

**THE GAUHATI HIGH COURT AT GUWAHATI**  
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

**CIRCULAR**

Dated: Guwahati, the 2<sup>nd</sup> August, 2021

The mandate of sub-section (1) of Section 143 of the Negotiable Instruments Act, 1881 ("the Act", for short), as amended by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002, is that notwithstanding anything contained in the Code of Criminal Procedure, 1973 ("the Code" and/or "CrPC", for short), all offences under the Chapter XVII (containing Section 138 to Section 148) shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the Code shall, as far as may be, apply to such trials.

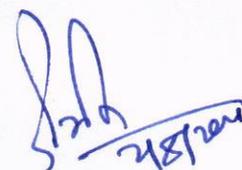
The first proviso to sub-section (1) of Section 143 of the Act has prescribed that in the case of any conviction in a summary trial under Section 143, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees. By virtue of the power conferred by the first proviso to sub-section (1) of Section 143 of the Act, it is lawful for a Judicial Magistrate of first class to pass a sentence of fine exceeding five thousand rupees, notwithstanding anything to the contrary contained in sub-section (2) of Section 29 of the Code.

The second proviso to sub-section (1) of Section 143 of the Act has laid down that when at the commencement of, or in the course of, a summary trial under the said Section, it appears to the Magistrate 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, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the Code.

The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 came into force w.e.f. 06.02.2003 in order to address the situation created due to huge pendency of cases filed under Section 138 of the Act so as to enable the Courts to dispose of the cases in an expeditious manner.

A five-Judges Bench of the Hon'ble Supreme Court of India concerned with the pendency of large number of cases filed under Section 138 of the Act, decided to examine the reasons for the delay in disposal of these cases in ***Suo Motu Writ Petition (Crl.) No. 2 Of 2020*** titled as ***In Re : Expeditious Trial of Cases under Section 138 of N.I. Act 1881.***

The Hon'ble Supreme Court of India in ***Expeditious Trial of Cases under Section 138 of N.I. Act 1881*** (supra) has identified the conversion of complaints under Section 138 of the Act from summary trial to summons trial mechanically by the trial courts without recording reasons as one of the reasons for delay in disposal of the cases.

  
2/8/2021