



*Achieve Perfection by unattached action*

**Report on**

**WEBINAR ON “EFFECTIVE IMPLEMENTATION OF  
NEGOTIABLE INSTRUMENTS ACT”**

**(PART-I AND II)**

**Held on: 20<sup>th</sup> August 2020; and**

**10<sup>th</sup> September 2020**

**Organised by:** Rajasthan State Judicial Academy, Jodhpur

**Hon’ble Resource Person(s):**

Hon’ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and  
Chairman, Rajasthan State Judicial Academy)

**Co-Speakers:**

1. Ms. Poonam Durgan (Additional Director [Academic], RSJA)
2. Sh. Nihal Chand (Additional District & Sessions Judge No-3,  
Bikaner)
3. Sh. Tushar Bishnoi (Special MM, NI Act Cases Court No-6, Jaipur  
Metro-I)

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## PART-I

- Objective of Rajasthan State Judicial Academy is to educate and sensitize its officers and other stake holders about the latest laws and procedure to achieve the constitutional mandate of securing the “Rule of Law”.
- With the restrictions on physical gathering due to the spread of novel coronavirus, the innovations in technology have come to aid us in our ever going quest for knowledge. Through the use of softwares and advancement of computer technology it is possible to continue imparting knowledge through webinars. A novel solution indeed for a novel crisis.
- Making full use of the advances in the field of technology and keeping up with its constitutional mandate in mind, The Rajasthan State Judicial Academy on **20<sup>th</sup> August 2020** organized a **Webinar on “Effective Implementation of Negotiable Instruments Act” (Part-I)** at **4.30 pm**, which was presided over by **Hon’ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial Academy)**.
- **Ms. Poonam Durgan (Additional Director [Academic], RSJA), Sh. Nihal Chand (Additional District & Sessions Judge No-3, Bikaner) and Sh. Tushar Bishnoi (Special MM NI Act Cases Court No-6, Jaipur Metro-I)** also participated as co-speakers and provided their valuable insights on the topic **“Effective Implementation of Negotiable Instrument Act”**.
- The webinar saw a participation of a total 100 Judicial Officers (Civil Judges and Judicial Magistrates) across the various Judgeships of the State of Rajasthan.
- **Mrs. Nandini Vyas (Director, Rajasthan State Judicial Academy)** welcomed **Hon’ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial Academy)** and the other resource persons on the webinar.

### **Discourse by Ms. Poonam Durgan (Additional Director [Academic], RSJA)**

- The Resource Person began the discussion by reminding the participants of their prime objective and duty as an officer. The prime objective of an officer is to implement the rule of law as per the Indian Constitution and their duty is to serve the people of our country to the best of their capacity.
- The mark of a good judge is to be aware of the latest laws as laid down by the legislature, the Hon’ble Supreme Court and the Hon’ble High Courts in order to work as effectively and efficiently as possible. It is the duty of a judicial officer to not only know the law, but also to apply the same as per the facts and circumstances of a particular case.
- The main object of the Negotiable Instruments Act, 1881 is to legalise the system by which instruments contemplated by it could pass from hand to hand by negotiation like any other goods. The purpose of the Act was to present an orderly and authoritative statement of the leading rules of law relating to the negotiable instruments. To achieve the objective of the Act, the legislature thought it proper to make provision in the Act for conferring certain privileges to the mercantile instruments contemplated under it and provide special procedure in case the obligation under the instrument was not discharged. (*See: Shri Ishar Alloy Steels Ltd v. Jayaswals Neco Ltd. (2001) 2 SCC 609*)
- The Preamble of the Act defines it as;  
*“An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques”*
- The Resource Person also discussed the legislative history with respect to the law relating to negotiable instruments. It was stated that the first law with respect to negotiable instruments was enacted in France in the year 1880. Further, the concept of Negotiable Instruments is derived from English Law.
- The 3<sup>rd</sup> Indian Law Commission drafted the NI Act in 1866 which was later on introduced to the Council in 1867 and then referred to the select committee. Finally after many deliberations, this Act came into force in 1881. It was subsequently amended in 1885.
- In the case of **Indra Kumar Patodia v. Reliance Industries Ltd. AIR 2013 SC 426**, the Hon’ble Supreme Court held that when Chapter 17 was incorporated, the purpose of

legislature was to dispose off early, the cases related to dishonor of cheques; enhancing the punishment for offenders and introducing electronic image of cheque or e-cheques.

