

THE LOTUS COOPERATIVE THRIFT AND CREDIT SOCIETY LTD
Vs ARJAN

Present: Sh.AKBARJIT SINGH , Adv. for complainant.

1. Consideration on point of summoning advanced today.
2. Heard. Preliminary inquiry has been conducted and this Court has gone through the documentary evidence and other relevant record produced by the complainant in his evidence. Hence, in the considered opinion of this Court, there is *prima facie* sufficient material to issue process against the accused U/s 138 of Negotiable Instruments Act. The detailed expression of opinion is avoided, as it is no longer necessary in view of the observation of *Hon'ble Supreme Court of India in 'U.P Pollution Board Versus Mohan Meekan', 2000(2) RCR 421 and reiterated in 'Deputy Chief Controller of Import and Export Versus Roshan Lal Aggarwal', 2003(2) RCR (Crl) 110(SC).*
3. Counsel for the complainant requested for taking cognizance and issuing process against the accused without issuing him prior notice as per Section 223 of Bhartiya Nagrik Suraksha Sanhita, 2023 (hereinafter referred as "BNSS 2023") on the ground that accused is fully aware that his cheque has been dishonoured as he had received message from his bank and legal notice has also been received by him.
4. I have heard learned counsel for the complainant on this point and in view of the reasons given below, the prior notice to the accused under Section 223 of BNSS, 2023 is not required to be given.

As per the proviso to Section 223 of BNSS, 2023, no cognizance of offence shall be taken by the Magistrate without giving the accused an opportunity of being heard. Section 223 of Chapter XVI of BNSS, 2023 is reproduced herein below for facility of reference:-

Examination of complainant.- (1) *A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:*

Provided that no cognizance of an offence shall be taken by

the Magistrate without giving the accused an opportunity of being heard:

Provided further that when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses

- (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or*
- (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212:*

Provided also that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them:

(2) A Magistrate shall not take cognizance on a complaint against a public servant for any offence alleged to have been committed in course of the discharge of his official functions or duties unless-

- (a) such public servant is given an opportunity to make assertions as to the situation that led to the incident so alleged; and*
- (b) a report containing facts and circumstances of the incident from the officer superior to such public servant is received.*

The perusal of the above said provision shows that no cognizance of an offence can be taken by the Magistrate without giving the accused an opportunity of being heard. Similarly, Sections 4 & 5 of BNSS,2023 are reproduced herein below for facility of reference:-

4. Trial of offences under Bharatiya Nyaya Sanhita, 2023 and other laws-

(1) All offences under the Bharatiya Nyaya Sanhita, 2023 shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) 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.

5. Saving- *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.*

The perusal of the above said provisions show that as per Section 4 of BNSS, 2023, 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. Section 5 of BNSS, 2023 specifically lays down 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.

5. The complaints filed under Section 138 of Negotiable Instrument Act, 1881 (in short 'the Act') is also regulated by Section 142 of the Act. The said section is reproduced herein below for facility of reference:-

142. Cognizance of offences.—1 [(1)] *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—*

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

³*[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;]*

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.].

⁴[(2) *The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—*

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee

or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.]

The perusal of the above said provision shows that no Court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque and such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138 of the Act. As per Section 138 sub clause (b) and (c) of the Act, the payee or the holder in due course of the cheque, has to send the 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; and in case the drawer of cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice, a complaint can be filed under Section 138 of the Act, 1881 with regard to dishonour of the cheque in question for insufficiency of funds in the account.

From the above, it is clear that entire procedure has been given in the Negotiable Instruments Act, 1881 for taking of cognizance of the offence as well as for filing of complaint under Section 138 of the Act. In the present case also, prior notice was sent as per Section 138 (b) of the Act and complaint was filed only when payment was not made by the accused. Thus, accused is fully aware of the proceedings being initiated against him under the Act and the accused was already at liberty to explain his version when notice was received by him. In the Negotiable Instruments Act, 1881, nowhere it is mentioned that prior notice is to be given by the Court before taking cognizance. It is a settled law that when there is a specific enactment to deal with a particular

subject matter, then the same will prevail over the general provisions. Since as per Section 4 sub clause (2) of the BNSS, 2023, all offences under any law are to be tried according to BNSS, 2023, 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, therefore, it is held that no prior notice is required to be given as per Section 223 of the BNSS, 2023 to the accused before taking cognizance. **Besides this, even otherwise, as per the judgment of the Hon'ble Supreme Court titled as Alavi Haji Vs Palapetty Muhammed & Anr. on 18 May 2007 held that the accused is at liberty to tender the cheque amount within first 15 days of receipt of notice before the concerned Court when he is summoned by the Court and in case, he tenders the cheque amount, the proceedings under Section 138 of N.I.Act are liable to be dropped. Thus, for this reason also, no prior notice is required to be given before taking cognizance in the complaint filed under Section 138 of N.I.Act.**

Accordingly, process is issued against the accused and he be summoned through process serving agency, E-mail of accused, message through mobile, whatsapp number of accused or any other electronic media (on WhatsApp with blue tick screenshot) as well as through RC/speed post for **16.09.2026** on filing of PF,RC and copy of complaint within a week. Dasti summons be given, if requested.

Date of Order: 04.08.2026
Sharvan Kumar*

(Yogesh Gill)
Judicial Magistrate First Class-20,
Jalandhar
UID No . PB0677