relating to compoundable offences including the matrimonial offences which are compoundable and pending between the parties, to mediation:
>
> §7. Power of court or tribunal to refer parties to mediation.—
>
> (1) Notwithstanding the non-settlement of dispute under sub-section (1) of section 5, the court or tribunal may, at any stage of proceeding, refer the parties to undertake mediation.
>
> (2) If the court or tribunal refers the parties to undertake mediation, it may pass suitable interim order to protect the interest of any party if deemed appropriate.
>
> (3) The parties shall not be under obligation to come to a settlement in the mediation pursuant to a reference under sub-section (1).

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[10] Supreme Court of India, *Meters and Instruments Private Limited & Anr. v. Kanchan Mehta*, (2018)1 SCC 560, Para 18, Oct 05, 2017.

[11] Supreme Court of India, *Damodar S. Prabhu v. Sayed Babalal H.*, [2010] 5 SCR 678, Para 3, pg682, May 03, 2010.

> §18. Time-limit for completion of mediation.—
> (1) Notwithstanding anything contained in any other law for the time being in force, mediation under this Act shall be completed within a period of one hundred and twenty days from the date fixed for the first appearance before the mediator.
> (2) The period for mediation mentioned under sub-section (1) may be extended for a further period as agreed by the parties, but not exceeding sixty days.
>
> §30. Online mediation.—
> (1) Online mediation including pre-litigation mediation may be conducted at any stage of mediation under this Act, with the written consent of the parties including by the use of electronic form or computer networks but not limited to an encrypted electronic mail service, secure chat rooms or conferencing by video or audio mode or both.
> (2) The process of online mediation shall be in such manner as may be specified.
> (3) The conduct of online mediation shall be in the circumstances, which ensure that the essential elements of integrity of proceedings and confidentiality are maintained at all times and the mediator may take such appropriate steps in this regard as he deems fit.
> (4) Subject to the other provisions of this Act, the mediation communications in the case of online mediation shall, ensure confidentiality of mediation.

42. Although §6 (1) of the Mediation Act has a list of disputes "not fit for mediation" in the First Schedule, such as serious criminal offences, its proviso clearly reflects the power of the Court to refer disputes relating to compoundable offences for Mediation. This provision is particularly relevant for §138 NI Act cases, as they are compoundable offences per §147 NI Act, which allows compounding "notwithstanding anything contained in the Code of Criminal Procedure, 1973.

43. [Mediation] is a process in which a neutral party works with and assists the disputants to negotiate a settlement by helping them communicate, identify their substantive interests, create options for settlement and focus on achieving a practical and workable solution that amicably ends the dispute.[12]

44. Calm talks lead to clear outcomes. In essence, it involves moving parties from a “me vs. you” approach and “I am right and you are wrong” attitude to a joint search for solutions to the dispute.[13] Unlike adjudication, which focuses on determining guilt and imposing a sentence, Mediation provides a platform for dialogue, negotiation, and flexible settlement terms, shifting the focus from blame to resolution. It is also reflected

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[12] Sriram Panchu, “Mediation-Practice and Law”, pg15, Third Edition, LexisNexis, (2021)

[13] Sriram Panchu, “Mediation-Practice and Law”, pg27, Third Edition, LexisNexis, (2021)

in the legislative intent, vide the said amendment, which provides that the offences under the NI Act are compoundable, which are indicative of the aforesaid principle of prioritizing restitution over castigation. Mediation may be perceived as slower at the threshold, but it offers a more substantive and outcome-oriented resolution. It enables parties to address the real dispute, such as recovering money, repairing and preserving business relationships, and mitigating further economic loss caused by inflation and currency depreciation. Mediation does not weaken justice; it strengthens it by delivering timely, balanced, and commercially sensible results.

45. In business transactions, cheques serve as a convenient and reliable way of deferred payment, allowing trade and financial arrangements to continue smoothly; however, misuse of cheques can be devastating. When poor people or those with limited cash need funds for emergencies—such as school or college admissions, family deaths, medical emergencies, accidents, police cases, or essential needs like marriage, urgent travel, sowing, or religious and cultural events, they often find that banks or financial institutions are unable to help on short notice. As a result, they are forced to turn to predatory money lenders who lend money at exorbitant interest rates and often keep blank cheques, which they manipulate by adding a high interest rate to the principal. The tragedy occurs when these individuals are unaware of the severe consequences of issuing a cheque. These cases are best addressed through mediation because the money lenders advance the cash loan blinded by the veil of greed. When the cheque fails, the money lenders, who are holding such cheques launch prosecution against its drawer under Section 138 of Negotiable Instruments Act. Although such kind of litigation would affect their reputation, and people would avoid taking loans from such unscrupulous money lenders, but in fact it does not affect the system. Even if poor and needy people stop borrowing from such ruthless lenders, still in a system riddled with black money and undeclared income, others are ready to mercilessly take over the dishonest operations of their predecessors.

