ITEM NO.1A COURT NO.5 SECTION IIB
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No. 2221 of 2014
(@ Petition(s) for Special Leave to Appeal (Crl.) No(s). 5623/2012)

J.V. BAHARUNI & ANR. Appellant(s)

VERSUS

STATE OF GUJARAT & ANR. Respondent(s)

WITH
Criminal Appeal No.2222 of 2014
(@ SLP(Crl) No. 3332/2012)
Criminal Appeal No.2223 of 2014
(@ SLP(Crl) No. 734/2013)

Date: 16/10/2014 These appeals were called on for Judgment today.

For Petitioner(s)
Mr. Aniruddha P. Mayee,Adv.

Mr. Haresh Raichura,Adv.

For Respondent(s)
Mr. Kunal Verma,Adv.

Giss Anthony, Adv.
Ms. Hemantika Wahi,Adv.

Mr. Vimal Chandra S. Dave,Adv.
Mr. Rameshwar Prasad Goyal,Adv.

Hon'ble Mr. Justice N.V. Ramana pronounced the Judgment of the Bench comprising Hon'ble Mrs. Justice Ranjana Prakash Desai and His Lordship.

The criminal appeals are allowed in terms of the signed Reportable Judgment.

(VISHAL ANAND) (INDU POKHRIYAL)
COURT MASTER COURT MASTER
(Signed Reportable Judgment is placed on the file)

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2221 OF 2014

ARISING OUT OF

SPECIAL LEAVE PETITION (CRL.) NO. 5623 OF 2012

J.V. BAHARUNI & ANR. … APPELLANTS

VERSUS

STATE OF GUJARAT & ANR. … RESPONDENTS

WITH

CRIMINAL APPEAL NO.2222 OF 2014
ARISING OUT OF
SPECIAL LEAVE PETITION (CRL.) NO. 3332 OF 2012

GIRIRAJ PROTEINS PVT. LTD. & ORS. … APPELLANTS

VERSUS

D.M. FINANCE & ANR. …. RESPONDENTS

CRIMINAL APPEAL NO. 2223 OF 2014
ARISING OUT OF
SPECIAL LEAVE PETITION (CRL.) NO. 734 OF 2013

BALDEVBHAI RAMJIBHAI PATEL … APPELLANT

VERSUS

VISHNUBHAI HARGOVINDAS PATEL & ANR. …. RESPONDENTS

JUDGMENT

N.V. RAMANA, J.

Leave granted.

2. The undisputed facts of the appeal arising out of S.L.P. (Crl.) No. 5623 of 2012 are that appellant No. 2 is the owner of appellant No. 1 Company. The respondent No. 2, who is in the business of manufacture, process and marketing of petroleum products, has a 'Company Owned Company Operated' retail outlet at Village Gadu, Maliya Hatina Taluq, District Junagadh, Gujarat. Appellants entered into a contract with the Respondent No. 2 Corporation for performing various contractual jobs. As per the terms of the contract, the appellants were required to undertake the contracted jobs and to deposit the money out of sale proceeds on a daily basis in the State Bank of India, Veraval Branch. The business dealings between the parties were going on since 1996 and in terms of the contract appellants furnished to the Respondent No. 2, two Cheques bearing Nos. 884572 and 884574, dated 24th June, 2000 for Rs.10 lakhs and Rs.25 lakhs, respectively. When the cheques

were presented for realization, they bounced with the endorsement “not arranged for”. Hence, respondent No. 2 initiated criminal proceedings under Section 138 of the Negotiable Instruments Act, 1881 (for short ‘the N.I. Act’) against the appellants and filed Criminal Complaint No. 2131 of 2000.

3. Before the Trial Court it was argued on behalf of Respondent No.2—Corporation that the cheques in question were issued by the appellants to discharge their part liability for clearing the dues whereas the case of the appellants was that there were no dues payable to the Respondent Corporation and the Cheques were taken by the complainant—Corporation as ‘guarantee’ and misused the same.

4. The Trial Court acquitted the appellant No. 2—accused under Section 255(1) of the Criminal Procedure Code (Cr.P.C.) holding that considering the facts and circumstances and taking into account the evidence and the settled principles of law, complainant has failed to prove the charge against the accused and under the circumstances, it is not possible to hold the

accused guilty for the offence punishable under Section 138 of the Act.

5. Aggrieved by the judgment of the learned Trial Judge, the respondent No. 2—complainant challenged it in an appeal before the High Court of Gujarat under Section 378, Cr.P.C. It was contended before the High Court on behalf of the complainant—Corporation that the evidence was recorded by one Magistrate and relying on the same evidence, his successor Magistrate delivered the judgment. Therefore, the trial was vitiated as the case was tried 'summarily' under Section 143 of the N.I. Act, and the successor Magistrate could not have relied upon the evidence recorded by his predecessor. Placing reliance on this Court's decision in ***Nitinbhai Saevatilal Shah*** **Vs.** ***Manubhai Manjibhai Panchal*** **AIR 2011 SC 3076,** the complainant submitted that the matter be remanded to the Trial Court for a *de novo* trial,

6. The High Court observed that the learned Magistrate who delivered the judgment was not in a position to appreciate the evidence properly and decide the matter effectively to do substantial justice as he formed the opinion relying upon the

evidence recorded by his predecessor. It, therefore, caused serious prejudice to the complainant as an order of acquittal was passed. Hence, the High Court allowed the appeal and remanded the matter to the Trial Court for a fresh trial in accordance with law after giving opportunity to the parties.

7. Dissatisfied with the High Court's judgment, the accused —appellants assailed it in appeal before this Court. On 6th August, 2012, this Court while issuing notice, stayed proceedings going on before the learned Magistrate in pursuance of the remand order passed by the High Court.

8. The brief facts of S.L.P. (Crl.) No. 3332 of 2012 are that at the relevant time, the complainant—Jayesh Thakker was the Manager of Respondent No.1 firm (D.M. Finance). Appellant Nos. 2 to 5 were Directors of the Appellant No. 1 Company which runs the business of proteins. They entered into a transaction with the Respondent No. 1 firm for purchase of castor stocks. It is alleged that the Appellant Nos. 2 to 5 had purchased the stock of castor seeds and as per the statement of account, the appellants paid only Rs.28,66,677/- and an amount of Rs.41,89,364/- was outstanding. The appellants,

therefore, issued three cheques bearing No.585977 dated 27.6.2001 for Rs.3,00,000/, cheque No. 585979 for Rs.2,00,000/- and cheque No. 585980 for Rs.2,00,000/- drawn on Laxmi Vilas Bank Ltd., Gondal Road, Rajkot towards part payment. When these cheques were presented for realization, they were dishonoured by the Bank with endorsement "insufficient funds". Respondent No. 1 issued notice dated 10.7.2001 to the appellants and upon their failure to obey the notice, he filed a Complaint under Section 138 of the N.I. Act.

