

ORDERS

The present private complaint is filed U/Sec.223 of B.N.S.S., for the commission of alleged offence P/U/Sec.138 and 142 of N.I. Act. As per proviso to Sec.223 of B.N.S.S., no cognizance of an offence shall be taken by the Magistrate without giving the accused for an opportunity of being heard. The said provision under B.N.S.S., is a general provision applicable to the cases of B.N.S.

When there is a special enactment then Sec.4 and 5 of B.N.S.S., provides a procedure to follow. As per Sec.5 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, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

As per Sec.5 when any special enactment provides special procedure for the trial and otherwise then the same special procedure shall have to be follow and not the general procedural law. In the absence of special procedures in the special enactment then the procedure laid down in general law has to be follow.

Sec.142 of N.I Act, 1881 provides procedure to take cognizance of the offences P/U/Sec.138 of the said Act. As per the Sec.142 of N.I Act if the requirements of proviso to Sec.138 and requirements of Sec. 142 are complied then this court has to take cognizance in accordance with Sec.142 N.I Act. The opening words of Sec.142 itself clearly excludes the procedure of general law. It says as follows;

Notwithstanding anything contained in the code of Criminal Procedure, 1973'...

It means that, the court has to follow Sec.142 of N.I Act to take cognizance. Sec.142 of N.I Act does not provide anything which says to hear the

accused before taking cognizance for the alleged offence. So, in the private complaint filed U/Sec.223 of B.N.S.S., for the offence P/U/Sec.138 of N.I Act issuance of notice to the accused is not necessary.

Perused the contents of complaint. The complainant has filed the private complaint U/sec.223 of B.N.S.S., against the accused for the commit of alleged offence P/U/Sec.138 of N.I., Act, 1881.

It is case of the complainant that, the complainant and accused No.2 have entered into an agreement of sale and the complainant has paid an amount of Rs.10,68,500/- to the accused No.2. Further that, when the accused No.2 has failed to execute the sale deed, in order to repay the said amount, accused No.2 has issued two cheques bearing No.000079, dated:03.08.2024 for Rs.6,68,500/- and cheque bearing No.000080, dated 12.08.2024 for Rs.4,00,000/- for amount of Rs.10,68,500/- and complainant had presented the cheques before the bank for encashment. But, the said cheque were dishonored on 10.09.2024. Hence, complainant in order to comply the mandates prescribed in the Sec.138 of NI Act, issued legal notice to the accused on 23.09.2024 and the said notice was served on accused, but accused neither gave reply to the notice nor made the any payment. Hence, with no other option the complainant had to file the complaint on 28.11.2024.

Complainant in order to establish the commission of offence by accused, sworn statement is recorded. Complainant files his affidavit in lieu of his sworn statement and got marked Ex.P1 to P6 and Ex.P1(a) and Ex.P2(a). On perusal of the said documents it is made out that the cheques drawn by accused No.2 in favor of complainant is dishonored by the bank, complainant after issuing notice has filed the present complaint against the accused for the offence punishable U/sec 138 of NI Act.

It is further made out that, the notice sent by complainant is within the time prescribed and the complaint is also filed within the time and sufficient materials are placed to take cognizance for the offence punishable U/sec.138 of NI Act. Cognizance taken for the said offence. Hence, court proceed to pass following :

ORDER

Office is directed to register the case as CC in register No.III and issue summons by way of RPAD, if PF paid.

Call on: 01.09.2026.

**II Addl. Civil Judge and JMFC
Hosakote**