- The Hon'ble Supreme Court in **Dalmia Cement(Bharat) Ltd. v. Galaxy Traders and Agencies Ltd. (2001) 6 SCC 463**, held that, efforts to undermine the objective of law by resorting to innovative measures are to be discouraged. The interpretation of the law ought to be in harmony with the intention of the legislature.
- In **Sarav Investment and Financial Consultants Pvt. Ltd. and Ors. v. Llyods Register of Shipping Indian Office Staff Provident Fund and Ors. (2007) 14 SCC 753**, the Hon'ble Supreme Court held that if there are penal provisions then strict construction of the same ought to be done and the court must not construe such provisions liberally.
- In the case of **Aparna A Shah v. Sheth Developers Pvt. Ltd. AIR 2013 SC 3210**; the Hon'ble Supreme Court held that a strict interpretation is required to be given in penal statutes.
- The Resource Person also stated the essentials to constitute an offence under Section 138 of the NI Act. To constitute an offence under section 138 of Negotiable Instruments Act, there must be:
  - a) Drawing of the cheque
  - b) Presentation of the cheque to the bank within the period of its validity
  - c) Returning of the cheque by the drawee bank
  - d) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount within thirty days of the receipt of information from the bank regarding the return of the cheque unpaid.
  - e) Failure of the drawer to make payment within fifteen days of the receipt of the notice
  - f) Cheque must be given for the discharge, in whole or in part, of any debt or other liability but that debt or other liability must be legally enforceable.

#### **Jurisdiction of the Courts under NI Act**

- The Jurisdiction of the Courts under NI Act has undergone substantial change from the position that existed after the judgment of **K. Bhaskaran v. Sankarn Vaidhyan Balan and Anr. (1999) 7 SCC 510**, to the amendment introduced by the legislature in 2015; whereby, the provision pertaining to jurisdiction has been limited substantially and is now governed by Section 142 of the NI Act.
- The Hon'ble Rajasthan High Court while dealing with the issue of jurisdiction in **Biran N. Shah and Ors. v. Sangam Suitings S.B. Criminal Misc. Petition Nos. 3559, 3551, 3561 and 3562 of 2019**, decided on 06.02.2020 in which Complaints were filed at the Courts of Bhilwara; However, Cheques were presented in the Bank at Mumbai and were dishonored by Banks at Mumbai. No part of cause of action took place at Bhilwara. Therefore, the Hon'ble Rajasthan High Court held that, "*Complaints could neither have been entertained nor the same can be prosecuted in the Court at Bhilwara as the said Court has no territorial jurisdiction to try these cases.*"
- The Resource Person dealt with the manner in which cases pertaining to NI Act were to be tried. The Act provides that such cases may either be tried summarily or via summons trial.
- In yet another decision of Rajasthan High Court in **Tripati Vyas v. State of Rajasthan 2014 (1) Crimes 46**, the Hon'ble 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) Code of Criminal Procedure 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.
- 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.
- Further, the Resource Person also dealt with the manner in which cases pertaining to NI Act were to be tried, to maintain uniformity in procedure in dealing with cases under Section 138.

- In **Indian Bank Association and Ors vs. Union of India and Ors. (2014) 5 SCC 590**; directions were given by the Hon'ble Supreme Court for maintaining uniformity in procedure in dealing with cases under Section 138 of the NI Act, namely;
  1. *Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.*
  2. *MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address received from the complainant. Court, in appropriate cases, may take the assistance of the police or the nearby Court to serve notice to the accused. For notice of appearance, a short date be fixed. If the summons is received back un-served, immediate follow up action be taken.*
  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.*
  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 251 Cr.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 re-calling a witness for cross-examination.*
  5. *The Court concerned must ensure that examination-in-chief, cross-examination and reexamination 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 Court. Witnesses to the complaint and accused must be available for cross-examination as and when there is direction to this effect by the Court.*

All the Criminal Courts in the country dealing with Section 138 cases were directed to follow the above-mentioned procedures for speedy and expeditious disposal of cases falling under Section 138 of the Negotiable Instruments Act.

