

CC No. 2068/23

20.10.2023

The undersigned is looking after the work of Ms. Arjinder Kaur, Ld. MM in the forenoon session and Mr. Apoorv Gupta, Ld. MM for full day.

Present: Mr. Anshul, Ld. Counsel for complainant.

1. The matter is listed today for fresh consideration.
2. Arguments Heard. Entire record including the complaint and the annexed documents perused thoroughly. It is alleged that accused has issued the cheque(s) in question to the complainant in discharge of a legal liability. On presentation, the same got dishonoured. Thereafter, demand notice was sent to the accused by the complainant. Thereafter, the accused has failed to make the payment within 15 days of receipt of the legal notice as per provisions of the Negotiable Instruments Act, 1881. Thereafter, the present complaint has been filed by the complainant.
3. The Hon'ble Supreme Court in the decision reported as A.C. Narayanan v. 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. v. Union of India* (2014) 5 SCC 590 and *Rajesh Agarwal v. State* (2010) 171 DLT 51.

4. In light of the aforesaid decision, there is no need to examine the complainant before issuing process to the accused. Accordingly, on consideration of the complaint, annexed documents and the verification affidavit of the complainant, this Court is of the opinion that prima facie there are sufficient grounds for proceeding against the accused mentioned below for the commission of offence under Section 138, Negotiable Instruments Act, 1881. There is no requirement for examination of the complainant or witnesses for purpose of issuance of process in view of the above-mentioned directions of the Hon'ble Apex Court and Hon'ble Delhi High Court. In terms of inquiry conducted under Section 202 CrPC, all the statutory requirements have been complied with. The complaint is filed within the period of limitation as prescribed under Section 142(1)(b) of the Negotiable Instruments Act.

5. Let the accused **Ramsamuj** be summoned through approved registered courier, speed post and e-mail for **16.02.2024**. Complainant is directed to file PF and take steps within 15 days. The Ahlmad is directed to issue the summons only after ensuring that the same has been done. In case, the complainant provides the E-mail address and the Whatsapp No. of the accused, the Ahlmad is directed to send the e-copy of summons to the Nazarat Branch for service through E-mail and Whatsapp. Further, complainant is directed to file an affidavit verifying the correctness of email ID and the Whatsapp No. of the accused. Nazarat Branch is directed to file report regarding service of summons through e-mail and Whatsapp before the NDOH. If the complainant wishes to serve the accused personally on his Whatsapp number and E-Mail ID, he is directed to file an affidavit of compliance with respect to

service through e-mail as well as Whatsapp.

6. Complainant is further directed to place the tracking report of summons sent through speed post on the next date. In the event the house/office/premises is found to be locked/refusal to accept the service/any other contingency the process be served through affixation in terms of Section 65, CrPC.

7. As per the guidelines laid down as in the case titled as Damodar S. Prabhu v. 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 or 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 10% of the cheque amount to be deposited as a condition for compounding with the District Legal Services Authority.

(Katyayini Sharma Kandwal)
Metropolitan Magistrate/NI Act -03
Central/Delhi/20.10.2023