

## FAQ

### 1. Whether discharge petition is maintainable in complaint cases?

In summons case discharge petition is not maintainable. In warrant cases discharge petition is maintainable under 245 of Cr.P.C. [Ref: Adalat Prasad -Vs- Rooplal Jindal 2004(4) CTC 608 (S.C.)]

### 2. Complaint case taken on filed u/s 498(A) and charges framed. At this stage whether withdrawal of the complaint is maintainable u/s 257 Cr.P.C.?

No. Offence U/s 498(A) is not a compoundable offence and also withdrawal of the complaint U/s 257 is applicable only to summon cases. Offence U/s 498(A) being warrant case. Withdrawal of the complaint is not maintainable U/s 257 of Cr.P.C. However the Apex court has entertained petition for withdrawal in cases of matrimonial disputes to meet the ends of Justice.

### 3. Whether petition for Re investigation is maintainable u/s 173(8) Cr.P.C.?

U/s. 173(8) of Cr.P.C. only further investigation can be ordered. Petition for Re-investigation is not permissible U/s. 173(8) of Cr.P.C.

### 4. Can accused file proof affidavit in 138 NI Act cases?

As per Section 145 of NI Act, the complaint can file a proof affidavit. Word since the "Accused" is not found in this section court cannot introduce the word "Accused" in S.145(1) of NI Act. (Ref: Mandvi Co.op - Vs- Nimesh Tajore)

### 5. முதல் தகவல் அறிக்கையின்படி 5 எதிரிகள் மீது வழக்குப் பதிவு செய்யப்பட்டது ஆனால் விசாரணையில் 5 தடவில் ஒருவர் மீது குற்றம் சாட்டப்படாத நிலையில் இருந்தி அறிக்கையில் இத.ச. பிரிவு 147 சேர்க்கப்படலான?

முடியாது. முதலு என்பது வழக்கு சம்பவம் குறித்த தகவல். ஏனவே புலன் விசாரணை செய்த பின், ருகவாகும் குற்றங்கள் பற்றித் தங்கள் மீது மட்டும்தான் முடியும். ஏனவே 4 தடவிகள் மீது குற்றத்திற்க்கை தாக்கல் செய்யப்படும் போது பிரிவு 147 சேர்க்கப்பட முடியாது.

சட்ட விரோதமான சம்பவங்கு '5' தடவிகள் அவசியம். அதற்கு குறைவான தடவிகள் மீது குற்றஞ்சாட்டப்பட்டிருக்கும் போது இத.ச. பிரிவு 147ன் படி குற்றஞ்சாட்டு வளையமுடியாது.

6. If a convict fails to pay the fine amount imposed but undergoes the default sentence can still the fine amount can be recovered from him?

If the convict completes his default sentence in lieu of the fine thereafter the fine amount can not be recovered unless special reasons are recorded for recovery of the fine. If whole part of the fine amount is ordered to be paid as compensation to the victim then Revenue Recovery proceedings can be resorted for recovery of fine amount, Distress warrant is to be issued to the collector for realization under Revenue Recovery Act. (See section 421 Cr.P.C.)

7. High Court or P.D.J. Court – ல் இருந்து முன் ஜாமீன் பெற்று வருகிறார்கள் கடைசி நாள் அன்று Surity கொடுக்கிறார்கள். Surity not satisfied whether accused shall be sent for remand or not

The accused shall not sent be remanded, If the magistrate is not satisfied by the surties, he should direct the accused to produce fresh surties on or before a date fixed.

8. If Commission petition pending for more than 6 years and commissioner fail to did not cooperate with court, Whether the commission petition can be closed or dismissed suo motu? If yes, Thereafter fresh commission petition maintainable or not?

No, the commission petition cannot be closed or dismissed suo motu but the warrant may be recalled and then a fresh commissioner can be appointed.

9. In execution proceedings schedule property delivered to degree holder. At this stage Judgment Debtor filed a memo not to accept the delivery of possession. Whether this memo is maintainable?

Memo is not maintainable, he can invoke section 47 of CPC

(OR)

He can challenge the delivery of possession under order 21 Rules 101 to 103 and seek for restoration of possession as the case may be.

10. Whether suit against Sub Registrar restraining him from registering any document is maintainable?

No. Suit against a public authority restraining his official duty is maintainable. (See Section 42 of Specific Relief Act)



**11. Whether more than one preliminary decree can be passed in a suit?**

Yes. There is not statutory bar in passing multiple preliminary decree is solution warrants. (See 2004 (1) MLJ 91)

**12. Whether the suit to declare a Supreme Court decree as null & void is maintainable?**

Yes, if there is any fraud played on the court in obtaining the decree.

See 1) S.P.Cheyal Varaya Naidu – Vs – Jaganath; 1994 SC 843

2) Santosh – Vs – Jagatram and another; 2010(2) SC 218

**13. Maintenance suit by mother for and on behalf of her minor son against father. During pendency of suit minor died. Whether suit itself get abated? Or maintenance can be granted for the period from the date of suit to date of death of the minor son?**

The suit will not abate as the minor's mother is alive and already on record. Maintenance can be granted for the period from the date of suit to the date of death of the minor son.

**14. Whether Munsif Court has jurisdiction to frame scheme decree apart from matters relating to trust?**

As per section 92 CPC (1) subject matter of trust fall under subsection(1) (a) to (h). The principle civil court of original jurisdiction i.e. District Courts or court empowered by state alone have jurisdiction to try the case. Hence, in matter relating to trust the District Munsif has no Jurisdiction. (Sri Jayaram Educational Trust & Ors. –Vs- A.G. Syed Mohideen & Ors. AIR 2010 SC 671)

**15. Execution petition for attachment of immovable property pending. The Judgment debtor filed Insolvency Petition by including the property mentioned in the EP. Whether EP can be proceeded further?**

EP can be validly proceed, unless there is a specific stay obtained in I.P. proceedings, mere pendency will not curtail the further proceedings. Mere filing petition, appeal, revision etc cannot stop the proceeding further in E.P.