

**ORDER**

The complainant has filed this complaint under Section 223 against the accused for the offences punishable under section 138 of the N.I.Act.

2. The complainant got examined himself has P.W.1 by filing affidavit in lieu of sworn statement and got marked documents at Ex.P.1 to Ex.P.5.

3. On perusal of Sec.223 of BNSS, it contemplates that, no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard. At this stage, this Court would like to refer section 142 of the Negotiable Instruments Act, 1881.

**142. Cognizance of offences.—** (1)  
Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

—(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138. The

word “Notwithstanding any thing contend in the code of Criminal Procedure” contemplates that, when special law is an acted, the special law would prevail over the General Act. The BNSS 2023 is the new form Cr.P.C 1973. Issuance of notice before taking cognizance is not contemplated under section 142 of N.I. Act. Hence, this Court is of the opinion that, the Negotiable Instrument Act 1881 being the special law, issuance of notice to the accused before taking cognizance as contemplated in section 223 of BNSS is not applicable. Further, the ***Hon’ble Supreme Court of India in the case of N. Hariyara Krishnam Vs J. Thomas reported in (2018) 3 SCC 663 has held that, “The offence under section 138 is persons specific, therefore parliament declared under section 142***

***that the provisions dealing with taking cognizance contained in the Cr.P.C should give way to the procedure prescribed under section 142. It must also be remembered that, section 142 does not either contemplate a report to the police or authorized the Court taking cognizance to direct the police to investigate into the complaint***". In view of the above decision, it clears that section 142 of N.I. Act does not contemplate issuance of notice to the accused before taking cognizance.

4. On perusal of the sworn statement and documents, it appears that the complainant has filed the complaint within the period of Limitation and this court is having jurisdiction to entertain the case.

5. In view of the decision reported in **(2014) 5 SCC 590, Indian Bank Association and others V/S Union of India and ILR 2014 Kar 5237, M/s Mesh Trans Gears Pvt Ltd V/S Dr. R Parvatha Reddhy**, The affidavit filed by the complainant is treated as examination in chief and Exhibit P1 to P5 are marked.

6. Heard counsel for complainant perused the document and affidavit its appears that the complainant has made out prima facie case against the accused punishable U/s 138 of NI Act and there is no delay. Hence I proceed to pass following:

**::ORDER::**

Cognizance for the offence u/s 138 of NI Act is taken.

Office to Register the criminal case in Register No.III.

Issue summons to the Accused  
through court and Speed Post.

Office to keep the original  
cheque in the safe custody.

R/by: 04.06.2026.

Prl. Civil Judge and JMFC,  
Sakaleshpura.