

HIGH COURT OF SIKKIM

No. 02/Confdl/HCS

Dated: 11.05.2022

PRACTICE DIRECTIONS

In compliance to the order of Hon'ble Supreme Court of India dated 16th April, 2021 passed in Suo Motu Writ Petition (Criminal) No. 2/2020 (*In Re: Expeditious Trial of Cases under Section 138 of Negotiable Instrument Act 1881*), the following directions are issued for the Courts under the High Courts of Sikkim:

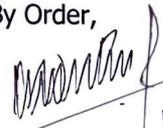
1. The Magistrates having jurisdiction to try offences under the Negotiable Instruments Act, 1881 (in short N.I. Act), shall record sufficient reasons before converting a complaint under section 138 of the N.I. Act from summary trial to summons trial, in terms of section 143 of the N.I. Act. Conversion of summary trial to summons trial in such cases shall not be done in a mechanical manner.
2. In all the complaints filed under section 138 of the N.I. Act inquiry shall be conducted by the concerned Magistrate to arrive at sufficient grounds to proceed against the accused when such accused resides beyond the territorial jurisdiction of the Court.
3. While conducting any such inquiry under section 202 of the Code of Criminal Procedure, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate may restrict the inquiry to examination of documents without insisting for examination of witnesses.


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4. All Trial courts shall treat service of summons in one complaint under section 138 of the N.I. Act forming part of a transaction, as deemed service in respect of all complaints filed before the same Court relating to dishonor of cheques issued as part of the same transaction.
5. Trial Courts have no inherent power to review or recall the issue of summons in relation to complaint filed under section 138 of the N.I. Act. However, the same shall not affect the power of the Trial Court under section 322 of the Code of Criminal Procedure 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.
6. Section 258 of the Code of Criminal Procedure has no applicability to complaints under section 138 of the N.I. Act. The words "*as far as may be*" in section 143 are used only in respect of applicability of sections 262 to 265 of the Code and the summary procedure to be followed for trials under the said Code.
7. The Appellate Courts before which appeals against the judgments in complaint under section 138 of N.I. Act are pending shall make an effort to settle the dispute through mediation.

These practice directions shall come into force with immediate effect.

By Order,


(K.W. Bhutia)
REGISTRAR GENERAL

11.05.2022