9. Before the Trial Court, the appellants denied having committed the offence and the complainant has adduced evidence. By an order dated 30.5.2009 the Trial Court acquitted the accused—appellants. The Respondent No. 1—complainant challenged the acquittal order in an appeal before the High Court of Gujarat under Section 378, Cr.P.C.

10. It was mainly contended by the complainant before the High Court that the Trial Court committed illegality as the offence under Section 138 of NI Act has to be tried in summary manner and a part of evidence was recorded by one Magistrate and remaining part of evidence was recorded by a successor

Magistrate who delivered the judgment. The High Court, placing reliance on ***Nitinbhai*** remanded the matter to the Trial Court for a *de novo* trial. Aggrieved by the remand order passed by the High Court, the accused—appellants preferred the present appeal.

11. This Court, by an order dated 27th August, 2012 issued notice and stayed proceedings before the learned Magistrate in pursuance of the remand order passed by the High Court. This Court also directed to tag on this matter with SLP (Crl) No. 5623 of 2012.

12. As regards the appeal arising out of S.L.P. (Crl.) No. 734 of 2013, the facts in a nutshell are that the Respondent No.1—complainant was the owner of Ranjan High School in Bapunagar, Ahmedabad and the accused—appellant was engaged with the activities of the school. The accused—appellant took hand loan of Rs.3,57,000/- from the respondent No. 1. To fulfil his obligation, the appellant issued a cheque No. 481551 dated 25.8.1998 for Rs.2,97,000/- and another cheque No. 481552 dated 25.10.1998 for Rs. 60,000/- drawn on Gandhinagar Nagrik Co-operative Bank, Sachivalaya Branch,

Gandhinagar. Upon presentation, the cheques were returned by the bank unpaid on account of insufficient funds. A notice was served upon the accused—appellant on 17.11.1998 demanding payment and upon his failure to comply with the notice, the respondent No.1—complainant filed criminal complaint before the Trial Court.

13. Accused pleaded not guilty and after conducting the trial. The Trial Court by an order dated 7.8.2009 acquitted the appellant—accused holding him innocent as per Section 255(1) of the Cr.P.C. Aggrieved thereby, the respondent No. 1 preferred appeal under Section 378 of Cr.P.C. before the High Court. The High Court, by the impugned judgment, observed that the case was transferred from one Metropolitan Magistrate to another and the Magistrate who recorded the evidence did not pass judgment. Placing reliance on ***Nitinbhai*** the High Court allowed the appeal and remanded the matter to the Trial Court for *de novo* trial. Against the order passed by the High Court remanding the matter for *de novo* trial, the accused—appellant preferred the present appeal.

14. This Court, by an order dated 14th January, 2013 issued notice and stayed proceedings before the learned Magistrate in pursuance of the remand order passed by the High Court. The matter was also directed to be tagged with SLP (Crl) No. 5623 of 2012.

15. That is how all these appeals are placed before us. In all three matters, the rival contentions of the parties are more or less similar and as the issue involved is one and the same, they are being dealt with and disposed of commonly.

16. Learned counsel for the appellants contended that even though the learned Magistrate who rendered the judgment was not the same who recorded the evidence, the fact remains that the order of acquittal was recorded only after appreciating the entire evidence in its proper perspective and after giving an opportunity to both sides to present their case. Not only that, the learned Magistrate, before delivering the judgment, has given ample opportunity to the parties to bring on record their evidence in detail. The learned Magistrate analyzed the entire oral as well as documentary evidence. After taking into account all material aspects, the Trial Court framed the issues and

passed reasoned order arriving at a conclusion that no iota of evidence is produced by the complainant to show that any amount was due and recoverable from the accused and the complainant has failed to prove that the Cheques in question were issued by the accused towards a legally enforceable debt. While passing the order of acquittal, the Trial Court also considered the settled principles of law laid down by this Court and came to the conclusion that the accused is not guilty of the offence under Section 138 of the N.I. Act. Therefore, in view of the exercise undertaken by the learned Judge, the trial in question could not be termed as a 'summary trial' and there is no impropriety involved in the judgment of the Trial Court. The High Court, while allowing the appeal of the complainant by setting aside the order of acquittal and directing for a *de novo* trial, failed to take into consideration the prejudice caused to the accused and further failed to follow the principles of natural justice.

17. Learned counsel, drawing our attention to the nature of 'summary trial', submitted that in the present case (SLP(Crl) No. 5623 of 2012), recording of the evidence of PW 1 was

commenced on 19th December, 2002 and Sections 143 to 147 of the N.I. Act came to be inserted by the Negotiable Instruments (amendment and Miscellaneous Provisions) Act, 2002 only w.e.f. 6th February, 2003, empowering the Court to try all offences under Chapter XVII of the N.I. Act 'summarily'. Thus, the change of law after the commencement of recording evidence cannot be applied to the present case and the judgment of the trial Court cannot be treated as a result of 'summary trial'. Moreover, the exercise undertaken by the learned Magistrate during the course of trial by examining the witnesses, marking of documents, recording of entire evidence in detail, cross examination and chief examination etc., shows that he tried the case not 'summarily' but in a regular way. For the simple reason that the learned Magistrate has failed to mention that the case was tried in a regular way but not 'summarily', the trial would not get vitiated. The final verdict of the Trial Court that "***considering all facts and circumstances, and considering the evidence and the settled principles of law and evidence, complainant has failed to prove the charge against the accused and under all these***

circumstances, it is not possible to hold the accused guilty and convict him" explains in clear terms that the decision was passed after undergoing a regular trial following complete procedure in accordance with the Cr.P.C. Keeping in mind the provisions of Section 465, Cr.P.C., the High Court ought not to have reversed the finding of the Trial Court on account of any error, omission or irregularity in the complaint or order, judgment or other proceedings during trial or inquiry until and unless the Court feels that failure of justice has in fact occasioned thereby. Learned counsel, taking cue from sub-section (2) of Section 465, Cr.P.C., submitted that it is the bounden duty of respondents—complainants to raise the objection, if any, at the earliest stage before the Trial Court itself. But the complainants had not raised any such objection that being summary proceedings, the learned Magistrate who delivered the judgment cannot act on the evidence recorded by his predecessor. The respondents have therefore no locus to raise such objection in appeal, and the High Court had committed a serious error in entertaining the plea of respondents and setting aside the judgment of the Trial Court.