#### **Presumptions under NI Act**

- The discussion then moved on to presumptions under the NI Act.
- In the case of **Shiv Kumar Alias Jawahar Saraf v. Ramavtar Agarwal Criminal Appeal No.1688 of 2017**, decided on 19.02.2020; The Hon'ble Supreme Court has stated that the rebuttal of presumption available under Section 139 of Negotiable Instruments Act can only be done after adducing evidence. The Hon'ble Supreme Court agreed with the High Court's view that rebuttal of presumption cannot be looked into at the stage of the Court taking cognizance of the offence.
- The Hon'ble Rajasthan High Court in **Shri Ram Transport Finance Co. Ltd. v. State of Rajasthan and Ors. 2017 (4) RLW 2875(Raj.)**, wherein it was contended that a cheque given for the full and final repayment of a Loan amount was dishonored; However, the accused denied his liability towards the disputed cheque. Complaint and the evidence led in support thereof was bereft of any particulars regarding the loan transaction. It was held that the burden of proving the facts essential to unfurl the necessary ingredients of offence u/Sec. 138 of the N.I. Act and the existence of the liability is upon the complainant. *Complainant failed to make out a case for holding the accused guilty of offence u/Sec. 138.* The accused was therefore acquitted.

#### **Grounds for dishonor of cheques**

- The Resource Person also discussed with the participants, the grounds for dishonor of cheques which may not be limited to merely insufficiency of funds or exceeding arrangement with the bank. Such grounds includes but are not limited to:
  - a) "Stop payment" instructions by the drawer
  - b) "Account closed" by the drawer

c) “Signatures do not match”

- The Hon’ble Supreme Court in **Laxmi Dyechem v. State of Gujarat (2012) 13 SCC 375**, has held that the expression “amount of money ... is insufficient” appearing in Section 138 of the Act is a genus and dishonour for reasons such as “account closed”, “payment stopped”, “referred to the drawer” are only species of that genus. Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138, so also dishonour on the ground that the “signatures do not match” or that the “image is not found”, would constitute a dishonour within the meaning of Section 138 of the Act.
- Return of a cheque on account of account being closed would be similar to a situation where the cheque is returned on account of insufficiency of funds in the account of the drawer of the cheque which squarely brings the case within Section 138. (**NEPC Micon Ltd. v. Magma Leasing Ltd., (1999) 4 SCC 253**)
- A complaint under Section 138 can be made not only when the cheque is dishonoured for reason of funds being insufficient to honour the cheque or if the amount of the cheque exceeds the amount in the account, but also where the drawer of the cheque instructs its bank to “stop payment”. If the accused shows that in his account there were sufficient funds to clear the amount of the cheque at the time of presentation of the cheque and that the stop-payment notice had been issued because of other valid causes, then offence under Section 138 would not be made out. (**MMTC Ltd. v. Medchl Chemicals and Pharma (P) Ltd., (2002) 1 SCC 234**)

#### **Serving of Notice under Negotiable Instruments Act**

- The Resource Person also dealt with the issue of sending of notice and the issue faced by the courts, that, the accused claims non-receipt of the said notice.
- In **C.C. Alavi Hazi Vs. Palapetty Muhammed, (2007) 6 SCC 555**, the Hon’ble Supreme Court held that;

*Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the General Clauses Act and Section 114 of the Evidence Act.*

- The Hon’ble Rajasthan High Court in **Bhagwati Kumar Gupta v. State of Rajasthan and Ors. 2013 (2) RLW 1788 (Raj.)**, dealt with contention that the mandatory notice for the demand of money was not served upon the petitioner personally and therefore, it cannot be considered to have been served to him and as such, the proceedings of complaint are vitiated. Relying on the Judgments of the Hon’ble Supreme Court, the Hon’ble Rajasthan High Court held that the onus on the holder of the cheque before launching a prosecution under Section 138 of the Act is only to the extent of sending the notice to the correct address of the drawer. Thereafter, the necessary consequences as enshrined in Section 27 of the General Clauses Act would follow, as per which it has to be presumed that the notice has been served on the addressee.

Who at the correct address receives the notice cannot be the control of the complainant. It would be too harsh and virtually an absurd proposition to require from the holder of the cheque to manage the affairs in such a fashion that the same is served on the addressee himself. It is only in order to avoid such situation that the Legislature enacted Section 27 of the General Clauses Act providing for presumption of service, even in cases, wherein the notice is not accepted by the addressee or cannot be served for various other reasons. As interpreted by the Hon'ble Apex Court in C.C. Alva Haji's case (**C.C. Alavi Haji v. Palapetty Muhammed & Anr., (2007) 3 SCC (Cri.) 236**), even a refusal to accept the notice has been considered to be a sufficient service upon the addressee.

