



CRIMINAL

Supreme Court Guidelines on Expeditious Disposal & Compounding under Section 138 NI Act: Sanjabij Tari v. Kishore S. Borcar

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Introduction

On 25 September 2025, the Supreme Court of India delivered a significant judgment in *Sanjabij Tari v. Kishore S. Borcar* (2025 INSC 1158), clarifying critical aspects of cheque dishonour prosecutions under the Negotiable Instruments Act, 1881 (NI Act). The decision not only addresses substantive legal issues such as the presumption of liability and enforceability of cash loans, but also prescribes systemic reforms aimed at reducing pendency in cheque bounce litigation, which constitutes a large share of trial court caseloads.

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Legal Background

Section 138 of the NI Act criminalises dishonour of cheques issued in discharge of a debt or liability. Once execution of the cheque is admitted, Sections 118(a) and 139 NI Act raise presumptions in favour of the complainant that the cheque was issued for a legally enforceable debt.

Historically, courts have grappled with two recurring issues:

1. Scope of revisional jurisdiction under the Code of Criminal Procedure, 1973 (CrPC), now replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).
2. Legality of cash loans exceeding ₹20,000, in view of Section 269SS of the Income Tax Act, 1961, which prohibits such transactions and prescribes penalty under Section 271D.

This case presented an opportunity to resolve both questions, while also addressing the systemic challenge of enormous arrears in NI Act prosecutions.

Case Facts

- The complainant, Sanjabij Tari, advanced a loan in cash to the accused, Kishore S. Borcar.
- The accused issued a cheque, which was dishonoured upon presentation.
- Both the Trial Court and the Sessions Court convicted the accused under Section 138 NI Act.
- The Bombay High Court (Goa Bench), in revisional jurisdiction, set aside the conviction and acquitted the accused, primarily questioning the complainant's financial capacity.
- The complainant appealed to the Supreme Court.

Supreme Court's Findings

1. Presumption under NI Act

- The Court reaffirmed that once the execution of a cheque is admitted, the statutory presumptions under Sections 118 and 139 of the NI Act automatically arise in favour of the complainant. Section 118 presumes that a negotiable instrument is made for consideration in favour of a holder in due course, while Section 139 creates a presumption that a dishonoured cheque was issued for discharge of a legally enforceable debt or liability. These presumptions shift the initial burden onto the drawer,

- reinforcing the reliability of cheques and strengthening the position of the complainant in Section 138 proceedings.
- The burden shifts to the accused to rebut the presumption through cogent evidence.
- Mere questioning of the complainant's financial capacity or alleging irregularities in the source of funds does not suffice.

2. Enforceability of Cash Loans

- The Court overruled the Kerala High Court view that cash loans above ₹20,000, advanced in violation of Section 269SS IT Act, are not legally enforceable.
- It held that such a transaction remains enforceable under the NI Act; the only consequence of violating Section 269SS is exposure to penalty under Section 271D.
- This removes a major defence often invoked by accused persons in cheque bounce litigation.

3. Scope of Revisional Jurisdiction

- The Supreme Court held that the High Court exceeded its revisional powers by re-appreciating evidence and overturning concurrent findings of conviction.
- Unless there is manifest perversity or miscarriage of justice, revisional courts must not interfere with concurrent factual findings.

4. Systemic Guidelines for Cheque Bounce Cases

Recognising the overwhelming pendency of Section 138 matters, the Court laid down pragmatic reforms:

- Summons Service:** To be effected not only by traditional modes but also through dasti service, email, WhatsApp, and electronic means under BNSS, 2023.
- Online Payment Mechanism:** All District Courts to establish secure QR codes or UPI links to enable accused persons to directly pay cheque amounts, facilitating compounding at the earliest stage.
- Complaint Synopsis Format:** Every complainant must file a structured synopsis containing essential particulars of the cheque, dishonour, statutory notice, and relief sought.
- Compounding and Settlement:** Courts must encourage early settlement, including use of the Probation of Offenders Act, 1958, where appropriate.

Impact of the Judgment

- Strengthening Complainants' Position:** The judgment fortifies the presumption under NI Act, restricting accused persons from raising frivolous defences about financial capacity or cash loan irregularities.
- Clarification on Cash Loans:** By holding that violation of Section 269SS IT Act does not render a debt unenforceable, the Court has removed a key defence strategy and aligned NI Act enforcement with commercial reality.
- Limiting Revisional Powers:** The reaffirmation of narrow revisional jurisdiction prevents High Courts from re-opening well-reasoned convictions, thereby reducing delays.
- Procedural Reforms for Speedy Disposal:** The guidelines covering digital summons, online payments, and structured complaint formats are designed to reduce pendency and align cheque dishonour cases with the digital transformation of the justice system under BNSS, 2023.

Conclusion

The Supreme Court's ruling in *Sanjabij Tari v. Kishore S. Borcar* (2025 INSC 1158) is a landmark in cheque dishonour jurisprudence. It clarifies substantive law on presumptions and enforceability of debts, limits revisional interference, and introduces forward-looking procedural reforms to tackle backlog. By combining doctrinal clarity with systemic innovation, the Court has taken a decisive step toward restoring efficiency and credibility in cheque bounce litigation, which forms a significant portion of India's trial court docket.

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