

Present:- Complainant represented by counsel Sh. Aasheem Jain

Fresh Complaint received by entrustment. It be checked and registered. The complainant/CW tender into preliminary evidence his affidavit Ex.CW1/A alongwith documents, Ex.C1/CW1 to Ex.C10/CW1 and close the preliminary evidence vide separately recorded statement. The perusal of case record reflects that the complaint is within prescribed period of limitation, and that the Court is having territorial jurisdiction to try the instant complaint. The specific and cogent averments of complaint, affidavit and documents on record prima facie reflects:-

1. drawing of cheque(s) by accused on an account maintained by it with a banker for payment to complainant from out of that account for discharge in whole/part any debt or liability.
2. presentation of the cheque(s) by the complainant (payee or the holder in due course) to the bank,
3. returning the cheque(s) unpaid by the drawer bank for want of sufficient funds to the credit of the drawer of any arrangement with the banker to the sum covered by the cheque(s).
4. giving notice in writing to the accused/drawer of the cheque(s) on the receipt of the information by the complainant from the bank regarding the return of the cheque(s) as unpaid demanding payment of the cheque(s) amount.
5. failure of the accused/drawer to make payment to the complainant/ payee or the holder in due course of the cheque(s) of the amount covered by the cheque(s) within 15 days of the receipt of the notice.
6. institution of the instant complaint within the prescribed period of limitation before the court of competent jurisdiction.

I have heard learned counsel for the complainant and have perused the case file/record with his able assistance on the question of summoning of the accused.

In view of the facts and circumstances of the instant case and dictum of settled legal position, this court is of the considered view that in totality and with greatest circumspection that there is a force in the line of the reasoning adopted by the counsel for the complainant as it prima facie transpires from the averments of complaint, affidavit and documents on record that there is "sufficient material" to issue process against the accused in consonance with the provision of law as contained under the Section 138 of Negotiable Instruments Act, 1881.

Furthermore, the detailed expression of opinion is avoided as it is no longer necessary in view of the law laid down by Hon'ble Supreme Court in case cited as **"UP Pollution Board Vs. Mohan Meaken Ltd. 2002(2) RCR (Criminal) 421"** and **"Deputy Chief Controller of Imports and Exports Vs. Roshan Lal Aggarwal 2003(2) RCR (Criminal) 110"**.

Accordingly, notice / process / summons be issued to the accused person for the alleged commission of offence as contained under the provisions of Section 138 of Negotiable Instruments Act, 1881 simultaneously through ordinary process as well as through Registered cover/AD/UPC/Speed Post/affixation, for **03.06.2024** on deposit/filing of registered cover / AD / UPC/ speed post bearing proper, correct and complete address of the accused for effective & expeditious service of process without delay, alongwith the requisite process fee, copy of complaint, list of witnesses etc., forthwith and positively within 7 days, failing which, the complainant cannot seek any assistance from the court, furthermore it may be deemed / presumed that the complainant is not interested for the effect prosecution & pursuance of the instant complaint and court may proceed under the provision of Section 204(4) Cr.P.C. as to the *dismissal of the instant complaint due to non prosecution*.

In addition to above, **Dasti summons/** notice / process may also be given, if desired.

Gurdeep Kaur
Judicial Magistrate Ist Class,
Chandigarh.
UID No. HR0441

Date of Order: 06.03.2024
Manjeet Steno II