### **Maintainability of premature complaints**

- The maintainability of premature complaints was also dealt with by the Resource Person, whereby as per the decision of the Hon'ble Apex Court in **Yogendra Pratap Singh v. Savitri Pandey & Anr. (2014) 10 SCC 713**, it has been held that no complaint can be filed for an offence under Section 138 of NI Act unless period of 15 days has elapsed. Any complaint before expiry of 15 days from the date on which notice has been served on drawer/accused is no complaint at all in eye of law. Since complaint filed under Section 138 of NI Act before expiry of 15 days from date on which notice has been served on drawer/accused is no complaint in eye of law, no cognizance of an offence can be taken on the basis of such complaint. Merely because at the time of taking cognizance by Court, period of 15 days has expired from date on which notice has been served on drawer/accused, Court is not clothed with jurisdiction to take cognizance of offence under Section 138 on a complaint filed before expiry of 15 days from date of receipt of notice by drawer of cheque.

### **Issue of restoration of complaint**

- Further the issue of restoration of complaint was also discussed with the participants as per the decision of the Hon'ble Apex Court in **Bindeshwari Prasad Singh v. Kali Singh AIR 1977 SC 2432**, it is well established that a complaint dismissed in default cannot be restored. The result is either discharge or acquittal.

#### **Discourse by Sh. Nihal Chand (Additional District & Sessions Judge No-3, Bikaner)**

### **Successive Presentation of Cheques for Encashment**

- In **MSR Leathers v. S. Palaniappan AIR 2014 SC 642**; the Hon'ble Supreme Court held that a payee or the holder in due course has a right to present the cheque as many number of times for encashment within its validity period. A prosecution based on second or successive dishonor of the cheque is also permissible so long as it satisfies the requirements stipulated under the proviso to Section 138 of the N.I. Act.

### **Condonation of delay in presentation of Complaint**

- The Hon'ble Supreme Court in **P.K. Choudhary v. Commander (2008) 13 SCC 229**, has held that, It is unequivocally clear that for condoning delay in filing a complaint beyond the period of limitation, natural justice warrants notice to the accused so as to grant him an opportunity to show that the delay should not be condoned.

### **Issuance of second demand notice**

- The Hon'ble Supreme Court in **M/s. Sicagen India Ltd. v. Mahindra Vadineni & Ors (2019) 4 SCC 271**, has held that there exists no prohibition u/s 138 on instituting criminal complaint based on the second or successive statutory notice based on second or successive dishonour of the cheque on its presentation.

### **Contents of Demand Notice**

- In the case of **Suman Sethi v. Ajay K. Churiwal and Anr. (2000) 2 SCC 380**; the Hon'ble Supreme Court has held that,
  - a) There exists no specific form of a demand notice
  - b) There must be specific demand of the cheque amount
  - c) The notice may be presented through an advocate or personally

### **Can a demand notice be sent through Fax or Email?**

- In **S.I.L.Import, Usa v. Exim Aides Silk Exporters, Bangalore AIR 1999 SC 1609**; the Hon'ble Supreme Court has held that *"If the notice envisaged in clause (b) of the proviso to Section 138 was transmitted by Fax it would be compliance with the legal requirement and time limit for filing complaint would start running on the date when the notice sent by Fax reaches the drawer of the cheque."*

### **Recording of Evidence on Affidavit (Section 145)**

- The Hon'ble Supreme Court in **Indian Bank Association and others v. Union of India and others AIR 2014 SC 2528**, has held that *Complainant is free to give evidence either orally or by way of affidavit. Such affidavit may be read in evidence in any enquiry, trial or other proceedings.*

### **Amendment of Complaint-if Permissible?**

- As per the decision of the Hon'ble Supreme Court in **S.R. Sukumar v. S. Sunaad Raghuram AIR 2015 SC 2757**, it is permissible, provided that no prejudice is caused to the opposite party.

