

Case called out. Complainant is present. Filed in lieu of sworn statement. The complainant examined as CW1 / PW1.

- 1) Cheques is marked as Ex.P.1,
- 2) Challan is marked as ExP.2
- 3) Bank endorsement is marked as Ex-P3
- 4) legal notice is marked as Ex.P4
- 5) Postal receipt is marked as Ex.P5
- 6) Unserved Postal cover is marked as Ex.P6

The complainant has duly complied with all the necessary ingredients of Sections 138 and 142 of N.I. Act. It prima-faciely appears that alleged offence Punishable U/s.138 of N.I. Act is committed.

The question before this Court is whether the stage of taking cognizance should precede the examination of the complainant on oath and inquiry/investigation as per Sec. 225 of B.N.S.S. or not?.

This question has been duly answered by the Hon'ble High Court of Karnataka in Criminal Petition No.1422 of 2021 C/W Criminal Petition Nos.1197/2021, 1219/2021 and 2286/2021 between Sri Sathya Sai Central Trust and another V/ s State of Karnataka & others wherein at paragraph No. 51 it is held as hereunder;

“Therefore the correct position appears to be, cognizance cannot be taken unless the Magistrate arrives at a satisfaction about occurrence of an offence only after going through the complaint and examining the complainant on oath and the witnesses if required”, and at paragraph No. 54 it was held as hereunder; “Because the words ‘having taken’ are not used in Section 223, it is not possible to say that the stage of taking cognizance should precede examination of the complainant on oath”.

Further, the Hon'ble Apex Court in Criminal Appeal No. 750 of 2021 wherein at paragraph No. 10 it is held as hereunder; “Object of holding an inquiry/investigation before taking cognizance, in cases where accused resides outside the territorial jurisdiction of such Magistrate, is to ensure that innocents are not harassed unnecessarily”.

Hence, as per the aforesaid authorities it is quite clear that the stage of taking cognizance by the Magistrate shall always succeed the examination of complainant U/sec. 223 of B.N.S.S. and an inquiry/investigation as per Sec. 225 of B.N.S.S. and not precede the same.

In the ruling of the Hon'ble Apex Court in Indian Bank Association case (supra) the direction No. 1 is given as hereunder; “(1) Metropolitan

Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.”

As per the decision of the Hon'ble Supreme Court of India in case of Indian Bank Association and others Vs. Union of India and others reported in (2014) 5 SCC 590. The sworn statement itself is treated as evidence affidavit and the complainant as P. W.1. At the time of sworn statement the complainant relied on documents in support of his case. Heard regarding issuance of process. Perused the averments made in the and also the material document cheque and other supporting documents available on record. Prima-facie reveals that well within the period of limitation, complaint has been filed. There are sufficient materials to proceed with and to issue summons to the accused.

Since, I have scrutinized the complaint, the complaint is accompanied by the affidavit and the documents are found to be in order, this Court can proceed further to comply Sec. Sec. 225 of B.N.S.S.

Further, as per the judgment of the Hon'ble 5 Judges Bench, of the Hon'ble

Supreme Court in SUO MOTU WRIT PETITION (CRL). NO. 2 OF 2020, IN RE: EXPEDITIOUS TRIAL OF CASES UNDER SECTION 138 OF NI ACT 1881 has held "If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses. In suitable cases, the Magistrate can examine documents for satisfaction as to the sufficiency of grounds for proceeding under Sec. 225".

ORDER

Acting U/sec.Sec. 225 of B.N.S.S. I have conducted the enquiry by myself by carefully examining all the documents and I have accorded satisfaction to myself that there are sufficient grounds for proceeding against the accused. Hence, the cognizance is taken for the alleged offence punishable U/sec. 138 of NI Act.

Office is hereby directed to register the case as criminal case against the accused for the offence punishable under section 138 of Negotiable Instruments Act in Register No.III.

Issue summons to the accused through speed post along with complaint copy if PF paid, by: 06.08.2026

I Addl.Civil Judge and JMFC,
K.R.Pete.