

ITEM NO.501 Court No.1 (Video Conferencing) SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Suo Motu Writ Petition (Criminal) No.2/2020

IN RE : EXPEDITIOUS TRIAL OF CASES UNDER SECTION 138 OF N.I. ACT 1881

[Mr. Sidharth Luthra, Senior Advocate(.A.C) and Mr. K.Parameshwar, Advocate (A.C.)]

(With IA No. 5070/2021 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 121371/2020 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 29900/2021 - CONDONATION OF DELAY IN FILING REPLY AFFIDAVIT

IA No. 6909/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 125606/2020 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 108282/2020 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 27192/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 13743/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 105142/2020 - EXEMPTION FROM FILING O.T.

IA No. 6927/2021 - EXEMPTION FROM FILING O.T.

IA No. 29902/2021 - EXEMPTION FROM PERSONAL APPEARANCE

IA No. 121370/2020 - PERMISSION TO APPEAR AND ARGUE IN PERSON)

Date : 16-04-2021 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE L. NAGESWARA RAO

HON'BLE MR. JUSTICE B.R. GAVAI

HON'BLE MR. JUSTICE A.S. BOPANNA

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

By Courts Motion

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UPON hearing the counsel the Court made the following
O R D E R

The Court made the following conclusions in terms of the signed order :

- 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 *Subramaniam 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.

List the matter after eight weeks. Further hearing in this matter will be before 3-Judges Bench.

(SANJAY KUMAR-II)
ASTT. REGISTRAR-cum-PS

(Signed Reportable Order is placed on the file)

(PRADEEP KUMAR)
BRANCH OFFICER