

From

Registrar General
High Court of Uttarakhand
Nainital

To

All the District Judges
Subordinate to High Court of Uttarakhand

C.L.No.10/UHC/Admn-B/v(a)6/2020

Dated: 01st September, 2021

Subject:- Practice Directions to streamline the procedure being Adopted in the cases instituted for the offence under Section 138 of the Negotiable Instruments Act.

Madam/Sir,

In compliance of order dated 16.04.2021 of Hon'ble the Supreme Court of India passed in *Suo Moto Writ Petition (Criminal) No.02 of 2020* titled as "*In Re: Expeditious Trial of Cases under Section 138 of Negotiable Instruments Act 1881*", the following directions are hereby issued in order to streamline the procedure being adopted in the cases instituted for the offence under Section 138 of the Negotiable Instruments Act, 1881:-

(1) The Magistrates having jurisdiction to try offences under the Negotiable Instruments Act, 1881 (*in short Act*), shall record cogent and sufficient reasons before converting a complaint under Section 138 of the Act from Summary Trial to Summons Trial in exercise of power under the second proviso of section 143 of the Act. Due care and caution shall be exercised in this regard and the conversion of summary trial to summons trial shall not be in a mechanical manner.

(2) On receipt of a complaint under Section 138 of Act, wherever it is found that the accused is resident of the area beyond the territorial jurisdiction of the Magistrate concerned, an inquiry shall be conducted by the Magistrate to arrive at sufficient grounds to proceed against the said accused, as prescribed under Section 202 of the Code of Criminal Procedure, 1973 (in short Code).

(3) While conducting the inquiry under Section 202 of the Code, the 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 for satisfaction as to the sufficiency of grounds for proceeding under the said provision without insisting for examination of witnesses.

(4) Trial Court shall treat service of summons in one complaint under Section 138 of the 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 said 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 Act. However, the same shall 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.

(6) Section 258 of the Code has no applicability to complaints under Section 138 of the 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 the Act are pending, shall make efforts for the settlement of the dispute through mediation.

The aforesaid Practice Directions shall come into force with immediate effect. Therefore, all the Judicial Officers in the State are hereby directed to follow the above practice directions scrupulously, while dealing with cases under Section 138 of the Negotiable Instruments Act, 1881.

Yours sincerely,

Sd/-

(Registrar General)

No.4242/UHC/Admn-B/V(a)4/2020

Dated: 01st September, 2021

Copy for information and necessary action to :-

- (i) Director, Uttarakhand Judicial & Legal Academy, Bhowali, Nainital
- (ii) All the Family Court Judges, State of Uttarakhand
- (iii) Chairman, Commercial Tax Tribunal, Dehradun
- (iv) Chairman, State Transport Appellate Tribunal, Dehradun
- (v) Registrar, State Consumer Redressal Commission, Dehradun
- (vi) Member Secretary, Uttarakhand State Legal Services Authority, Nainital
- (vii) Presiding Officer, Industrial Tribunal-cum-Labour Court, Haldwani, District Nainital
- (viii) Presiding Officer, Labour Courts, Dehradun, Haridwar & Kashipur, District Udham Singh Nagar
- (ix) Presiding Officer, Food Safety Appellate Tribunal, Dehradun & Haldwani
- (x) Registrar, Public Service Tribunal, Uttarakhand, Dehradun
- (xi) Chairman, Uttarakhand Cooperative Tribunal, Dehradun

- (xii) Secretary-cum-Registrar, State Level Police Complaint Authority, Dehradun
- (xiii) Chairman, Permanent Lok Adalat, Dehradun, Haridwar, Nainital and Udham Singh Nagar
- (xiv) All the Registrars of the Court.
- (xv) Joint Registrars, Deputy Registrars, Asstt. Registrars & Section Officers of the Court.
- (xvi) Computer Section of High Court with a direction to upload the same in the website of the High Court of Uttarakhand
- (xvii) Guard File

Sd/-

(Registrar General)