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**IN THE COURT OF JUDICIAL MAGISTRATE FIRST
CLASS , KALAVAD**

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-:: Order Below Exhibit - 1 ::-

Perused the record, heard the Ld. Advocate for the complainant and gone through the affidavit submitted by the complainant along with the documents. In view of the directions of Hon'ble Supreme Court in Writ Petition (Civil) No. 18/2013, in the case of Indian Bank Association, the Judicial Magistrate on the day when the complaint under Section 138 of The Negotiable Instruments Act, 1881 (*hereinafter referred to as "The Act, 1881"*) is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons. Further, the Hon'ble Supreme Court directed in *Suo Motu* Writ Petition (CRL.) No.2/2020 that Inquiry shall be conducted on receipt of complaints under Section 138 of the Act is arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the Court. According to Section 223 of Bharatiya Nagarik Suraksha Sanhita, 2023, before taking cognizance in complaints, opportunity of being heard shall be given to the accused. On inquiring it appears that the accused is residing beyond the territorial jurisdiction of this Court and on perusal of the affidavit, it reveals that the cheque in question was presented by the complainant in his Bank Account, which is maintained at Kalavad and that cheque was dishonoured, therefore, in view Section 138(b) of N.I. Act, notice was issued to the accused but accused failed to make the payment of cheque amount within 15 days from the date of service of notice and therefore, the complainant filed the complaint under Section 138 of The Negotiable Instruments Act, 1881 against the accused. As notice was duly served to the accused and it reveals that the accused had



full knowledge regarding the dishonouring of cheque and its consequences. Hon'ble Apex Court in the case of "*Sanjabij Tari Versus Kishore S.Borcar, 2025 (0) AIJEL-SC 75934*" held as under;

"36.E. Recently, the High Court of Karnataka in Ashok Vs. Fayaz Aahmad, 2025 SCC OnLine Kar 490 has taken the view that since NI Act is a special enactment, there is no need for the Magistrate to issue summons to the accused before taking cognizance (under Section 223 of BNSS) of complaints led under Section 138 of NI Act. This Court is in agreement with- the view taken by the High Court of Karnataka. Consequently, this Court directs that there shall be no requirement to issue summons to the accused in terms of Section 223 of BNSS i.e., at the pre-cognizance stage."

Further, N.I. Act is a Special Act and provisions regarding cognizance is specifically given in Section 142, therefore, in view of Judgment passed by Hon'ble Apex Court in the case of *Sanjabij Tari Versus Kishore S.Borcar, 2025 (0) AIJEL-SC 75934*" and Indian Bank Association (Supra) and view taken by the Hon'ble Apex Court in the both of these Judgments, as per facts of this case, before taking cognizance, opportunity to hear the accused seems certainly not required. In view of Section 142(2) of Negotiable Instruments Act, 1881, the Court within whose jurisdiction the branch of the Bank where the payee maintains the account is situated, will have the jurisdiction to try the offence, if the cheque is delivered for collection through an account. Therefore, this Court has jurisdiction to adjudicate this matter. Hence, I pass the following order.

- (1) Cognizance is hereby taken against the accused and summons be issued, returnable on 15th May, 2026.
- (2) The registry is hereby directed to register this case in Criminal Case Register.

Place: - Kalavad
Date: - 17/04/2026

[Harshad Rajabhai Khamal]
Judicial Magistrate First Class,
Kalavad, Code - GJ01749