In support thereof, learned counsel heavily relied on a decision of this Court dated 12th July, 2013 in Criminal Appeal Nos. 968-971 of 2013 (***Mehsana Nagrik Sahkari Bank Ltd.*** Vs. ***Shreeji Cab Co. & Ors. Etc.*** 2014 CriLJ 1953) wherein this Court after referring to ***Nitinbhai*** and perusing the notes of evidence, found that the Magistrate recorded the evidence not in a summary manner but in full fledged manner and declared that there is no need to order for a *de novo* trial.

18. While submitting that by remanding the present matter to the Trial Court for a *de novo* trial, nothing new can be found, learned counsel invited our attention to a judgment of this Court in ***Indian Bank Association & Ors.*** Vs. ***Union of India & Ors.*** (2014) 5 SCC 590 whereby this Court has issued certain directions to the Trial Courts as to how to deal with the complaints under Section 138 of the N.I. Act. In the said judgment, Guideline No. 5 speaks in the following terms:

> (5) The Court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The court has option of accepting affidavits of the witnesses instead of examining them in the court. The witnesses to the complaint and the accused must be

> available for cross-examination as and when there is direction to this effect by the court.

19. This Court further directed that all the criminal Courts in the country dealing with Section 138 of the N.I. Act cases to follow the abovementioned procedure for speedy and expeditious disposal of those cases. In the trial of the present cases also, though it was not a summary trial, learned Magistrate has kept in mind the above mentioned procedure and scrupulously followed the same.

20. Learned counsel further submitted that Section 260, Cr.P.C. provides an option to the Magistrate either to try the case summarily or as a summons case. Relying on a decision of Bombay High Court in ***Pratibha Pandurang Salvi & Ors.*** Vs. ***State of Maharashtra & Anr.*** 2010 Crl.L.J. 730, and also a decision of Orissa High Court in ***Kishore Pallei*** Vs. ***Aruna Kumar Panda*** 2013 (I) OLR 1005, learned counsel argued that, Section 143 of the N.I. Act provides an option to the Magistrate to try a case 'summarily' or otherwise. Therefore, there is no illegality in the way trial of the present cases was

conducted and the High Court was not right in ordering for a *de novo* trial.

21. Learned counsel for the respondents, on the other hand, contended that even though sub-section (1) of Section 326 Cr.P.C. allows the succeeding Magistrate to act on the evidence so recorded by his predecessor, sub-section (3) thereof puts a bar in respect of summary trials in proceedings under Section 138 of the N.I. Act. After the insertion of Section 143 to the N.I. Act, w.e.f. 6th February, 2003, all offences under Chapter XVII of the N.I. Act shall be tried by the Judicial Magistrate and provisions of Sections 262 to 265 of the Cr.P.C. shall, as far as may be, apply. Basing reliance on ***Nitinbhai*** learned counsel for the respondents submitted that the prohibition contained in sub-section (3) of Section 326 is absolute and admits of no exception. Sub-section (2) of Section 143 of the N.I. Act read with absolute bar contained in sub-section (3) of Section 326, Cr.P.C. makes it clear that in summary trial the evidence if recorded by a Magistrate partly, the entire trial vitiates and becomes non est in the law. In such cases, *de novo* trial is only the alternative.

22. Placing reliance on ***Mandvi Cooperative Bank Ltd.*** Vs. ***Nimesh B. Thakore*** (2010) 3 SCC 83, learned counsel submitted that in cases of summary trials, Sections 143, 144, 145 and 147 of the N.I. Act form a compete code which expressly departs and overrides the provisions of Cr.P.C. They provide flexibility to the Magistrate to come to a conclusion that at any stage of the trial, if the Magistrate thinks that it would not be desirable to hold a summary trial, he may call for cross examination, chief examination and recall any witness. For doing so, however, the Magistrate has to record reasons. But, in the cases on hand no such reason has been recorded by the Magistrate and hence the trial could only be treated as 'summary trial' and there is no illegality in the decision of the High Court remanding the matter for *de novo* trial. Learned counsel further submitted that the amendment inserting Sections 143 to 147 in the N.I. Act w.e.f. 6th February, 2013 shall be held to be retrospective in operation.

23. Having heard learned counsel for the parties at length, the following issues arise for our determination:

1. What is the legislative intent of the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 and the object of incorporating Section 143?

2. What are the factors, the appellate Court has to keep in mind while arriving at a conclusion about the procedure adopted by the Trial Court in conducting the trial?

3. In what circumstances a case should be remanded back for *de novo* trial?

24. The Legislature, having noticed that the prevailing Sections 138 to 142 of the N.I. Act could not completely achieve the desired results, has chosen to insert Sections 143 to 147 with an avowed object of speedy disposal of cases relating to dishonour of cheques. To achieve the purpose of "speedy disposal", the Legislature has recommended a simplified procedure for trial of the offences under the N.I. Act i.e. 'summary trial'. The amendment to the Act also made the offence 'compoundable' as the punishment provided in the unamended Act was inadequate and the procedure was found

to be cumbersome. Thus, incorporation of Sections 143 to 147 was especially aimed at early disposal of cases in a simplified procedure and more particularly, to do away with all the stages and processes in a regular criminal trial that normally cause inordinate delay in its conclusion and to make the trial procedure as expeditious as possible without in any way compromising with the right of the accused for a fair trial. This results in overcoming the huge docket of Courts with matters pertaining to dishonour of cheques as their prolonged trials became a serious matter of concern.

25. Sub-section (1) of Section 143 of the N.I. Act makes it clear that all offences under Chapter XVII of the N.I. Act shall be tried by the Magistrate 'summarily' applying, as far as may be, provisions of Sections 262 to 265 of Cr.P.C. It further provides that in case of conviction in a summary trial, the Magistrate may pass a sentence of imprisonment for a term not exceeding one year and a fine exceeding Rs.5,000/-. Sub-section (1) of Section 143 of the N.I. Act further provides that during the course of a summary trial, if the Magistrate is of the opinion that the nature of the case requires a sentence for a term exceeding

one year or for any other reason, it is undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witness whom he had examined, or proceed to rehear the case. ***Sub-section (2) mandates that so far as practicable, the trial has to be conducted on a day to day basis until its conclusion***.

