IN THE HON'BLE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SUO MOTO W.P. (CRL.) NO. 02 OF 2020
AND
SLP Crl. No.5464 / 2016

In Re: EXPEDITIOUS TRIAL OF CASES UNDER SECTION 138 OF N.I. ACT, 1881

Along with:
MAKWANA MANGALDAS TULSIDAS … PETITIONER(s)

VS.

THE STATE OF GUJARAT & ANR. … RESPONDENT(s)

Note

1. This Hon'ble Court, on 05.03.2020, while dealing with a case under Section 138 of the Negotiable Instruments Act, 1881 ["the Act"] noticed the pressing need for the expeditious trial and disposal of cases instituted under Section 138.
2. The Court while passing the order, recounted the backlog of cases pending under the aforesaid provision, the perils that it posed to the justice delivery system and also indicated certain measures that could be undertaken to find a solution to the huge pendency.
3. The undersigned were appointed as *amici curiae* to assist the Court and pursuant thereto, submitted a report containing their preliminary submissions and suggestions.
4. This Hon'ble Court *vide* order dated 27.10.2020 and 19.01.2021, took notice of the preliminary report and directed the High Courts and the Director Generals of Police of all States to give specific suggestions in response to the Report.
5. Thereafter, this Hon'ble Court *vide* judgment dated 16.04.2021 constituted an expert-committee to consider various suggestions that are made for arresting the explosion of the judicial docket. Further, the Hon'ble Court arrived at the following conclusions:

> *"1) The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial.*
> *2) Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.*

3) For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.

4) We recommend that suitable amendments be made to the Act for provision of one trial against a person for multiple offences under Section 138 of the Act committed within a period of 12 months, notwithstanding the restriction in Section 219 of the Code.

5) The High Courts are requested to issue practice directions to the Trial Courts to treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques issued as part of the said transaction.

6) Judgments of this Court in Adalat Prasad (supra) and Subramanium Sethuraman (supra) have interpreted the law correctly and we reiterate that there is no inherent power of Trial Courts to review or recall the issue of summons. This does not affect the power of the Trial Court under Section 322 of the Code to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint.

7) Section 258 of the Code is not applicable to complaints under Section 138 of the Act and findings to the contrary in Meters and Instruments (supra) do not lay down correct law. To conclusively deal with this aspect, amendment to the Act empowering the Trial Courts to reconsider/recall summons in respect of complaints under Section 138 shall be considered by the Committee constituted by an order of this Court dated 10.03.2021.

8) All other points, which have been raised by the Amici Curiae in their preliminary report and written submissions and not considered herein, shall be the subject matter of deliberation by the aforementioned Committee. Any other issue relating to expeditious disposal of complaints under Section 138 of the Act shall also be considered by the Committee."

6. The Committee has since submitted its report which has been circulated.

7. The compliance status regarding the steps taken in furtherance of this Hon'ble Court's request that High Court issue practice directions regarding (i) mechanical conversion of summary trials to summons trials and

(ii) deemed service in all complaints with respect to one transaction:

High Court	**Mechanical Conversion**	**Deemed Service**	**Date of Issuance**
High Court of Madhya Pradesh	Yes	Yes	
High Court of Telangana	Yes	Yes	21.06.2021
High Court of Karnataka	Yes	Yes	17.08.2021
High Court of Allahabad	Yes	Yes	10.10.2021
High Court of Rajasthan	Yes	Yes	19.05.2021
High Court of Manipur	Yes	Yes	18.06.2021
High Court of Punjab and Haryana	Yes	Yes	30.11.2021
High Court of Madras	No*	No*	-
High Court of Jharkhand	Yes	Yes	30.09.2021

High Court of Kerala	Yes	Yes	-
High Court of Sikkim	No*****	No*****	-
High Court of Meghalaya	Yes	Yes	-
High Court of Gauhati	Yes	Yes	02.08.2021
High Court of Chattisgarh	Yes	Yes	02.07.2021
High Court of Bombay	Yes	Yes	27.01.2022
High Court of J&K and Ladakh	Yes	Yes	05.04.2022
High Court of Andhra Pradesh	Yes	Yes	10.01.2022
High Court of Himachal Pradesh	Yes	Yes	08.04.2022
High Court of Tripura	Yes	Yes	08.09.2021
High Court of Delhi	Yes	Yes	21.06.2021
High Court of Calcutta	Yes	Yes	22.04.2022
High Court of Gujarat	Yes	Yes	22.04.2022
High Court of Uttarakhand	No Action Taken Report Submitted		
High Court of Patna	No Action Taken Report Submitted		
High Court of Odisha	No Action Taken Report Submitted		

***** The High Court of Madras has circulated a copy of the judgment of this Hon'ble Court *vide* circular dated 17.06.2021 but has not issued practice directions as such.

