

Order below Exhibit 1 in SCC.382/2018

This is a complaint filed under Section 138 of the Negotiable Instruments Act, 1881. The Hon'ble Supreme Court has laid down certain direction in the case of Indian Banks Association Vs. Union of India. (2014) SCC 590 which are required to be scrupulously followed.

2. The Hon'ble Supreme Court has laid down as follows:-

*We have indicated that under Section 145 of the Act, the complainant can give his evidence by way of an **affidavit and such affidavit shall be read in evidence in any inquiry, trial or other proceedings in the Court, which makes it clear that a complainant is not required to examine himself twice i.e. one after filing the complaint and one after summoning of the accused. Affidavit and the documents filed by the complainant along with complaint for taking cognizance of the offence are good enough to be read in evidence at both the stages i.e. pre-summoning stage and the post summoning stage.** In other words, there is no necessity to recall and re-examine the complaint after summoning of accused, **unless the Magistrate passes a specific order as to why the complainant is to be recalled.** Such an order is to be passed on an application made by the accused or under Section 145(2) of the Act suo moto by the Court. In summary trial, after the accused is summoned, his plea is to be recorded under Section 263(g) Cr.P.C. and his examination, if any, can be done by a Magistrate and a finding can be given by the Court under Section 263(h) Cr.P.C. and the same procedure can be followed by a Magistrate for offence of dishonour of cheque since offence under Section 138 of the Act is a document based offence. **We make it clear that if the proviso (a), (b) & (c) to Section 138 of the Act are shown to have been complied with, technically the commission of the offence stands completed and it is for the accused to show that no offence could have been committed by him for specific reasons and defences.***

3. In the present case, the plea of accused is recorded on 16-03-2020. He has furnished his bail bond. He was asked to take notice of

Section 251 of the Code of Criminal Procedure, 1973. He has pleaded not guilty and stated to have defence to be made out.

4. The accused has not made any application for compounding of offence as directed by Hon'ble Supreme Court in the case of Indian Banks Association (supra). The said direction is as under:

“3. Court may indicate in the summon that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, Court may pass appropriate orders at the earliest”

5. In view of the above law laid down by Hon'ble Supreme Court in the case of Indian Banks Association (supra) the affidavit of complainant about at the stage of inquiry can be also used in the trial. Particularly, as per Section 145 (1) of the Negotiable Instruments Act, 1881. Hence, the Complainant need not be examined again. The affidavit filed for enquiry under section 200 of Cr.P.C. was not relied by my predecessor for the purpose of trial. Hence, however, the complainant has again filed evidence affidavit today.

5. However, the documents produced by him are required to be marked in evidence as the proof of such documents is not mentioned in the evidence affidavit by the Complainant. Therefore, the matter be kept for appropriate order about the proof of documents.

6. Once the documents are marked in evidence, the matter will be kept for defence evidence as directed by Hon'ble Supreme Court in the case of Indian Bank Association (supra). The said direction is as under:

“4) Court should direct the accused, when he appears to

furnish a bail bond, to ensure his appearance during trial and ask him to take notice under [Section 251Cr.P.C.](#) to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under [Section 145\(2\)](#) for recalling a witness for cross-examination”

7. Hence, as per said directions after completing the steps in para number 5, the matter will be kept for recording defence statement of accused. Needless to say, thereafter the accused will have right to cross examination as per Section 145(2) of the Negotiable Instruments Act, 1881 if he makes application about the same.

Date 3-2-2022

Judicial Magistrate First, Class, Atpadi

Certificate

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Stenographer	- H.P.Haridas
Court	- Civil Judge Jr.Dn. Atpadi.
Date	- 03.2.2022
Order signed by the Presiding Officer on	- 03.2.2022
Order uploaded on	- 04.2.2022