

30 CC NI ACT/782/2026
CNR No. DLCT020002812026
JAGDISH MENON Vs. Ashish Chaturvedi

04.08.2026

Present: Sh. Mukesh Yadav, Ld. Counsel for the complainant along with complainant. (through VC)

Perusal of complaint shows that the present matter has been filed after 01.07.2024 and the same falls under Bhartiya Nagarik Suraksha Adhiniyam, 2023 (BNSS). As per Proviso 1 to Section 223 of BNSS, it is mandatory to hear the proposed accused before taking cognizance. However, in light of the judgment of the Hon'ble Supreme court in '*Sanjabij Tari Vs. Kishore S Borcar*', 2025 INSC 1158, the requirement of hearing the accused on the point of cognizance is dispensed with.

Accordingly, arguments on cognizance and summoning heard on behalf of complainant.

I have gone through the entire record including the complaint and the documents. It is alleged that accused has issued the cheque in question to the complainant to discharge his liability. On its presentation the same was dishonored. Therefore, demand notice was sent to the accused by the complainant. Despite service/deemed service of said notice, accused has failed to make the payment as per provisions of Negotiable Instruments Act.

The counsel for the complainant submits that dictum of "*A. C. Narayanan Vs. State of Maharashtra & Anr.*" (2014) 11 SCC 790 is also applicable to complaints u/s 138 NI Act.

In the aforesaid judgment, Hon'ble Supreme Court of India has held that "...it is a matter of discretion and the Magistrate is not bound to call upon the complainant to remain present before the court and to examine him upon oath for taking decision whether or not to issue process on the complaint under Section 138 of the NI Act. For the purpose of issuing process under Section 200 of the Code, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the NI Act..."

Complaint, affidavit of evidence and documents considered in light of above cited judgment. In opinion of this Court, there is no need to examine the complainant/witnesses for purpose of issuance of process. In view of complaint, documents produced and verification in the form of affidavit of evidence, there are sufficient grounds for proceeding further against accused person(s) for offence punishable under Section 138 NI Act.

Hence, accused person(s) be summoned through all permissible modes (including dasti) for offence punishable u/s 138 of Negotiable Instruments Act on filing of PF/RC within one month. In the event the house/office/premises is found to be locked/refusal to accept the service/any other contingency the process be served through affixation.

Put up for appearance of accused on 01.03.2027.

(Arvind Tomar)
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