

Heard

ORDER

It is the complaint filed under Sec.223 of B.N.S.S. alleging that, the accused has committed the offence punishable under Sec.138 and 142 of Negotiable Instruments Act.

On 09.06.2026 the complainant has filed affidavit in lieu of sworn statement. In view of the direction issued by Hon'ble Supreme Court in Indian Bank Association cited in **AIR 2014 SC 2528**, the complainant has filed affidavit by way of chief-examination and got examined himself as PW.1 and got marked Ex.P.1 to Ex.P.5 and Ex.P.5(a).

In Crl.Petition No.101514/2025 the Hon'ble High Court of Karnataka held that "there is no need for the Magistrate to given an opportunity of being heard to the accused before taking cognizance on the complaint of payee/holder in due course of cheque for offence punishable under Sec.138 of N.I. Act".

Hence, notice to accused before taking cognizance is dispense.

The complainant coupled with the allegation made in the complaint and the documents produced by the

complainant prima-facie establishes that, the cheque in question was issued for discharge of debt. On presentation of which returned without encashment for the reason **Drawers Signature Differs from Specimen.** The amount covered under the cheque demanded by issuing notice, which is not complied by the accused. In view of presumption under Sec.138 of Negotiable Instruments Act at this stage of the proceedings prima-facie made out a trial case against accused for an offence punishable under Sec.138 of Negotiable Instruments Act. Hence, there are reasonable grounds to proceed against the accused for trial for the said offence.

On perusal of complaint averments and consequences of the case it appears to this court that the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be imposed. If the accused are tried summarily it may not be possible to award compensation out of the fine amount that may be imposed. Therefore, it is undesirable to try this case summarily.

Further, if this case is tried summarily, the evidence which is recorded by me cannot be acted upon by my successor in view of the bar under Sec.365(3) of B.N.S.S. (U/Sec.326(3) of Cr.P.C.). In the result, I proceed to pass the following:

ORDER

The case is converted into summons case.

Office is directed to register the case against accused in Register No.III for the offence punishable under Sec.138 of Negotiable Instruments Act.

Issue summons to accused R/by:

Sd/-
II Addl. Civil Judge & JMFC,
Tumakuru.