46. In R. Vijayan v. Baby, 2012(1) SCC 260, Oct 11, 2011, the Hon’ble Supreme Court holds,

> [14]. ... It is sometimes said that cases arising under section 138 of the Act are really civil cases masquerading as criminal cases. The avowed object of Chapter XVII of the Act is to "encourage the culture of use of cheques and enhance the credibility of the instrument". In effect, its object appears to be both punitive as also compensatory and restitutive, in regard to cheque dishonour cases. Chapter XVII of the Act is an unique exercise which blurs the dividing line between civil and criminal jurisdictions. It provides a single forum and single proceeding, for enforcement of criminal liability (for dishonouring the cheque) and for enforcement of the civil liability (for realisation of the cheque amount)

> thereby obviating the need for the creditor to move two different fora for relief.

47. In Meters and Instruments Private Limited & Anr. v. Kanchan Mehta, (2018)1 SCC 560, Oct 05, 2017, the Hon'ble Supreme Court holds,

> [18(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 not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court.
>
> [18(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.

48. In the light of the Mediation Act, 2023, and the Jurisprudence on Mediation as propounded by the Hon'ble Supreme Court, the trial Courts and the Sessions Court shall refer for Mediation, all the pending complaints and appeals under the NI Act, which have not already been referred to Mediation.

49. And if the Mediation fails, the court can resume the trial proceedings without prejudice, as Mediation is voluntary and non-binding until approved according to §7(3) of the Mediation Act, stating "The parties shall not be under obligation to come to a settlement in the mediation pursuant to a reference under its sub-section (1)".

50. In Sanjabij Tari v. Kishore S. Borcar & Anr, CrA 1755-2010, 2025-INSC-1158, Sep 25, 2025, the Hon'ble Supreme Court holds,

> [36 H]. Wherever, the Trial Court deems it appropriate, it shall use its power to order payment of interim deposit as early as possible under Section 143A of the NI Act.

51. When the cheques are dishonored, the predominant objective is recovery and compensation, which the Mediation naturally furthers more efficiently than an adversarial trial. Mediation enables parties to negotiate not only the principal cheque amount but also interest, additional compensation, or structured instalments, thereby directly addressing the erosion of money value caused by prolonged litigation and aligning outcomes with commercial realities. Looking at the other side of the coin, one consequence of sending these cases to Mediation is that, while it may help clear the bottleneck plagued with waves of cheque bounce complaints, it is likely to reduce the Court's workload in some cases. When the case involves a failed settlement or a feigned Mediation by the accused, it can unnecessarily prolong the trials. Given that the primary goal is restoration rather than punishment of the wrongdoer, the risk of delay in failed Mediation is worth taking, despite black-swan failures.

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52. In the continuous tsunami of criminal cases being filed against the dishonor of the cheque, the proverb, "*When you are at the edge of a cliff, sometimes progress is a step backwards,*" needs adherence.

53. Given the above, in all NI Act matters, every Trial Court (CJM/JMFC) shall, immediately after the service of the accused in new cases and in cases not sent for Mediation, refer the matter to Mediation, and it shall be for the parties to decline Mediation before the mediator. Similarly, all Sessions Courts shall, immediately upon the service of the opposite party in all pending appeals and revisions, and in all pending matters not sent for Mediation, refer those for Mediation. Needless to say, the State cannot be made a party in the NI Act case, because it is a private dispute. For a custody certificate and confinement, there is no need for the State to be arraigned as a party before the Sessions Court, and if it is, its name shall be deleted. This is required to avoid unnecessary delay of Mediation by impleading the State as a party in an NI Act matter.

54. Given the above, this Court requests the Magistrate concerned to refer the matter to Mediation; however, considering the delay in the present matter, if the Mediation fails to yield results within 30 days, it shall be presumed that the Mediation has failed.

55. On merits, as discussed at the earlier portion of this order, no ground exists to interfere with the impugned order, and as such, the petition is dismissed.

(ANOOP CHITKARA)
JUDGE

March 10, 2026
Jyoti Sharma

Whether speaking/reasoned	YES
Whether reportable	**YES**