

THE LOTUS COOPERATIVE THRIFT AND CREDIT SOCIETY LTD
Vs JYOTI

Present: Ms. Taranpreet Kaur, Advocate for the complainant.

SUMMONING ORDER

In preliminary evidence, the complainant has tendered his affidavit Ex.CA alongwith requisite documents Ex.C1 to Ex.C7 and closed preliminary evidence.

2. Heard. Preliminary enquiry has been conducted and this Court has gone through the documentary evidence and other relevant record produced by the complainant in his evidence. Perusal of the documents shows that the present complaint has been filed within limitation. Hence, in the considered opinion of this Court, there is prima facie sufficient material to issue process against the accused U/s 138 of Negotiable Instruments Act.

3. 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.

4. 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.

5. 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. Further 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.

6. The complaints filed under Section 138 of Negotiable Instrument Act, 1881 (in short 'the Act') is also regulated by Section 142 of the Act. It is clear that 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.

7. 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.

8. Accordingly, process is issued against the accused and accused be summoned through process serving agency, e-mail of accused, message through mobile, whatsapp number of accused or any other electronic media (on whatsapp with blue tick screenshot) as well as through RC/speed post for **10.09.2026** on filing PF/RC and copy of complaint within a week. Dasti summons be taken, if desired.

Date of Order: 11.06.2026

*Gautam Yadav *JW (J.G.)*
(Directly Dictated)

(Shivani Garg)
Judicial Magistrate First Class-7,
Jalandhar
UID No . PB00529