

ORDER BELOW EXHIBIT 1

1. Perused the complaint and the documents appended therewith. Heard the Ld. Advocate of the complainant Mr. P.K.Patel today. On the earlier occasion when the present complaint came up before this Court, it transpired from the cause title of the complaint itself that both the accused are residing outside the territorial jurisdiction of this Court. Hence, the matter was fixed for enquiry by my Ld. Predecessor presiding officer 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 202 of the Code, 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."

3. 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.
4. Here in the present case, the complainant has filed the present complaint against both the accused under section 138 of the Negotiable Instruments Act. On perusal of the documentary evidence, it *prima facie* transpires that the accused had given cheque of their account to the complainant and it also *prima facie* transpires that one accused had signed the said cheque. When the complainant had deposited the said cheque in the account maintained by him with the bank situated within the jurisdiction of this Court, it has been dishonoured. Notice sent by the complainant is also duly served to both the accused and none of the accused has given any reply of this notice. On overall view of the matter, *prima facie* it transpires that the accused has committed the offence punishable under section 138

of the Negotiable Instruments Act. It also transpires that the documents appended with the complaint are sufficient to proceed with the complaint further against the accused by issuing summons upon the accused. 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. However, it is also vital to note that the complainant has filed delay condone application along with this complaint, as there is delay in filing this complaint. Therefore, I pass the following order in larger interest of justice:

:: ORDER ::

It is ordered that said complaint be registered as Criminal Miscellaneous application, as there are just and proper reasons to proceed further in the matter.

The instant Criminal Enquiry stands disposed of accordingly.

Place:Kalol
Date:18.07.2026

S.G.Sheikh
2nd Add. Civil Judge &
J.M.F.C.,Kalol
GJ01615