*****The High Court of Sikkim has circulated a copy of the judgment of this Hon'ble Court *vide* circular dated 04.06.2021 but has not issued practice directions as such.

8. The Expert Committee has submitted a report on the aspects asked to be examined by it and has put forth certain recommendations (**p.45, Committee Report**). It would be pertinent to highlight the gravity of the issue of increasing pendency of NI Act cases by looking into the data available after the submission of the report by the Expert Committee.

9. As on 08.11.2021, there was a pendency of 26,07,166 (**p.20, Committee Report**). As on 13.04.2022, this pendency has increased to 33,44,290 (*See* **ANNEXURE A-1**). This is an increase in pendency of 7,37,124 cases in a period of just over 5 months. As per the data available on 08.11.2021, NI Act cases contribute to 8.81% of the total criminal cases pending in the courts. Further, 11.82% of the total criminal cases that are stagnating due to appearance/service related issues are NI Act cases. Thus, the singular features of NI Act cases which lead to increased pendency need to be examined.

10. This Hon'ble Court *vide* order dated 31.03.2022 has directed the *amici curiae* to file their response to the report of the Expert Committee. In this note, three aspects have been dealt with: **(i)** mediation, **(ii)** creation of a National Portal for Summons and **(iii)** the Scheme for establishment of special courts.

MEDIATION

11. The Committee has suggested that Alternative Dispute Resolution options must be explored. The Committee has proposed a statutory amendment to Section 144 of the NI Act for attempting mediation. Further, it has suggested that the Union government make suitable arrangements for online mediation and permanent online *lok adalats* in consultation with NALSA. The Committee notes that if successful mediation results in executable decrees/orders, it would be useful. (**Page 16 of the Committee Report**).

12. NALSA has formulated two separate schemes for pre-summons mediation and post-summons mediation: NALSA (Scheme for Mediation in Cheque Dishonour Cases) 2021 and NALSA (Scheme for Expedited Pre-Litigation Mediation in Cheque Dishonour Cases). The following concerns in this regard may be highlighted with respect to the mediation:

a. A perusal of Sections 138 and 142 would reveal that after the dishonour of the cheque, the complainant has 30 days' time to issue notice (Section 138, proviso (b)). The accused has 15 days' time to respond and issue a fresh cheque (Section 138, proviso (c)). After the expiry of the said 15 days, the complainant gets another 30 days' time to file his complaint under Section 142(1)(b). Therefore, the short time period within which mediation will have to commence and conclude should be 75 days from the date of dishonour if this suggestion is accepted.

b. Service of summons under Chapter VI, Part A (Section 61-69, Cr.P.C) on the proper address of the accused is a considerable concern (and cause for delays) and therefore, a pre-prosecution mediation would entail service of mediation notice and the conduct of pre-summons mediation before the 75 days and would also pose considerable challenges. In any case, the accused has an

opportunity to pay the cheque amount on receipt of statutory notice under Section 138 to avoid initiation of prosecution.

c. Though many High Courts have stated that the time taken in mediation may be a reason to condone delay under Section 142, this issue itself will generate systemic delays and extensive litigation that would further burden the already overburdened courts.

d. With respect to the NI Act cases that are referred to the Lok Adalat, this Hon'ble Court in the case of ***K.N. Govindan Kutty Menon v. C.D. Shaji*, (2012) 2 SCC 51**, has formulated the following propositions:

