

1) This complaint is filed under Section 138 of the Negotiable Instrument Act. As the complaint is private in nature, the Section 223 (1) of the BNSA comes into the picture, which reads thus;

**223. 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) In light of the above section, my Ld. Predecessor kept the same for inquiry and notice was issued to the accused. The notice has been served to the accused, however, he has not filed any objection.

3) Before moving further, I find it necessary to keep in mind the observation made by the **Hon'ble Karnataka High Court in Ashok S/O. Siddappa Bankar Versus Fayaz Aahmad S/O. Aurangzeb naikar, Criminal Petition No.101514 Of 2025.**

**23.** Since Negotiable Instrument Act, 1881 is special enactment and in view of Section 5 of BNSA r/w. Section 143 of NI Act as far as the cases tried by the learned Magistrates under Section 138 of NI Act, **there is no need for the Magistrate to give an opportunity of being heard to the accused before taking cognizance on the complaint of payee/holder in due course of cheque for offence punishable under Section 138 of NI Act.**

**24.** In the case on hand, **the learned Magistrate has not committed any error in not issuing notice to the accused prior to taking cognizance.** In the result the petition is dismissed.

4) The section 5 of the BNSS reads thus;

**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.**

5) Further, looking at the nature of complaint and documents produced along-with, I find it necessary to cite section 283 (3) of the BNSS.

**283. Power to try summarily.**

**(3)** When, in the course of a summary trial **it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily**, the Magistrate shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by this Sanhita.

6) Moreover, the **Hon'ble Apex Court in case of Indian Bank Association Versus Union Of India, 2014 (0) AIJEL-SC 55452**

has observed as thus;

21. Many of the directions given by the various High Courts, in our view, are worthy of emulation by the Criminal Courts all over the country dealing with cases under Section 138 of the Negotiable Instruments Act, for which the following directions are being given :-

DIRECTIONS:

(1) Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act 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.**

7) Thus, in light of above discussion, I find following order judicious.

**-: O R D E R :-**

1) This complaint is hereby ordered to be registered as criminal case. This case be tried as summons triable case. Summons be issued to the accused as per rules.

Pronounced in the open Court.

16-03-2026.  
Nadiad.

Shrikant Dilipbhai Trivedi  
Addl.Chief Judicial Magistrate  
Nadiad. UID:- GJ01104