26. An analysis of Section 143 brings out that the Magistrate, initially, should try the case 'summarily' if he is of the opinion that he is not going to pass sentence of imprisonment not exceeding one year and fine of Rs.5,000/- . In case during the course of trial, if the Magistrate forms a different opinion that in the circumstances of the case, he may order a sentence of a term exceeding one year, or for any other reason it is undesirable to try the case summarily, ***he must record the reasons for doing so*** and go for a 'regular trial'. Thereafter, the Magistrate can also recall any witness who has been examined and proceed to hear or rehear the case. So, ***the second proviso to sub-section (1) of Section 143, gives discretion***

***to the Magistrate to conduct the case other than in summary manner*.**

27. This Court in ***Mandvi Cooperative Bank*** (supra) after analyzing the objects and importance of Sections 143 to 147 of the N.I. Act, this Court observed that Section 143 of the Act gave power to the Court to try cases summarily. At Paras 20, 21, 25 & 29 of the said judgment, this Court observed:

> "**20.** It may be noted that the provisions of Sections 143, 144, 145 and 147 expressly depart from and override the provisions of the Code of Criminal Procedure, the main body of adjective law for criminal trials. The provisions of Section 146 similarly depart from the principles of the Evidence Act. Section 143 makes it possible for the complaints under Section 138 of the Act to be tried in the summary manner, except, of course, for the relatively small number of cases where the Magistrate feels that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily.
>
> **21.** It is, however, significant that the procedure of summary trials is adopted under Section 143 subject to the qualification "as far as possible", thus, leaving sufficient flexibility so as not to affect the quick flow of the trial process. Even while following the procedure of summary trials, the non obstante clause and the expression "as far as possible" used in Section 143 coupled with the non obstante clause in Section 145 allow for the evidence of the

complainant to be given on affidavit, that is, in the absence of the accused. This would have been impermissible (even in a summary trial under the Code of Criminal Procedure) in view of Sections 251 and 254 and especially Section 273 of the Code. The accused, however, is fully protected, as under sub-section (2) of Section 145 he has the absolute and unqualified right to have the complainant and any or all of his witnesses summoned for cross-examination.

… … …

25. It is not difficult to see that Sections 143 to 147 lay down a kind of a special code for the trial of offences under Chapter XVII of the Negotiable Instruments Act and Sections 143 to 147 were inserted in the Act by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 ***to do away with all the stages and processes in a regular criminal trial that normally cause inordinate delay in its conclusion and to make the trial procedure as expeditious as possible without in any way compromising on the right of the accused for a fair trial***. Here we must take notice of the fact that cases under Section 138 of the Act have been coming in such great multitude that even the introduction of such radical measures to make the trial procedure simplified and speedy has been of little help and cases of dishonoured cheques continue to pile up giving rise to an unbearable burden on the criminal court system.

… … …

29. ***Once it is realised that Sections 143 to 147 were designed especially to lay down a much simplified procedure for the trial of dishonoured***

> ***cheque cases with the sole object that the trial of those cases should follow a course even swifter than a summary trial and once it is seen that even the special procedure failed to effectively and expeditiously handle the vast multitude of cases coming to the court, the claim of the accused that on being summoned under Section 145(2), the complainant or any of his witnesses whose evidence is given on affidavit must be made to depose in examination-in-chief all over again plainly appears to be a demand for meaningless duplication, apparently aimed at delaying the trial.***"

28. We find that in the case of ***Nithinbhai***, the complainant examined himself along with other witnesses in support of his case and produced documentary evidence. The accused, however, did not lead any defence evidence but in his examination under Section 313 Cr.P.C., the accused stated that his signature was obtained on the blank paper by kidnapping him, written something on it and filed a false complaint against him. After recording evidence, the Metropolitan Magistrate came to be transferred. Therefore, he ceased to exercise jurisdiction. He was succeeded by another Magistrate before whom both parties, i.e. the complainant as well as the accused, filed a memo declaring that the parties had no objection to proceed with the matter on the basis of evidence recorded by

the predecessor Magistrate in terms of Section 326, Cr.P.C. and on that basis, learned Magistrate considered the evidence led by the complainant and passed judgment convicting the appellants under Section 138 of the N.I. Act and sentenced them to suffer simple imprisonment for three months with fine of Rs.3,000/-. Aggrieved by the said order, the accused preferred Criminal Appeal before the Sessions Judge at Ahmedabad who affirmed the conviction. However, there was some modification in the sentence. Dissatisfied with the judgment of the first appellate Court, the accused moved Gujarat High Court by way of a Revision. The Gujarat High Court maintained the conviction under Section 138 of the N.I. Act, but set aside the final order of sentence imposed upon the accused and remanded the matter to the learned Magistrate for passing appropriate order on sentence and compensation. Aggrieved by the said order, appeal came before this Court.

29. Dealing with the said appeal, this Court, while relying on the provisions of Section 326, Cr.P.C. observed:

> "**12.** Section 326 is part of the general provisions as to inquiries and trials contained in Chapter XXIV of the Code. It is one of the important principles of criminal law that the Judge who hears and records

the entire evidence must give judgment. Section 326 is an exception to the rule that only a person who has heard the evidence in the case is competent to decide whether the accused is innocent or guilty. The section is intended to meet the case of transfers of Magistrates from one place to another and to prevent the necessity of trying from the beginning all cases which may be part-heard at the time of such transfer. Section 326 empowers the succeeding Magistrate to pass sentence or to proceed with the case from the stage it was stopped by his preceding Magistrate. Under Section 326(1), the successor Magistrate can act on the evidence recorded by his predecessor either in whole or in part. If he is of the opinion that any further examination is required, he may recall that witness and examine him, but there is no need of a retrial.

13. In fact, Section 326 deals with part-heard cases, when one Magistrate who has partly heard the case is succeeded by another Magistrate either because the first Magistrate is transferred and is succeeded by another, or because the case is transferred from one Magistrate to another Magistrate. The rule mentioned in Section 326 is that the second Magistrate need not rehear the whole case and he can start from the stage the first Magistrate left it.

14. However, a bare perusal of sub-section (3) of Section 326 makes it more than evident that sub-section (1) which authorises the Magistrate who succeeds the Magistrate who had recorded the whole or any part of the evidence in a trial to act on the evidence so recorded by his predecessor, does not apply to summary trials. The prohibition contained in sub-section (3) of Section 326 of the Code is absolute and admits of no exception.

Where a Magistrate is transferred from one station to another, his jurisdiction ceases in the former station when the transfer takes effect.

15. Provision for summary trials is made in Chapter XXI of the Code. Section 260 of the Code confers power upon any Chief Judicial Magistrate or any Metropolitan Magistrate or any Magistrate of the First Class specially empowered in this behalf by the High Court to try in a summary way all or any of the offences enumerated therein. Section 262 lays down the procedure for summary trial and sub-section (1) thereof inter alia prescribes that in summary trials the procedure specified in the Code for the trial of summons case shall be followed subject to the condition that no sentence of imprisonment for a term exceeding three months is passed in case of any conviction under the chapter.

