

Order Below Exh.1

Heard, Perused the entire record of the present case as the complainant is being filled for the offence under section 25 of The Payment & Settlement Act, 2007. Moreover provision of chapter-XVII of N.I. Act is applicable to the payment and settlement Act and the accused has selected the mode of Payment through ECS (**ELECTRONIC CLEARANCE SYSTEM**).

That Hon'ble Supreme Court of India in **Indian Bank Association & Others Vs. Union of India & Others, (2014) 5 SCC 590** held that on the day when the complaint is filed, the Magistrate shall scrutinize the complaint and if the complaint is accompanied by the affidavit & the documents and if they are found to be in order, court can take cognizance of the offence by issuing summons. Further, the Hon'ble Supreme Court in **Suo Motu Writ Petition (Cri.) No.2/2020** has also held that when accused resides beyond the territorial jurisdiction of the Court, an inquiry, on receipt of the complaint, shall be conducted, which may be held on the basis of affidavit and in suitable cases, the Court can restrict the inquiry to examination of documents without insisting for examination of witness. Meaning thereby, if the affidavit and examination of documents filed with the complaint are found in order, cognizance can be taken without examining witness, relying on the affidavit & the documents.

Hence as per the direction of Hon'ble Supreme Court as above this court inquired and after perusing the complaint at the affidavit of complainant it appears that ELECTRONIC CLEARANCE SYSTEM (ECS) has been dishonoured at Ahmedabad. A bare reading of the complaint, affidavit in evidence and the documents shows that there is prima facie case against the accused and considering the **Section 25 of Payment and settlement Act** it appears this court has jurisdiction to take cognizance. Therefore after perusing the entire record along with the complaint and after inquiry under section 202 of the Code of Criminal Procedure, 1973 there is prima facie case for the offence under **Section 25 of Payment and settlement Act** against the accused no.: 1,2,3. It is therefore present complaint is hereby ordered to be registered and order to issue summons as per U/Sec.204 of Cr.P.C for the offence of **U/Sec.25 Payment and settlement Act**.

Accordingly, **the complaint is ordered to be registered as Criminal Case.** Summons under section 204 of the Code of Criminal Procedure, 1973 is ordered to be issued against the accused for the offence under Section 25 of the payment & settlement Act, 2007. Summons be issued in the prescribed form as per the direction of the Hon'ble Apex Court in Indian Bank Association (supra) and Circular issued by the Hon'ble Gujarat High Court in view of circular No. 2619/2018. Moreover, **accused no.1,2,3. is/are hereby directed to furnish a surety each accused amount of Rs. 10,000/-** before this Court for the purpose of securing his/her presence during the trial of the present complainant. In addition to normal mode of service, the complainant is also permitted to serve the summons through R.P.A.D. and email. In case of service by email, the complainant is required to declare that the email address is correct.

Next Date: 19/01/2024

Date: 19/10/2023
Ahmedabad.

(K.D.Dwivedi)
Addl. Chief Metro. Magi.
(N.I.A) Court No.27, Ahmedabad