



::Order Below Ex. 1::

1. Heard learned advocate appearing for the complainant. Also gone through the complaint filed under section 138 of the NI. ACT accompanied by affidavit and the document file.

2. In case of Indian Bank Association vs Union of India reported as (2014) 5 SCC 590, it has been laid down by Hon'ble Supreme court in a complaint filed under section 138 of the NI Act the learned MM/ ACJM/ JMFC has to scrutinize the complaint which is supported by the affidavit and the document if any. It is further held that if these are found to be in order prima facie, the Court has to take cognizance on very same day of filing the complaint and has to issue summons to the accused. But in recent judgment of Hon'ble Supreme Court in case of In Re: expeditiously trial of the cases under section 138 of N.I. Act, 1881, Suo Motu Writ Petition No. 2 of 2020 also reported as AIR 2021 SC 1957, following has been held that:

"....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. Perusal of the complaint, accused resides beyond the territorial jurisdiction of this Court."

3. In present complaint, going by the averment it seems that accused residing beyond the territorial jurisdiction of this court. Following the command of the Hon'ble Apex Court, having inquired about the sufficient ground to proceed against the accused, this Court find that present complaint is duly supported by affidavit as per Section 145 of N.I. Act. Not only that in present complaint, the complainant has also produced, original cheque , return memo, office copy of the notice, RPAD slip/Tracking slip etc.

4. The above evidence found during the inquiry, prima facie suggest that the cheque in question given to the complainant has been dishonoured for the reasons stated in the N.I. Act. The statutory notice is also given to the accused, which remained without due compliance. No amount stated in the cheque has been paid to the complainant within the statutory time limit. Moreover, the cheque in question is deposited in the account maintained with the I.C.I.C.I bank, Deesa branch, which is situated within the territorial jurisdiction of this Court. Thus, prima facie requisite ingredient of offence punishable under Section 138 of the N.I. Act is made out also this Court prima facie found territorial jurisdiction to complaint and thus, it allow this court to take cognizance of offence as per section 142 the NI Act.

5. Further, Negotiable Instrument Act is special law. Now in relation to taking cognizance in this complaint whether B.N.S.S. Sec.223 applied or not and for that purpose B.N.S.S. Sec.5 should be taken into consideration.

Section 5- Saving.- Nothing contained in this Sanhita shall, in the absence of 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 of procedure prescribed, by any other law for the time being in force.

Therefore, considering Sec. 5 of B.N.S.S. it is cleared that if any procedure given in any special law than that provision of special law is applicable and procedure of B.N.S.S. is not apply.

This complaint is given under N.I. Act and procedure of cognizance is given under Sec. 142 of N.I. Act and in this section and it is not stated anywhere to hear accused. In this circumstances taking into consideration Sec. 5 of B.N.S.S. in this complaint proviso of Sec.223 of B.N.S.S. is not applicable and for that reason in this complaint no need to issue notice to accused before taking cognizance.

6. Thus, considering the entire matter before the Court, it finds reasonable grounds for proceeding against the accused and hence inclined to pass below said final order in connection to this inquiry.

:-ORDER:-

The complaint is hereby order to be admitted by taking it upon relevant criminal register.

This Court hereby issues process under the Act, Section 138 read with Section 141 of the N.I. Act. On providing the copy of the complaint along with all the documents by the complainant, summons be issued against the accused. Returnable on

Dt. 01/04/2026
Place- Deesa

(U.M. Ahir)
Addl Chief Judicial Magistrate Deesa
UID No. GJ01473