

HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171001

HHC/SC/Important Judgment/2017-

Dated: Shimla, the 2nd August, 2018

OFFICE ORDER

In compliance of directions passed by the Hon'ble Supreme Court of India in Criminal Appeal Nos. 1731, 1732 and 1733 of 2017 titled M/s Meters and Instruments Private Limited versus Kanchan Mehta Etc., Hon'ble the Acting Chief Justice has been pleased to issue guidelines/instructions for dealing with cases under section 138 of the Negotiable Instruments Act, 1881, as follows :-

1. Judicial Magistrate on the day when the complaint is presented shall scrutinize the complaint and if the complaint is accompanied by the affidavit and the documents and are found to be in order, take cognizance and direct issuance of summons.
2. Judicial Magistrate 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 got from the complainant. Court, in appropriate cases, may take the assistance of 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 unserved, immediate follow up action be taken.
3. Summons shall be served at least 15 days prior to date of hearing and if the period is less, fresh summons shall be issued or time shall be granted to the accused to enable payment.
4. The complainant will give his account number in the complaint filed by him and if possible, the e-mail ID of the accused.
5. The summons shall be issued to the accused in the proforma annexed as Annexure 'A' to these instructions. The court shall fill the amount having regard to the cheque amount, prevalent interest rate charged by the bank calculated till the date of issuance of summons and costs not more than 5% of the cheque amount.
6. If the accused deposits the amount in the bank account of the complainant and intimates the complainant and the court in any manner, the court can close the process after hearing the complainant.
7. The court may indicate in the summons that if the accused makes an application for compounding the offenses at the first hearing of the case and if such application is made, the court may pass appropriate orders at the earliest.
8. 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 of the Criminal Procedure Code, 1973 to enable him to enter his plea of defense and fix the case for defense evidence, unless an application is made by the accused

