

Further order below Exh. 01

(1) Perused the complaint and the documents appended therewith. Heard, Complainant and Ld. Advocate of Complainant. On the earlier occasion when the present complaint came up before the Court, it was found from the cause title of the complaint itself that the accused has been residing outside the territorial jurisdiction of this Court. Hence, the matter was fixed for enquiry under section 223 BNSS as well as in view of the observations of the Constitution Bench of the Hon'ble Apex Court in the case of “ **In Re : Expeditious Trial of Cases Under Section 138 of N.I. Act 1881**” while dealing with Suo Motu Writ Petition (Crl.) No.2 of 2020, vide order dated 16.04.2021.

(2) At this stage, it would also be appropriate to refer to and rely upon the observations and directions of the Constitution Bench of the Hon'ble Apex Court in the aforesaid case whereby the Hon'ble Apex Court has inter alia observed and held as under :

“12. On a holistic reading of Section 145 along with Section 202, we hold that Section 202 (2) of the Code is inapplicable to complaints under Section 138 in respect of examination of witnesses on oath. The evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses. In suitable cases, the Magistrate can examine documents for satisfaction as to the sufficiency of grounds for proceeding under Section 202.

....XXX....XXX....XXX....

24. The upshot of the above discussion leads us to the following conclusions:

....XXX....XXX....XXX....

2) Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed

against the accused, when such accused resides beyond the territorial jurisdiction of the court.

(3) For the conduct of inquiry under Section 223 BNSS, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.”In view of aforesaid observations and directions of the Hon’ble Apex Court, it appears that this Court can in suitable cases, restrict the inquiry to examination of documents without insisting for examination of witnesses. Here in the present case, the complaint has been preferred by the complainant and the complainant has produced all the necessary documents whereby it transpires that the complainant has filed the present complaint against the accused under section 138 of N.I.Act. On perusal of the complaint and the documents, suggests that the cheque in question was given to the complainant has been dishonoured for the reasons stated therein. The statutory notice is also given to the accused who fails to make payment within prescribed time. Thus, the prima facie requisite ingredient for the offence u/s 138 of N.I.Act has been made out. The present complaint has been filed within prescribed time before this Court who has jurisdiction to inquire and try as per sec. 142(2) of the N.I.Act. Hence, On perusal of the documentary evidence as aforesaid, it transpires that there is prima facie case and sufficient grounds against the accused.

(4) Further, the Hon’ble Apex Court has observed that the Magistrate can restrict such inquiry to examination of the documents without insisting for examination of witnesses. The present case falls under the said category of exceptional cases and, Hence, the following order be passed -

ORDER

- The Criminal Inquiry is hereby disposed of.
- The Complaint of the Complainant be registered in the concern register as Criminal Case.
- Looking at the detailed facts stated in the complaint this Court orders to proceed this Case as per provision contained in the Bhartiya Nagrik Suraksha Sanhita, 2023 for the summons-triable cases.
- The cognizance against the accused has been taken for the offence u/s. 138 of the Negotiable Instrument Act, 1881 and summons be issued for the same as per section 227 of BNSS returnable on dt.29/06/2026.

Signed & Pronounced in the open court today on 04th June in the year of 2026

Date 04/06/2026

Malpur

K.B.Parmar

Judicial Magistrate First Class, Malpur

GJ01710