

28 CC NI ACT 2060/2020
M/S HDFC BANK LTD.
Vs HARI SHANKAR PANDEY

PROCEEDINGS CONDUCTED THROUGH VIDEO
CONFERENCING

22.01.2021

Present: Sh. Mohit Jalal, Id. Counsel for complainant.

Previous order has been complied with. Perusal of the digital file reveals that the Advocate's Welfare Stamp has not been affixed. Id. Counsel for complainant is directed to make good the said deficiency.

Arguments on summoning heard.

This is complaint filed for offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Entire record including the complaint, affidavit of evidence and the documents annexed therewith perused thoroughly. It is alleged that the accused issued cheque bearing no. 825683 dated 13.10.2020 for an amount of Rs. 28,437/- to the complainant in discharge of his legal liability. On presentation, the same got dishonoured vide return memo dated 15.10.2020 for the reason "Funds Insufficient". Thereafter, a legal demand notice dated 27.10.2020 was sent to the accused by the complainant. Despite service/deemed service of the said notice, the accused failed to make payment within the statutory period of 15 days as per the Provisions of the Negotiable Instruments Act, 1881.

The Hon'ble Supreme Court, in the case A.C. Narayanan Vs State of Maharashtra (2014) 11 SCC 790, has held as under:

"29. From a conjoint reading of Sections 138, 142 and 145 of the N.I. Act as well as [Section 200](#) of the Code, it is clear that it is open to the Magistrate to issue process on the basis of the contents of the complaint, documents in support thereof and the affidavit submitted by the complainant in support of the complaint....

...33.4 In the light of Section 145 of the NI Act, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the

NI Act and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present before the Court, nor to examine the complainant or his witness upon oath for taking the decision whether or not to issue process on the complaint under Section 138 of the NI Act.”

Similar directions have been issued in *Indian Bank Association & Ors vs Union of India* (2014) 5 SCC 590 and *Rajesh Agarwal vs State* (2010) 171 DLT 51.

On consideration of the complaint, the documents annexed therewith and the verification affidavit, this court is of the opinion that *prima facie* there are sufficient grounds for proceeding against the accused Hari Shankar Pandey, being the signatory of the cheque in question, for commission of offence under section 138 of the Negotiable Instruments Act, 1881. In view of the above mentioned directions of the Hon'ble Supreme Court and Hon'ble Delhi High Court, there is no requirement for examination of the complainant or witnesses for the purpose of issuance of process. An inquiry under section 202 CrPC reveals that all the statutory requirements have been complied with. The complaint has been filed within the period of limitation prescribed under section 142(1)(b) of the Negotiable Instruments Act, 1881. I take cognizance of the said offence.

As per the SOP issued by the Hon'ble High Court of Delhi, the complainant side is required to file the mandatory NI Act Complaint Meta Data Form before filing of PF. The complainant side is directed to comply with this requirement. **Thereafter, Reader-cum-Ahlmad is directed to issue summons against accused Hari Shankar Pandey through Approved Courier Service/Speed Post for 25.02.2021.** Service be also effected through e-mail, WhatsApp and text message as per the information provided by the complainant. In case the house/office/premises is found to be locked/refusal to accept service/any other contingency, the process be served through affixation in terms of section 65, CrPC and process server is directed to file his report accordingly and a photograph of the affixed summons and the place where it is affixed be also filed.

Complainant is directed to place on record on NDOH the tracking report of summons sent through speed post.

As per the guidelines laid down in *Damodar S. Prabhu Vs. Sayed Babalal H*, AIR 2010 (SC) 1907, Ahlmad is directed to

make a mention on the summons issued against the accused (by adding separate sheet, if required) that :

(A) Accused can make an application for compounding of the offence at the first and second hearing of the case and if such an application is made, compounding may be allowed by the Court without imposing any costs on the accused.

(B) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the court at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay ten percent of the cheque amount to be deposited as a condition for compounding with the district legal services authority.

The Ahlmad is directed to mention the official email id and video conferencing link of this Court on the summons. Complainant is directed to file PF and take steps within 07 days including providing copy(ies) of complaint otherwise the complaint may be dismissed U/s 204(4) Cr.P.C.

Matter be fixed for appearance of accused/furnishing of bail/consideration on notice on 25.02.2021.

(Shipra Dhankar)
MM (Digital Court)-04
South-West District/Dwarka Court
22.01.2021