> *"(1) In view of the unambiguous language of Section 21 of the Act, every award of the Lok Adalat shall be deemed to be a decree of a civil court and as such it is executable by that court.*
> *(2) The Act does not make out any such distinction between the reference made by a civil court and a criminal court.*
> *(3) There is no restriction on the power of the Lok Adalat to pass an award based on the compromise arrived at between the parties in respect of cases referred to by various courts (both civil and criminal), tribunals, Family Court, Rent Control Court, Consumer Redressal Forum, Motor Accidents Claims Tribunal and other forums of similar nature.*
> *(4) Even if a matter is referred by a criminal court under Section 138 of the Negotiable Instruments Act, 1881 and by virtue of the deeming provisions, the award passed by the Lok Adalat based on a compromise has to be treated as a decree capable of execution by a civil court."*

e. However, unlike the system of Lok Adalats, where statutorily the settlement is given the force of a decree, the mediation settlement arrived at the pre-summons stage, as the law stands today has no such effect. The complainant may still have to seek other judicial remedies to enforce the settlement which will further burden the judicial system.

f. Post-summons mediation, on the other hand, may not encounter such concerns except the issue of service because the settlement can be recorded in terms of compounding under Section 147 of the NI Act.

13. Due to this lack of clarity with respect to reports in private mediation, it is suggested that all mediation reports be sent to the court so that actions for compounding the offence may be taken up by the court.

14. The Hon'ble High Court of Delhi in the case of ***Dayawati v. Yogesh Kumar Gosain*****, 2017 SCCOnLine Del 11032**, while examining the possibilities and procedure to be followed when there is a settlement agreement pursuant to a mediation in NI Act cases, noted that there was no bar on criminal courts from adopting the practice followed by the civil courts before whom the settlement in writing, is taken on record and a decree is passed in terms thereof after confirming that the settlement was entered into voluntarily and that it contained the actual terms of the settlement. The High Court further held that, a criminal court would thereafter pass an appropriate order accepting the agreement, incorporating the terms of the settlement regarding payment under Section 147 of the NI Act and the undertakings of the parties. Any breach of this order and non-payment of the agreed amounts would be recoverable in terms of Section 431 read with Section 421 Cr.P.C.

15. It is also suggested that, a scheme for mediation be formulated and pending 138 cases, which are at the appeal, review or quashing (Section 482) stages, mandatorily be referred to the High Court annexed mediation centres after obtaining consent of parties. The mediation proceedings could be conducted online. It is to be noted that, in such matters pending before the High Court, both parties would be represented and therefore, it is easier to facilitate mediation proceedings. It is suggested that at least High Courts of states having the highest pendency of cases must formulate Standard Operating Procedures for online mediation. This is especially important due to the unique feature of these NI Act cases where the parties are located in different jurisdictions.

NATIONAL PORTAL FOR SUMMONS

16. The Expert Committee has suggested that a national portal for secured display of summonses, searchable by account number/name may be created (**Page 23, Committee Report**). It is submitted that invariably, in cases under Section 138, NI Act, the cheque is presented in a territorial jurisdiction where the Accused does not ordinarily reside. This, coupled with the fact that Section 142(2) of the NI Act, as amended by Act 26 of 2015, results in the Accused being resident outside the

jurisdiction of the summoning Magistrate. Amongst the causes of delay in prosecutions is on account of the avoidance of summons by accused, delays in execution of warrants and other dilatory tactics employed by the Accused in ensuring that the trial does not commence. A National Portal for Summons may help tackle with this singular problem of accused invariably residing in different jurisdictions. It may be beneficial for this Hon'ble Court to seek the response of the Union government immediately on the modality of operationalising such a proposed portal since the NI Act is a Union legislation and the Union government would be best positioned to assist this Hon'ble Court on this issue.

SCHEME FOR ESTABLISHMENT OF NI COURTS

17. The Expert Committee has submitted a detailed concept note on the creation of *de novo* Special NI Courts by the Central Government *vide* its powers under Article 247 in its Report. The Expert Committee has proposed a scheme with two grades of judges at the trial court level and two at the appellate/revision stage. As per the Expert Committee's calculations, the establishment of these special NI Courts would require recruitment of 1,826 special judicial officers and a total cost of Rs 126.59 crores. Since it may not be immediately feasible to establish *de novo* courts and recruit fresh candidates, it may be helpful to examine the possibility of appointing retired judicial officers as Special Judicial/Metropolitan Magistrates.