16. ***The manner in which the record in summary trials is to be maintained is provided in Section 263 of the Code***. Section 264 mentions that:

> "**264.** ***Judgments in cases tried summarily***. —In every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding."

Thus, ***the Magistrate is not expected to record full evidence which he would have been, otherwise required to record in a regular trial and his judgment should also contain a brief statement of the reasons for the finding and not elaborate reasons which otherwise he would have been required to record in regular trials***.

> **17.** The mandatory language in which Section 326(3) is couched, leaves no manner of doubt that when a case is tried as a summary case a Magistrate, who succeeds the Magistrate who had recorded the part or whole of the evidence, cannot act on the evidence so recorded by his predecessor. In summary proceedings, the successor Judge or Magistrate has no authority to proceed with the trial from a stage at which his predecessor has left it. The reason why the provisions of sub-sections (1) and (2) of Section 326 of the Code have not been made applicable to summary trials is that in summary trials only the substance of evidence has to be recorded. The court does not record the entire statement of witnesses. Therefore, the Judge or the Magistrate who has recorded such substance of evidence is in a position to appreciate the evidence led before him and the successor Judge or Magistrate cannot appreciate the evidence only on the basis of evidence recorded by his predecessor. Section 326(3) of the Code does not permit the Magistrate to act upon the substance of the evidence recorded by his predecessor, ***the obvious reason being that if the succeeding Judge is permitted to rely upon the substance of the evidence recorded by his predecessor, there will be a serious prejudice to the accused and indeed, it would be difficult for a succeeding Magistrate himself to decide the matter effectively and to do substantial justice***."

30. Further considering the memo jointly filed by the parties, it was held by this Court that "***it is well settled that no amount of consent by the parties can confer jurisdiction where there exists none, on a court of law nor can they divest a court of jurisdiction which it possesses under the law.***"

This Court further held:

"**19.** The cardinal principle of law in criminal trial is that it is a right of an accused that his case should be decided by a Judge who has heard the whole of it. It is so stated by this Court in the decision in ***Pyare Lal*** v. ***State of Punjab,*** AIR 1962 SC 690. This principle was being rigorously applied prior to the introduction of Section 350 in the Code of Criminal Procedure, 1898. Section 326 of the new Code deals with what was intended to be dealt with by Section 350 of the old Code.

20. From the language of Section 326(3) of the Code, it is plain that the provisions of Sections 326(1) and 326(2) of the new Code are not applicable to summary trials. Therefore, except in regard to those cases which fall within the ambit of Section 326 of the Code, the Magistrate cannot proceed with the trial placing reliance on the evidence recorded by his predecessor. He has got to try the case de novo. In this view of the matter, the High Court should have ordered de novo trial.

… … …

22. As it has been seen that Section 326 of the new Code is an exception to the cardinal principle of trial of criminal cases, it is crystal clear that if that principle is violated by a particular Judge or a Magistrate, he would be doing something not being empowered by law in that behalf. Therefore, Section 461 of the new Code would be applicable.

23. Section 461 of the new Code narrates the irregularities which vitiate proceedings. The relevant provision is clause (*l*). It reads as follows:

> "**461.** ***Irregularities which vitiate proceedings***.—If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:
>
> * * *
>
> (*l*) tries an offender;
>
> * * *
>
> his proceedings shall be void."

A plain reading of this provision shows that the proceedings held by a Magistrate, to the extent that he is not empowered by law, would be void and void proceedings cannot be validated under Section 465 of the Code. This defect is not a mere irregularity and the conviction of the appellants cannot, even if sustainable on the evidence, be upheld under Section 465 of the Code.

… … …

> **25.** This is not a case of irregularity but want of competency. Apart from Sections 326(1) and 326(2) which are not applicable to the present case in view of Section 326(3), the Code does not conceive of such a trial. Therefore, Section 465 of the Code has no application. It cannot be called in aid to make what was incompetent, competent. There has been no proper trial of the case and there should be one."

31. In ***Nitinbhai*** we find that the entire case was tried 'summarily' and the Magistrate who issued process, was transferred after recording the evidence. The succeeding

Magistrate delivered the judgment basing upon the memo filed by the parties declaring that they had no objection to proceed with the matter on the basis of evidence recorded by his predecessor. Ultimately, this Court remanded the matter to the Trial Court for *de novo* trial opining that no amount of consent by the parties can confer jurisdiction on a Court of law, where there exists none, nor can they divest a Court of jurisdiction which it possesses under the law.

32. Coming to the facts of the present cases, on scrutiny of record available in SLP(Crl) No. 5623 of 2012, we found that there has been in total 82 hearings spread over five years. Out of 82 hearings, 67 hearings were done by Jt. C.J. (J.D.) and J.M.F.C., Veraval. The Magistrate was transferred on 24.02.2005 and was replaced by J.M.F.C., Veraval who heard the case for 14 more times and delivered judgment on 15th hearing *i.e.* on 12.09.2005. Thus by any stretch of imagination, the trial which extended over five years and was decided in over 82 hearings with elaborate cross examination, deposition and all trappings of regular trial cannot simply be termed as “summary trial”.

33. On perusal of record of other two cases (SLP (Crl.) Nos. 3332 of 2012 and 734 of 2013), we found the similar situation. The Complaint was taken up on 20th August, 2001 and the Trial Court decided the criminal case on 30th May, 2009 declaring the accused appellants as innocent, after conducting about 132 hearings. It is also evident from the record that in SLP(Crl) No. 734 of 2013, the criminal proceedings under the N.I. Act were initiated in December, 1998 before the Trial Court which came to be concluded by the judgment of the Metropolitan Magistrate on 7th August, 2009. Thus, during the period of about 11 years a total of 103 hearings took place and a detailed trial procedure had been followed. Going thereby, *prima facie*, it is difficult for us to accept that the case was tried summarily.

34. Moreover, these cases were decided by the same judge in the High Court and there seems to be a mechanical application of ***Nitinbhai*** without discerning the difference on facts of ***Nithinbhai*** and the present cases. In ***Nitinbhai,*** the case was established as being decided 'summarily' whereas in the present cases, no such independent inquiry has been

undertaken by the High Court to arrive at a just conclusion whether the cases were tried “summarily” or in a “regular way”.

