

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF FINANCIAL SERVICES
RAJYA SABHA

UNSTARRED QUESTION NO. 2457

TO BE ANSWERED ON TUESDAY, 10th AUGUST, 2021/ **19 Sravana, 1943 (Saka)**

Cheque bounce cases

2457. Shri K.C. Ramamurthy:

Will the Minister of FINANCE be pleased to state:

- (a) the number of cheque bounce cases pending in various courts of the country, Statewise;
- (b) the details of guidelines issued by the 5 Judge Supreme Court Bench on cheque bounce cases;
- (c) whether it is a fact that the apex court has asked Government to amend the Negotiable Instruments Act for this purpose; and
- (d) if so, the details thereof?

ANSWER

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE

(DR. BHAGWAT KARAD)

a) to (d): In the *Suo motu* writ petition (Crl) No. 2/2020 –“In Expeditious Trial of Cases under Section 138 of the Negotiable Instruments Act, 1881”, the Hon’ble Supreme Court considered the great delays in the disposal of cases under the Negotiable Instruments Act 1881 which create logjam in courts at all levels, particularly, the trial courts and the High Courts. As per the Order dated 16.04.2021 of the Hon’ble Supreme Court, the learned Amici Curiae appointed by the Court submitted a preliminary report which showed that as on 31.12.2019, the total number of criminal cases pending was 2.31 crores, out of which 35.16 lakh pertained to Section 138 of the Negotiable Instruments Act, 1881. Through the same Order dated 16.04.2021, the Hon’ble Supreme Court also passed guidelines pertaining to expeditious disposal of cheque bounce cases. These are highlighted in Para 24 of the said Order, which is placed at **Annex**. Para 24 (4) of the said Order contains the recommendation of the Hon’ble Supreme Court for any further amendments to the Negotiable Instruments Act, 1881 for such purpose.

Para 24 of the Order dated 16.04.2021 of the Hon'ble Supreme Court in the *Suo motu* writ petition (Crl) No. 2/2020 –“In Expeditious Trial of Cases under Section 138 of the Negotiable Instruments Act, 1881

1. The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial.
2. Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.
3. For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.
4. We recommend that suitable amendments be made to the Act for provision of one trial against a person for multiple offences under Section 138 of the Act committed within a period of 12 months, notwithstanding the restriction in Section 219 of the Code.
5. The High Courts are requested to issue practice directions to the Trial Courts to treat service of summons in one complaint under Section 138 forming part of a transaction.
6. Judgments of this Court in Adalat Prasad (supra) and Subramaniam Sethuraman (supra) have interpreted the law correctly and we reiterate that there is no inherent power of Trial Courts to review or recall the issue of summons. This does not affect the power of the Trial Court under Section 322 of the Code to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint.
7. Section 258 of the Code is not applicable to complaints under Section 138 of the Act and findings to the contrary in *Meters and Instruments* (supra) do not lay down correct law. To conclusively deal with this aspect, amendment to the Act empowering the Trial Courts to reconsider/recall summons in respect of complaints under Section 138 shall be considered by the Committee constituted by an order of this Court dated 10.03.2021.
8. All other points, which have been raised by the Amici Curiae in their preliminary report and written submissions and not considered herein, shall be the subject matter of deliberation by the aforementioned Committee. Any other issue relating to expeditious disposal of complaints under Section 138 of the Act shall also be considered by the Committee.