### **Who can file the complaint? Issue of Maintainability**

- In **Shankar Finance & Investments v. State of Andhra Pradesh (2008) 8 SCC 536**; the Hon'ble Supreme Court held that;

*where the payee is a proprietary concern, the complaint can be filed : (i) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the payee; (ii) The proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and (iii) the proprietor or the proprietary concern represented by the attorney-holder under a power of attorney executed by the sole proprietor.*

*This Court has always recognized that the power of attorney holder can initiate criminal proceedings on behalf of his Principal*

### **Whether a partner of an unregistered firm can file a complaint under Section 138 of N.I. Act?**

- As per the Hon'ble Gauhati High Court in **Indrajit Gogoi v. Auto Sales and Service Station (2008) 3 GLR 440**; it was held that a complaint under Section 138 N.I. Act filed by a partner of an unregistered firm is also maintainable.

### **Can Power of Attorney be further delegated?**

- The Hon'ble Supreme Court in **A.C. Narayanan v. State of Maharashtra AIR 2014 SC 630**, has held that;

*Sub-delegation of power by the attorney holder- The attorney holder can sign and file a complaint on behalf of the complainant-payee. However, whether the power of attorney holder will have the power to further delegate the functions to another person will completely depend on the terms of the general power of attorney. As a result, the authority to sub-delegate the functions must be explicitly mentioned in the general power of attorney. Otherwise, the sub-delegation will be inconsistent with the general power of attorney and thereby will be invalid in law. Nevertheless, the general power of attorney itself can be cancelled and be given to another person.*

### **Substitution of Complainant**

- The Hon'ble Gauhati High Court in the case of **Kushal Kumar Talukdar v. Chandra Prasad Goenka 2004 (3) GLT 465**, has made it clear that there is no provision for substitution of a complainant under the CrPC, but a Magistrate has the power under Section 302, CrPC to permit any one to conduct the prosecution.

### **Death of a Complainant**

- The Hon'ble Supreme Court in **Chand Devi & Ors. v. Manju K. Humantani & Ors. 2017 (4) RCR (741) SC**, has held that;

*If in a case under Section 138 of the NI Act, the complainant dies while the case is still pending in the court for adjudication, in that case the legal heirs of the complainant can move an application under Section 302 CrPC for permission to prosecute in the case.*

### **Liability of Guarantor under Section 138 of NI Act**

- The Hon'ble Supreme Court in **I.C.D.S. Ltd. v. Beena Shabeer AIR 2002 SC 3014**; has held that;

*The language of the Statute depicts the intent of the law-makers to the effect that wherever there is a default on the part of one in favour of another and in the event a cheque is issued in discharge of any debt or other liability there cannot be any restriction or embargo in the matter of application of the provisions of Section 138 of the Act*

**Discourse by Sh. Tushar Bishnoi (Special MM NI Act Cases Court No-6, Jaipur Metro-**

### **D**

- The Resource Person dealt with the aspect of presumptions and compounding under the Negotiable Instruments Act.
- In **Meters and Instruments Private Limited and Another v. Kanchan Mehta (2018) 1 SCC 560**; it was held by the Hon'ble Supreme Court that;