35. Be that as it may, to satisfy ourselves we have carefully gone through the records of the Trial Court as well as the High Court in each matter before us. There is no doubt, as per the record, learned Magistrate has not specifically mentioned that the trial was conducted as summons case or summary case. Though in the record of SLP(Crl) No. 734 of 2013, at some places the word ‘summary’ was mentioned as regards to the nature of proceedings of the case, having given our anxious and thorough consideration, we found that the word ‘summary’ used therein was with reference to Chapter XXII of Cr.P.C., 1882 and it does not relate to the ‘summary trial’ envisaged under Section 143, of the N.I. Act. Pertinently, before the Trial Court the Suit No. 4457 of 2001 has been referred at some places as ‘Summary Suit’ and at some other places it has been referred as ‘Civil Suit’. Similarly, the case number 5294 of 1998 has been shown at some places as Summary Case and at some other places it was shown as Criminal Case. After a careful examination of the record, we came to the conclusion

that the word 'summary' used at some places was with reference to summary trials prescribed under Cr.P.C. Needless to say that the summary trial as preferred mode of trial in the matters related to negotiable instruments was inserted by the Amendment Act, 2002 only w.e.f. 6th February, 2003.

36. Thus the scrutiny of the record of the Courts below led us to the opinion that the High Court has not applied its mind independently by thoroughly examining the records about the procedure followed in these cases by the Magistrate. The record shows that the Complaint was lodged on 19th August, 2000 and presented in the Court of learned Magistrate on 6th September, 2000 when the trial proceedings were commenced which came to be concluded only on 29th August, 2005, after a long lapse of about six years.

37. A case under section 138 of the N.I. Act, which requires to be tried in a summary way as contemplated under section 143 of the Act, when in fact, was tried as regular summons case it would not come within the purview of section 326 (3) of the Code. In other words, if the case in substance was not tried in a summary way, though was triable summarily, and was tried as

a summons case, it need not be heard *de novo* and the succeeding Magistrate can follow the procedure contemplated under section 326 (1) of the Code [See ***Ramilaben Trikamlal Shah*** vs. ***Tube and Allied Products & Ors.*** 2007 ALLMR (Cri) 1637 (Bom)].

38. But where even in a case that can be tried summarily, the Court records the evidence elaborately and in verbatim and defence was given full scope to cross-examine, such procedure adopted is indicative that it was not summary procedure and therefore, succeeding Magistrate can rely upon the evidence on record and *de novo* enquiry need not be conducted [See ***A. Krishna Reddy*** vs. ***State & Anr.*** 1999 (6) ALD 279].

39. In ***Bhaskar @ Prabaskar & Ors.*** Vs. ***State represented by Inspector of Police, Vollor Taluk Police Station, Vellore*** (1999) 8 SCC 551, this Court observed:

> "15. The archaic concept was that the very same judicial personage who heard and recorded the evidence must decide the case. That concept was in vogue for a long time. But over the years it was revealed in practice that fossilisation of the said concept, instead of fostering the administration of criminal justice, was doing the reverse. Very occasionally judicial officer of one court was changed and was replaced by another. As evidence had to be recorded afresh by the new officer under

the old system, witnesses who were already examined in the cases at the cost of considerable strain and expenses - not only to them but to the exchequer - were re-summoned and re-examined. The litigation cost thereby inflicted on the parties used to soar up. The process would have to be repeated over again if such next judicial personage also was changed. Eventually it was learnt that the object sought to be achieved by such repetitions, when compared with the enormous cost and trouble, was not of much utility. Hence the legislature wanted to discontinue the aforesaid ante-diluvian practice and decided to afford option to the successor judicial officer. Legislature conferred such option only to the magistrates at the first instance and at the same lime empowered them to re-examine the witnesses already examined if they considered such a course necessary for the interest of justice. As the new experiment showed positive results towards fostering the cause of criminal justice the Law Commission recommended that such option should advisedly be extended to judges of all other trial courts also.

… … …

21. A contrary interpretation would lead to unwholesome repetition of the entire exercise involving considerable cost to the exchequer, financial strain to the accused and waste of time of the courts. Greater than all those, it would inflict untold inconveniences to the witnesses who are the innocent parties in (sic) case. The Court cannot afford to be oblivious to the reality that no witness is, on his own volition, desirous of going to the Court for remaining there until his turn is called to mount the witness stand and to undergo the agony of facing grueling questions. He does it as he has no other option when summoned by the Court. Most of the witnesses can attend the courts only by bearing

with all the inconveniences to themselves and at the cost of loss of their valuable time. When any witness had already undergone such agony once in connection with the same case, no effort to save him from undergoing that agony once again for the very same case should be spared, unless such re-summoning is absolutely necessary to meet the ends of justice."

40. In ***Shivaji Sampat Jagtap*** Vs. ***Rajan Hiralal Arora & Anr***. 2007 CriLJ 122, the Bombay High Court observed thus:

"A case, which is triable as summarily, and in which the record of the proceedings has been prepared in accordance with the provisions of Section 263 and 264 of the Code could be stated to have been tried summarily for the purpose of Section 326(3) and in that case the evidence recorded by one Magistrate cannot be read in evidence by succeeding Magistrate. ***The succeeding Magistrate, however, in a case, where the procedure contemplated under Sections 263 and 264 of the Code in particular has not been followed, he need not hold a trial de novo***. In short, if no record as per Sections 263 and 264 has been or is being maintained by the Magistrate and the case has been or is being tried as a regular summons case and not tried in a summary way as contemplated under Sections 262 to 265 of the Code, such case shall not be considered as tried in summary way, though triable summarily as provided for under Sub-section (1) of Section 143 of the Act, so as to attract the provisions of Section 326(3) of the Code. Therefore, ***the evidence recorded by one Magistrate in such a case may be legally read in evidence by his successor and no de novo trial shall be necessary***".

41. Placing reliance on the aforementioned decision of the Bombay High Court, in ***Shyam Prakash Agarwal*** Vs. ***Ramesh Kumar Gupta & Anr.*** decided on 1st July, 2013, the Rajasthan High Court refrained itself from remitting the matter for a de novo trial and directed to decide the matter on merits by lower appellate Court.

42. In yet another decision of Rajasthan High Court in ***Tripati Vyas*** Vs. ***State of Rajasthan*** 2014 (1) Crimes 46, the High Court held that wherein the accused cross examined the complainant extensively and it was recorded by the Court word to word which does not happen in the summary trial where only substance of the evidence is to be recorded, Section 326(3) Cr.P.C. has no application. Accordingly, the High Court held that re-trial for offence under Section 138 of Negotiable instruments Act, 1881 could not be ordered on mere ground of transfer of Magistrate.

43. Thus, there is patent illegality in the approach undertaken by the High Court in remanding the matter for a *de novo* trial mechanically on the ground of change of Magistrate, without proper appreciation of the material before it. Out of three cases

before us, in SLP (Crl.) No. 5623/2012 there is a finding recorded by the High Court that the matter has been tried summarily. In other two cases i.e. SLP (Crl.) No. 734/2013 and SLP (Crl.) No. 3332/2012 there is finding on record that the cases have been heard by one Magistrate and judgment was passed by another Magistrate, they were remanded back to Trial Court for *de novo* trial even without inquiry whether they were tried summarily or regularly. It seems from the impugned orders that no thorough scrutiny was undertaken by the High Court concerned to ascertain whether cases have been actually tried summarily or as summons cases.

