

Order Below Exh. 1

1. Heard the learned advocate appearing for the applicant/complainant. Perused the the complaint file 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. 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 present complaint, accused resides beyond the territorial jurisdiction of this Court. Further, "no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard" as per the proviso of the sec.223 of the B.N.S.S.,2023. However, as per the recent judgment of the **Hon'ble Supreme Court in the case of *Sanjabij Tari v. Kishore S. Borcar*, Criminal Appeal No. 1755 of 2010, decided on 25.09.2025 [2025 (0) AIJEL SC 75934]**, the following

has been held that:

"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 filed 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."

In light of the above, there is now no requirement to give the accused an opportunity of being heard before taking cognizance in matters under Section 138 of the NI Act.

3. 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/acknowledgment slip etc.
4. The above evidences 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.
5. Thus, prima facie requisite ingredient of offence punishable under Section 138 of

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the N.I. Act is made out, also this Court prima facie found territorial jurisdiction to try complaint and thus, it allow this court to take cognizance of the offence as per Section 142 of the NI Act. Hence, there are sufficient grounds to proceed against the all accused.

6. Consequently, I pass the following order:

ORDER

1. The present complaint is to be registered by the registry of this court for the offence under Section 138 of N.I. Act in criminal case register and the present enquiry is disposed off accordingly.
2. On providing the copy of the complaint along with all the documents by the complainant and in connection with the judgment of *Sanjabij Tari v. Kishore S. Borcar*, Criminal Appeal No. 1755 of 2010, decided on 25.09.2025 [2025 (0) AIJEL SC 75934] the Hon'ble Gujarat High Court passed the

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circular no.D.2913/2026 dated 05.02.2026, as per the said circular after fill up the prescribed model presentation form by the complainant, issues process against the present accused under the Act, with the note as per the guideline given in the judgment of **Indian Bank Association and others V/s. Union of India & others** reported in **AIR 2014 S.C. 2528** that the accused will remain present before this court with surety and bail bond of Rs.15,000/-. Returnable on 23.10.2026.

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Date- 01/07/2026.

(PRANAV DILIPKUMAR MODI)

Prin. Sr. Civil Judge &

A. C. J. M., Jetpur.

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