*Though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.*

- The Hon'ble Delhi High Court in **Dayawati v. Yogesh Kumar Gosain [2017] 205 CompCas 231(Delhi)**, delivered a landmark judgment and held that compoundable offences can also be resolved through Mediation and thereafter laid the procedure to be adopted in such a case and the implications of legal breach.
- It implies that offences under Section 138 of Negotiable Instrument's Act, 1881 can be tried under Section 89 of Code of Civil Procedure Code, 1908 which specifies the disputes that can be resolved under Alternate Dispute Resolution. The bench while giving its judgment relied on the three bench judgment of Hon'ble Supreme Court in **Damodar S. Prabhu v Syed Babala (2010) 5 SCC 663**, which ruled that *"the punishment in cases under NI Act is not a means of seeking retribution, but is more a means to ensure payment of money."* As a general principle of law, the Code of Criminal Procedure, 1973 and the Negotiable Instruments Act, 1881 do not contain any provision to refer matters to ADR unlike some of the other statutes.
- In **G. J Raja v. Tejraj Surana AIR 2019 SC 3817**, the Hon'ble Supreme Court has held that the applicability of Section 143A of the Act is prospective in nature and in operation and confined to cases where the offence under Section 138 of the Act was committed after the introduction of that provision (Section 143A) in the statute book.
- Further, In the case of **Surinder Singh Deswal @ Col S.S. Deswal and others Vs. Virender Gandhi 2019 (3) RCR (Criminal) 186**, the Hon'ble Supreme Court has held that the provisions of Section 148 of the N.I. Act are retrospective in nature and Section 148 of the N.I. Act, as amended, will be applicable in respect of the appeals against the order of conviction and sentence for the offence under Section 138 of the N.I. Act even in a case where the criminal complaint for the offence under Section 138 of the N.I. Act was filed prior to enactment of the Negotiable Instruments (Amendment) Act, 2018 (20 of 2018) w.e.f. 01.09.2018 and that though in amended Section 148 of the N.I. Act, the word used is "may", but considering the amended Section 148 of the N.I. Act as a whole to be read with the Statement of Objects and reasons of amending the same, it is generally to be construed as a "rule" or "shall" and not directing of the appellant by the appellate court to deposit minimum of twenty per cent of the fine or compensation awarded by the trial Court is an exception for which special reasons have to be assigned.
- **Director (Rajasthan State Judicial Academy)** dealing with the issue of whether a certificate under Section 65B of the Indian Evidence Act, 1872 is a condition precedent for admissibility of any secondary electronic record, cited the recent judgment of the Hon'ble Supreme Court in **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and ors. (2020) 3 SCC 216**, wherein it has been held that;
  - ❖ **Anvar P.V. v. P.K. Basheer & Ors (2014) 10 SCC 473**, is the authoritative law of the land on Section 65B of the Evidence Act and therefore certificate required under Section 65B(4) is a condition precedent to the admissibility of any Secondary electronic record;
  - ❖ Earlier Three Judge Bench decision of **Tomaso Bruno v. State of U.P. (2015) 7 SCC 178**, on Section 65B of the Evidence Act, having not considered Anvar P.V., being per incuriam, does not lay down the law correctly;
  - ❖ Earlier Division Bench decision rendered in **Shafhi Mohammad v. State of Himachal Pradesh, (2018) 2 SCC 801**, does not lay down the law correctly and is therefore overruled.
- The webinar concluded with a vote of thanks by **Ms. Poonam Durgan (Additional Director [Academic], Rajasthan State Judicial Academy)** thanking **Hon'ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial Academy)** and the other Resource Persons for imparting their valuable knowledge with regards to **"Effective Implementation of Negotiable Instruments Act"**; (Additional

Director [Academic], RSJA) further extended her most sincere gratitude to all the participants for making the webinar an interactive and fruitful discussion.

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## (PART-II)

- The Rajasthan State Judicial Academy on 10<sup>th</sup> September 2020 organized a Webinar on “Effective Implementation of Negotiable Instruments Act” (Part-II) at 4.30 pm, which was presided over by Hon’ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial Academy).
- Ms. Poonam Durgan (Additional Director [Academic], RSJA) acted as co-speaker and provided her valuable insight on the topic “Effective Implementation of Negotiable Instrument Act”.
- Due to the paucity of time, all the queries of the participants which could not be addressed in the previous webinar (Part-I) were addressed and resolved subsequently during the course of this webinar.
- The webinar saw a participation of a total 100 Judicial Officers (Civil Judges and Judicial Magistrates) across the various Judgeships of the State of Rajasthan.
- Ms. Poonam Durgan (Additional Director [Academic], Rajasthan State Judicial Academy) welcomed Hon’ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial Academy) on the webinar.
- The queries pertaining to service of summons was addressed by drawing the attention of the participants towards the judgment in **Ganesh Ram v. State of Rajasthan S.B. Crim. Mis. Bail Application No. 9568/2015 decided on 01.12.2015**, wherein the Hon’ble Rajasthan High Court directed the Director General of Police to ensure that a nodal officer preferably not below the rank of Circle Inspector of Police shall be appointed in furtherance of the circular dated 08.1.2013, in each district for ensuring service of summons and attendance of police witness for giving evidence in the courts and thereby authorizing concerned trial court to directly forward the summons to such nodal officer who shall be responsible to effect service of the summon and ensure the attendance of the witness in the court. In the event of noncompliance of trial court’s direction, the nodal officer shall be personally liable to face the consequence thereof.
- The circular of Director General of Police **CID/CB/PRC/Circular/2019/3435-3512** dated 11.02.2019, also contains explicit directions regarding non-service of summons and action which can be taken. Further, a circular of the Hon’ble Rajasthan High Court No. 25/P.I./2016, dated 20.10.2016 mandates that the complainant must provide the details of mobile number and e-mail ID which would aid the serving of the process online.
- The aspect of Interim Compensation was dealt with by The Hon’ble Madras High Court in **L.G.R. Enterprises v. P. Anbazhagan 2019 3 MLJ(Cri) 423**, wherein it was held that; *whenever the trial Court exercises its jurisdiction under Section 143A(1) of the Act, it shall record reasons as to why it directs the accused person (drawer of the cheque) to pay the interim compensation to the complainant. The reasons may be varied. For instance, the accused person would have absconded for a longtime and thereby would have protracted the proceedings or the accused person would have intentionally evaded service for a long time and only after repeated attempts, appears before the Court, or the enforceable debt or liability in a case, is borne out by overwhelming materials which the accused person could not on the face of it deny or where the accused person accepts the debt or liability partly or where the accused person does not cross examine the witnesses and keeps on dragging with the proceedings by filing one petition after another or the accused person absconds and by virtue of a non-bailable warrant he is secured and brought before the Court after a long time or he files a recall non-bailable warrant petition after a long time and the Court while considering his petition for recalling the non-bailable warrant can invoke Section 143A(1) of the Act.*
- Dealing with the query pertaining to production of certificate under Section 65-B of the Indian Evidence Act and the evidentiary value of CDs, it was stated that, The Hon’ble