44. There is no straight jacket formula to try the cases falling under the N.I. Act. The law provided therefor is so flexible that it is up to the prudent judicial mind to try the case 'summarily' or otherwise. No doubt, the second proviso to Section 143 of the Act specifies that in case the Magistrate does not deem the case fit to try summarily, ***he shall record an order to that effect after hearing the parties***. Just because this directive is not followed scrupulously by the Trial Court would itself not vitiate the entire trial and the appellate Court should not direct

for a *de novo* trial merely on the ground that the Trial Court had not recorded the order for not trying the case summarily.

45. This Court in ***Bharati Tamang*** Vs. ***Union of India and Ors.*** 2014 CriLJ 156 observed that at times of need where this Court finds ***that an extraordinary or exceptional circumstance arise and the necessity for reinvestigation would be imperative in such extraordinary cases even de novo investigation can be ordered*.**

46. In ***Babubhai*** Vs. ***State of Gujarat and Ors.*** (2010) 12 SCC 254, this Court observed:

> **"**Thus, it is evident that in exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, if considers necessary, may direct for investigation *de novo* wherein the case presents exceptional circumstances."

47. The *de novo* trial of entire matter which should be ordered in exceptional and rare cases only when such course of fresh trial becomes indispensable to avert failure of justice [See ***Mohd. Hussain @ Julfikar*** Vs. ***State (Govt. of NCT of Delhi)*** (2012) 9 SCC 408, ***State of M.P***. Vs. ***Bhooraji & Ors***. (2001) 7

SCC 679 and **Ganesha v. Sharanappa & Anr.** (2014) 1 SCC 87]. Hence, *de novo* trial is only for exceptional cases when the finding of acquittal is on a total misreading and perverse appreciation of evidence.

48. The High Court in the present cases remanded the matters for *de novo* trial on the basis of flawed application of ***Nitinbhai***'s case, in spite of the fact that these cases are pending for over a decade. It went unnoticed by the High Court that the appellants have raised the plea of mode of trial due to change of Magistrate for the first time before the High Court. The same has not been raised when the change of Magistrate took place in the Court below during the course of trial. This clearly shows that only for the purpose of protracting the litigation, the plea has been taken for the first time. Had it been their case that because of the procedure adopted by the Court substantial miscarriage has taken place, they would have raised this plea at a much early stage of the proceedings.

49. 'Speedy trial' and 'fair trial' to a person accused of a crime are integral part of Article 21 of the Constitution of India. There is, however, qualitative difference between the right to speedy

trial and the accused's right of fair trial. Unlike the accused's right of fair trial, deprivation of the right to speedy trial does not per se prejudice the accused in defending himself. The right to speedy trial is in its very nature relative. It depends upon diverse circumstances. Each case of delay in conclusion of a criminal trial has to be seen in the facts and circumstances of such case. Mere lapse of several years since the commencement of prosecution by itself may not justify the discontinuance of prosecution or dismissal of indictment. The factors concerning the accused's right to speedy trial have to be weighed vis-a-vis the impact of the crime on society and the confidence of the people in judicial system. Speedy trial secures rights to an accused but it does not preclude the rights of public justice. The nature and gravity of crime, persons involved, social impact and societal needs must be weighed along with the right of the accused to speedy trial and if the balance tilts in favour of the former the long delay in conclusion of criminal trial should not operate against the continuation of prosecution and if the right of accused in the facts and circumstances of the case and exigencies of situation tilts the

balance in his favour, the prosecution may be brought to an end. These principles must apply as well when the appellate Court is confronted with the question whether or not retrial of an accused should be ordered [See ***Mohd. Hussain @ Julfikar Ali*** Vs. ***State of Delhi*** (AIR 2013 SC 3860)].

50. The Constitution Bench of this Court in ***Abdul Rehman Antulay & Ors.*** Vs. ***R.S. Nayak & Anr.*** (1992) 1 SCC 225 considered right of an accused for speedy trial in the light of Article 21 of the Constitution and various provisions of the Code. The Constitution Bench also extensively referred to the earlier decisions of this Court in ***Hussainara Khatoon & Ors. (I)*** Vs. ***Home Secretary, State of Bihar*** (1980) 1 SCC 81, ***Hussainara Khatoon & Ors. (III)*** Vs. ***Home Secretary, State of Bihar, Patna*** (1980) 1 SCC 93, ***Hussainara Khatoon & Ors. (IV)*** Vs. ***Home Secretary, State of Bihar, Patna*** (1980) 1 SCC 98 and ***Raghubir Singh & Ors.*** Vs. ***State of Bihar*** (1986) 4 SCC 481 and noted that the provisions of the Code are consistent with the constitutional guarantee of speedy trial emanating from Article 21.

51. In ***Mohd. Hussain*** Vs. ***State (Govt. of NCT of Delhi)***, (2012) 9 SCC 408, this Court observed:

> "A *de novo* trial or retrial of the accused should be ordered by the appellate court in exceptional and rare cases and only when in the opinion of the appellate court such course becomes indispensable to avert failure of justice. Surely this power cannot be used to allow the prosecution to improve upon its case or fill up the lacuna. A retrial is not the second trial; it is continuation of the same trial and same prosecution.… the appeal court must closely keep in view that while protecting the right of an accused to fair trial and due process, the people who seek protection of law do not lose hope in legal system and the interests of the society are not altogether overlooked."

52. This Court in ***Mehsana Nagrik Sahkari Bank Ltd.*** observed that where evidence in case is recorded in full and not in a summary manner, it is not fit to direct *de novo trial* on transfer of Magistrate.

53. In ***Satyajit Banerjee*** Vs**.** ***State of W.B.*** (2005) 1 SCC 115, a two-Judge Bench of this Court was concerned with an appeal by special leave wherein the appellant-accused were charged for the offences punishable under Sections 498-A and 306 of the Penal Code. The trial court acquitted the accused persons. In revision preferred by the complainant, the High

Court set aside the order of acquittal and directed a de novo trial of the accused. While dealing with the revisional jurisdiction of the High Court in a matter against the order of acquittal, the Court observed that such jurisdiction was exercisable by the High Court only in exceptional cases where the High Court finds defect of procedure or manifest error of law resulting in flagrant miscarriage of justice. In the facts of the case, this Court held that the High Court ought not have directed the trial court to hold *de novo* trial.

