

VIKAS KUMAR Vs. AJAYPAL SINGH

Present: Sh. Nikhil Chabrha, Proxy counsel for the complainant.

Arguments heard on point of summoning of accused. As the Proviso to Section 223 of The Bharatiya Nagarik Suraksha Sanhita, 2023 provides that *no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard*. However, the offence U/s 138 of N.I Act is governed by a Special Statute which provides its own procedure. Further Section 4 Clause (2) of The Bharatiya Nagarik Suraksha Sanhita, 2023 provides that *all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences* and Section 5 of The Bharatiya Nagarik Suraksha Sanhita, 2023 provides that *Nothing contained in this Sanhita shall, in the absence of a specific provision to the contrary affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force*. Further, Proviso (b) to Section 138 of N.I. Act provides mandatory pre-trial notice to accused, which is unique and special mandatory provision which is missing in other kind of offences of criminal nature providing punishment under different Acts and The Bharatiya Nayaya Sanhita, 2023. Proviso (b) to Section 138 of N.I. Act provides that *the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid*. Further, Section 142 of Negotiable Instruments Act deals with cognizance offence which start with the wording in Clause 1 of Section 142 that *notwithstanding anything contained in the Code of Criminal Procedure 1973 (Now The Bharatiya Nagarik Suraksha Sanhita, 2023), which shows that the Negotiable Instruments Act 1881 provides its own procedure for cognizance of offences under Negotiable Instruments Act and provisions regarding cognizance of offences provided under the Code of Criminal Procedure 1973. (Now The Bharatiya Nagarik Suraksha Sanhita, 2023)* shall not be applicable in case of cognizance of offences under Section

142 of the Negotiable Instruments Act. Further, Section 143 contains special provisions for trial of offences under Section 138 of Negotiable Instruments Act 1881. Section 144 provides for Special Provisions for service of summons and Section 145 provides Special Provisions for evidence on affidavits. Further, Section 139 of the Negotiable Instruments Act 1881 is an example of a reverse onus clause which has been included in the furtherance of legislative objective of improving credibility of negotiable instruments. In my opinion, notice to accused before summoning under Section 138 of Negotiable Instruments Act 1881 is not required and provisions of Proviso to Section 223 of The Bharatiya Nagarik Suraksha Sanhita, 2023 shall not be applicable in case of summoning of accused under Section 138 of Negotiable Instruments Act 1881. This court is further supported in his view by finding of Hon'ble Supreme Court of India in case *J.V. Baharuni & Anr. Vs. State of Gujarat & Anr., Criminal Appeal No. 2221 of 2014*, wherein it has been held that *It may be noted that the provisions of Sections 143, 144, 145 & 147 expressly depart from and override the provisions of the Code of Criminal Procedure, the main body of adjective law for criminal trials. The provisions of Section 146 similarly depart from the principles of the Evidence Act. Section 143 makes it possible for the complaints under Section 138 of the Act to be tried in the summary manner, except, of course, for the relatively small number of cases where the Magistrate feels 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.* Further, assistance has been taken from findings of Hon'ble Supreme Court of India in cases "*Damodar S. Prabhu Vs. Sayed Baba Lal H.*" *Criminal Appeal Nos. 964-966 of 2010*, in case "*M/s Meters and Instruments Pvt. Ltd. & Anr. Vs. Kanchan Mehta*" *Criminal Appeal No. 1731 of 2017*, and recently in case *Suo Moto Writ Petition (Cr.) No. 2 of 2020, in Re-Expedition trial of cases under Sections 138 of Negotiable Instruments Act, 1881* in which different guidelines are issued in order to expedite the cases and to simplify the trial of cases under *Negotiable Instruments Act, 1881*. Therefore, on the basis of discussion above this court is of the considered view that provisions of *Proviso to Section 223 of The Bharatiya Nagarik Suraksha Sanhita, 2023* shall not be applicable in case of cognizance of offence under *Section 142 Negotiable Instruments Act, 1881*.

Now, complainant has stepped into the witness box as CW1 and reiterated the whole sequence of event in minute details through his affidavit Ex.CW1/A, as got detailed by him in his written complaint. Complainant has

also placed on record documents i.e. cheque as Ex.C1, memo as Ex. C2, legal notice as Ex. C3 and postal receipt as Ex.C4. After perusing the statement of complainant and going through the documents placed on record by him, this Court is of the considered opinion that there are sufficient grounds to proceed against the accused under Section 138 of Negotiable Instrument Act. Accordingly, accused is ordered to be summoned to face trial for above said offence for 12.10.2026 on filing of PF/RC/BNPL. Ahlmad is directed to summon the accused through WhatsApp and email as provided by complainant. Process server is directed to visit the house of accused again and again till the service of summon. Further summon be served preferably to the accused in case accused refused to take the summon, summon be affixed on the wall of the house of accused. Dasti process, if requested, be issued.

Date of Order: 08.07.2026
Sameer, Stenographer Gr.II

(Shruti)
Judicial Magistrate Ist Class,
Bathinda
UID No.PB00564