18. With respect to the legality of constituting Special Magistrate Courts under the NI Act, it is submitted that it can be done under Section 18 of Cr.P.C, 1973 (along with S.13, Cr.P.C). The necessary ingredients of this provision are that (i) the High Court may on request of Central or State Government confer on any person who holds or has held in past under the Government, powers conferrable under this Code (i.e. CrPC, 1973) on a MM, *qua*, particular cases or particular classes of cases in any metropolitan area within its local jurisdiction; (ii) no such powers shall be conferred on any person, unless he possesses such qualification or experience, qua, affairs, as High Court may specify; (iii) such Magistrate shall be called Special Metropolitan Magistrate (SMM) and be appointed for maximum one year, as High Court may direct and (iv) High Court or State Govt. may empower any SMM to exercise in any

local area outside metropolitan area, the powers of Judicial Magistrate. However, this is not with respect to creation of *de novo* courts.

19. It is submitted that this Hon'ble Court in the case of ***Kadra Pahadiya v. State of Bihar*, (1997) 4 SCC 287**, held that the choice of power to be conferred on the appointees under Section 18(1) is left to the sole discretion of the High Court. The appointee must possess such qualification and experience in relation to legal affairs as the High Court may by rules specify. The Court also clarified that judicial officers belonging to the subordinate judiciary of a State/Union territory can also be appointed and that it would be erroneous to narrowly construe the words '*who holds or has held any post under the Government*' in a manner that excludes members belonging to the subordinate judicial services. This Hon'ble Court further observed that,

> "*22. The idea underlying the provision for the appointment of Special Judicial Magistrates/Special Metropolitan Magistrates under Sections 13(1) and 18(1) respectively, is to relieve the regular courts of the burden of trying those cases which could be disposed of by such Magistrates. Parliament has advisedly left the decision as to the choice of power to be conferred on such Magistrates with the High Court. Once a request is received from the Central/State Government by the High Court, the ball is entirely in the High Court, and it is the High Court and the High Court alone which has to decide on the number of appointments to be made, the choice of personnel to be entrusted with such power, and the extent of power to be conferred on such persons. It is the High Court which has to specify the qualification and/or experience that would be required for the discharging of duties by such Magistrates.*"

20. It is thus suggested that the High Courts must employ the services of retired judicial officers for this purpose. The human resources required to operationalise these courts could also be drawn from retired court staff. This scheme could be tested on a pilot basis in 5 judicial districts with the highest pendency in the 5 states with the highest pendency (namely, Maharashtra, Rajasthan, Gujarat, Delhi and Uttar Pradesh) and the viability of utilising services of retired judicial officers can be examined based on the results of the pilot study.

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Sidharth Luthra

K Parameshwar

Amicus Curiae

ANNEXURE A-1

NI ACT cases-Pending & disposal_As per NJDG DATA – for the period 01.01.2021- 31.12.2021				
Sr No.	**State**	**INSTITUTION**	**DISPOSAL**	**PENDENCY**
		Registration Date (01.01.2021-31.12.2021)	**Disposal Date (01.01.2021-31.12.2021)**	**(As on 13.04.2022)**
1	Andhra Pradesh	9,752	4,271	36,348
2	Assam	721	475	3,247
3	Bihar	7,596	1,734	37,519
4	Chandigarh	6,534	4,561	24,818
5	Chhattisgarh	17,414	8,277	60,778
6	Delhi	69,123	54,384	4,08,992
7	DNH at Silvasa	160	83	911
8	Goa	3,109	2,378	13,721
9	Gujarat	1,13,095	91,540	4,37,979
10	Haryana	52,361	34,131	2,35,870
11	Himachal Pradesh	9,002	7,043	50,389
12	Jharkhand	5,349	2,157	26,996
13	Karnataka	21,874	32,678	60,549
14	Kerala	7,545	4,930	42,974
15	Madhya Pradesh	32,044	23,582	1,71,471
16	Maharashtra	86,408	66,682	5,60,914
17	Nagaland	5	3	19
18	Orissa	7,826	3,518	57,650
19	Puducherry	1,206	327	4,713
20	Punjab	49,154	40,304	1,79,065
21	Rajasthan	91,212	39,502	4,79,774
22	Sikkim		1	3
23	Tamil Nadu	24,133	16,116	1,06,200
24	Telangana	12,191	6,977	40,104
25	Tripura	71	48	197
26	Uttar Pradesh	53,827	26,930	2,66,777
27	Uttarakhand	6,943	5,732	36,003
28	West Bengal	96	13	309
	Total	6,88,751	4,78,377	33,44,290