

THE LOTUS COOPERATIVE THRIFT AND CREDIT SOCIETY
LTD Vs ASHOBRAJ KUMAR

Present: Sh. Akbarjit Singh, Advocate for complainant.

1. Heard on the point of summoning. The complainant has stepped into the witness box as CW1 and narrated the whole sequence of events in minute details through affidavit as got detailed by him in the written complaint. He placed on the record documents i.e. copy of registration certificate of society Ex.C1, copy of attorney Ex.C2, payment voucher Ex.C3, cheque Ex.C4, memo issued by bank Ex.C5, legal notice Ex.C6 and postal receipt Ex.C7. After perusing the statement of CW1 and the documents placed on record by him in support of his submissions, I find that there are sufficient ground to proceed against the accused under section 138 of the Negotiable Instruments Act. The detailed expression of opinion is avoided, as it is no longer necessary in view of the observation of *Hon'ble Supreme Court of India in U.P Pollution Board Versus Mohan Meekan, 2000(2) RCR 421 and reiterated in Deputy Chief Controller of Import and Export Versus Roshan Lal Aggarwal, 2003(2) RCR (Crl) 110(SC)*.

2. Counsel for the complainant requested for taking cognizance and issuing process against the accused without issuing him prior notice as per Section 223 of Bhartiya Nagrik Suraksha Sanhita, 2023 (hereinafter referred as "BNSS 2023") on the ground that accused is fully aware that his cheque has been dishonoured as he had received message from his bank and legal notice is also received by him.

3. I have heard learned counsel for the complainant on this point and in view of the reasons given below, the prior notice to the accused under Section 223 of BNSS, 2023 is not required to be given. As per the proviso to Section 223 of BNSS, 2023 no cognizance of offence shall be taken by the Magistrate without giving the accused an

opportunity of being heard. As as per Section 4 of BNSS, 2023, all offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Section 5 of BNSS, 2023 specifically lays down that 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.

4. The complaints filed under Section 138 of Negotiable Instrument Act, 1881 (in short 'the Act') is also regulated by Section 142 of the Act. The entire procedure has been given in the Negotiable Instruments Act, 1881 for taking of cognizance of the offence as well as for filing of complaint under Section 138 of the Act. In the present case also, prior notice was sent as per Section 138 (b) of the Act and complaint was filed only when payment was not made by the accused. Thus, accused is fully aware of the proceedings being initiated against him under the Act and the accused was already at liberty to explain his version when notice was received by him. In the Negotiable Instrument Act, 1881 no where it is mentioned that prior notice is to be given by the Court before taking cognizance. It is a settled law that when there is a specific enactment to deal with a particular subject matter, then the same will prevail over the general provisions. Since as per Section 4 sub clause (2) of the BNSS, 2023, all offences under any law are to be tried according to BNSS, 2023, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences, therefore, it is held that no prior notice is required to be given as per Section 223 of the BNSS, 2023 to the accused before taking cognizance. Accordingly, accused is ordered to be summoned to face trial for the above said offence on filing of PF/RC/AD and copy of complaint within 3 days for 08.10.2026. Notice to accused be also issued through e-mail, Whatsapp etc. on providing e-mail address or

contact number of accused by complainant, for the date fixed. Dasti be issued, if required. In addition to it, separate notice be also sent to the accused through registered cover as envisaged under section 144 of the Act.

Date of Order: 10.08.2026

*Sobhati**

(Pawanpreet Singh)

Judicial Magistrate First Class,

Jalandhar

UID No . PB00775