Supreme Court in **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors. 2020 (5) CTC 200** has held that;

*Required certificate under Section 65B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4).*

- Further, it was also brought to the attention of the participants that the Hon'ble High Court of Himachal Pradesh in **Rajinder Singh Verma v. Haji. B.K. Hanchmani Criminal Appeal No. 582 of 2017**, decided on 30.04.2019 has held that, cheque return memo which is computer generated not containing the endorsement cannot be lead in evidence, unless and until the original is produced in the court.
- The query pertaining to Cheque Return Memos not being signed was dealt with by drawing the attention of the participants towards RBI notification **RBI/2011-12/121 DPSS.CO.CHD.No. 120 / 03.06.01 / 2011-12** dated **July 25, 2011** which clearly states that; *Certain instances of banks not signing the Cheque Return Memos stating that the Memos are computer generated and therefore no signature is necessary, have been brought to our notice. Such practices are violation of instructions contained in Uniform Regulations and Rules for Bankers' Clearing Houses (URRBCH) which is issued under Payment and Settlement Systems Act 2007 read with Payment and Settlement Systems Regulations 2008. Banks are, therefore, advised to strictly adhere to the instructions and sign/initial the Cheque Return Memos as laid down in Rule 6 of URRBCH.*
- The query pertaining to taking LRs on record was addressed by stating the decision of the Hon'ble Rajasthan High Court in **Amit Kumar v. Firm Kapoorchand Bhagchand (2018) 2 RLW(Raj) 1529**, wherein it was held that; *upon death of the complainant, complaint itself shall not abate, and the court has power to implead legal representative and permit him to continue with the complaint.*
- The applicability of the provisions of Section 219 CrPC was also discussed with the participants and it was stated that if the ingredients of Section 219 CrPC are fulfilled, then it is applicable in NI Act cases.
- Due to the ongoing COVID-19 pandemic, the Hon'ble Supreme Court of India via its order in **Suo Moto Writ Petition (C) No. 3/2020 dated 10.07.2020**, permitted online service of summons, notices and pleadings. The online modes of services permitted by the Supreme Court include e-mail, fax and Instant Messaging Services like Whatsapp, Telegram, Signal etc. The Court has further directed that where a party intends to serve *via* Instant Messaging Services, a mandatory additional service through email will also be required to be done on the same date.
- As regards the extension of validity of cheques under the Negotiable Instruments Act, 1881, the Hon'ble Supreme Court observed that the statute does not prescribe any period rather it is a period prescribed by the Reserve Bank of India pursuant to Section 35A of the Banking Regulation Act, 1949. Therefore, the Court deemed it inappropriate to intervene on the said issue and observed that the discretion to alter such period is the prerogative of the RBI.
- The webinar concluded with a vote of thanks by **Ms. Poonam Durgan (Additional Director [Academic], Rajasthan State Judicial Academy)** thanking **Hon'ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial Academy)** for imparting his valuable knowledge with regards to **"Effective Implementation of Negotiable Instruments Act"**; (Additional Director [Academic], RSJA) further extended her most sincere gratitude to all the participants for making the webinar an interactive and fruitful discussion.