54. The procedure being followed presently by learned Magistrates dealing cases under Section 138 of N.I. Act is not commensurate with the summary trial provisions of Cr.P.C. and N.I. Act. due to which the cases under Section 138 of N.I. Act are taking unnecessary long time and the complaints remain pending for years together [See ***Rajesh Agarwal*** Vs. ***State & Anr.*** 171(2010) DLT 51].

55. In the present cases on hand, without strong, cogent, unimpeachable evidence on record that cases were tried

'summarily' but not as regular trial, the Court below gravely erred in remanding them to the Trial Court for a *de novo* trial.

56. It is worthwhile to mention that in one of the present cases, the Trial Court took about six years to acquit the accused and then High Court took about six and half years to remit the matter to the Trial Court on a technical ground of mode of trial i.e. being summary trial. Special Leave Petition against the order of High Court has been filed on 28th April, 2012. Thus, about 14 years have elapsed, without definitive determinative conclusion of the case on merits. Thus, the whole purport of expeditious trial under N.I. Act has been preposterously frustrated.

57. Thus, we are of the considered opinion that the Courts while dealing with the matters under the N.I. Act should keep in mind that the difference between summary and summons trial for the purpose of N.I. Act is very subtle but has grave repercussions in case of mistaken identification of trial which is *de novo* trial in the light of Sec 326 (3) of the Code.

58. A *de novo* trial should be the last resort and that too only when such a course becomes so desperately indispensable. It should be limited to the extreme exigency to avert “a failure of justice”. Any omission or even the illegality in the procedure which does not affect the core of the case is not a ground for ordering a de novo trial. This is because the appellate Court has got the plenary powers to revaluate and reappraise the evidence and to take additional evidence on record or to direct such additional evidence to be collected by the Trial Court. But to replay the whole laborious exercise after erasing the bulky records relating to the earlier proceedings by bringing down all the persons to the Court once again for repeating the whole depositions would be a sheer waste of time, energy and costs unless there is miscarriage of justice otherwise. Hence the said course can be resorted to when it becomes imperative for the purpose of averting “failure of justice”. The superior Court which orders a *de novo* trial cannot afford to overlook the realities and the serious impact on the pending cases in trial courts which are crammed with dockets, and how much that order would inflict hardship on many innocent persons who once took all the

trouble to reach the Court and deposed their versions in the very same case. The re-enactment of the whole labour might give the impression to the litigant and the common man that law is more pedantic than pragmatic. Law is not an instrument to be used for inflicting sufferings on the people but for the process of justice dispensation [See ***State of M.P.*** Vs. ***Bhooraji*** (2001) 7 SCC 679].

59. Thus, in summation, we are of the considered opinion that the exercise of remitting the matter to Trial Court for *de novo* trial should be done only when the appellate Court is satisfied after thorough scrutiny of records and then recording reason for the same that the trial is not summons trial but summary trial. The non-exhaustive list which may indicate the difference between both modes of trial is framing of charges, recording of statement under sec 313 of the Code, whether trial has been done in the manner prescribed under Sections 262-265 of Cr.P.C, how elaborately evidence has been adduced and taken on record, the length of trial etc. In summary trial, the accused is summoned, his plea is recorded under sec 263 (g) of Cr.P.C.

and finding thereof is given by the Magistrate under Section 263 (h) of Cr.P.C. of his examination.

60. The ratio in ***Nitinbhai*** must not be followed mechanically to remand matters to trial courts for *de novo* trial. There should be proper application of judicial mind and evidence on record must be thoroughly perused before arriving at any conclusion with regard to mode of trial.

61. However, to summarise and answer the issues raised herein, following directions are issued for the Courts seized off with similar cases:

1. All the subordinate Courts must make an endeavour to expedite the hearing of cases in a time bound manner which in turn will restore the confidence of the common man in the justice delivery system. When law expects something to be done within prescribed time limit, some efforts are required to be made to obey the mandate of law.

2. The learned Magistrate has the discretion under Section 143 of the N.I. Act either to follow a summary trial or summons trial. In case the Magistrate wants to conduct a summons trial, he should record the reasons

after hearing the parties and proceed with the trial in the manner provided under the second proviso to Section 143 of the N.I. Act. Such reasons should necessarily be recorded by the Trial Court so that further litigation arraigning the mode of trial can be avoided.

3. The learned Judicial Magistrate should make all possible attempts to encourage compounding of offence at an early stage of litigation. In a prosecution under the Negotiable Instruments Act, the compensatory aspect of remedy must be given priority over the punitive aspect.

4. All the subordinate Courts should follow the directives of the Supreme Court issued in several cases scrupulously for effective conduct of trials and speedy disposal of cases.

5. Remitting the matter for *de novo* trial should be exercised as a last resort and should be used sparingly when there is grave miscarriage of justice in the light of illegality, irregularity, incompetence or any other defect which cannot be cured at an appellate stage. The appellate Court should be very cautious and exercise the discretion judiciously while remanding the matter for *de novo* trial.

6. While examining the nature of the trial conducted by the Trial Court for the purpose of determining whether it was summary trial or summons trial, the primary and predominant test to be adopted by the appellate Court should be whether it was only the substance of the evidence that was recorded or whether the complete record of the deposition of the witness in their chief examination, cross examination and re-examination in verbatim was faithfully placed on record. The appellate Court has to go through each and every minute detail of the Trial Court record and then examine the same independently and thoroughly to reach at a just and reasonable conclusion.

62. We, therefore, direct all the Criminal Courts in the country dealing with cases falling under Section 138 of the N.I. Act to follow the above-mentioned procedure discussed in the preceding paragraphs for speedy and expeditious disposal of cases as per the purport of the Act.

63. In the light of the discussion made above, we are of the considered opinion that the High Court failed to appreciate the evidence on record in its true perspective. The High Court erred in arriving at a conclusion that the mode of trial in all these matters was summary trial whereas the record of the trial Court

adequately shows that regular trial was undertaken in these matters. Hence, in our considered opinion, the matters are required to be remanded back to the High Court for consideration on merits. We make it clear, that we have not expressed any opinion on the merits of the cases. The High Court should, by conducting an independent inquiry and by reasoned order, dispose of the cases on their own merits as expeditiously as possible, preferably within a period of three months due to the fact that these cases are languishing for almost 14 years.

64. For the foregoing reasons, we allow the appeals, set aside the impugned judgments passed by the High Court and remand the matters to the High Court for consideration on merits.

…….J.
(RANJANA PRAKASH DESAI)

…….J.
(N.V. RAMANA)

NEWDELHI,
October 16, 2014.