

PROFORMA

The particulars of the case:

1.	Case No.	:	CC 2254/17
2.	Name of the accused	:	Vinaya B.V
3.	Offence U/Sec	:	U/Sec. 138 of NI Act
4.	Date of Issue of proclamation U/Sec 82 of Cr.P.C	:	7/12/23
5.	Date of publication of proclamation Duration Must be not less than 30 days	:	8/1/24 32
6.	Date fixed for appearance of accused	:	9/2/2024
7.	Steps take U/Sec 83 Cr.P.C : (a) Whether NBW has been issued against the accused (b) Report regarding Movable/Immovable properties of the accused from the concerned (MunicipalCounsilator/village officer/Ex-officer, Town Panchayath/ Revenue Officer/ Chief Officer Purasabha Karyalaya/Addl.Dist.Commissioner/Tahsildar/Village Accountant, etc.,)	:	Issued Report obtained from Revenue Official

8.	Action taken on surety of : accused (a) Whether the case has been registered against the surety of the accused (b) Whether bond amount has been deposited by the surety.	Accused has not been secured from the beginning
9.	Evidence U/Sec 299 Cr.P.C (details of evidences etc)	One complainant examined as PW-1 C.P.Shivaraju ASI, Madduru PS who is conducted proclamation is examined as PW-2, and marked Ex.P1 to 13. Ex. P1 is cheque, Ex.P2 is bank endorsements, Ex.P3 is Legal Notice, Ex.P4 and 5 are postal receipts and Ex.P6 and 7 unopened RPAD Cover and E.xP.6(a)and 7 (a) Notices,Ex.P8 is Proclamation Mahazar, Ex.P9 to Ex.P11 photos, Ex.P12 is requisition. Ex.P13 is property reports,

Place : Maddur
Date :

I Addl. Civil Judge and JMFC
Maddur

**ORDERS WITH REGARD TO SEEKING PERMISSION TO
TRANSFER THE CASE TO THE REGISTER OF LONG
PENDING CASES**

The complainant namely Sri. Si.M.B. Umesha has filed the private complaint under sec.200 of Cr.P.C against the accused for the offence punishable U/sec 138 of NI Act. From the beginning accused has not been secured.

2. Process of proclamation and attachment was issued on 7/12/23. It was duly published on 8/1/24 . However the accused have not appeared before the court. The matter was called on **9/2/2024** and it was held that, proclamation is duly published. The report of Revenue Official would show that, the accused does not possess any property under Ex.P13. Accordingly, matter is set down for evidence U/Sec 299 of Cr.P.C.

3. One complainant examined as PW-1 C.P.Shivaraju ASI, Madduru PS who is conducted proclamation is examined as PW-2, and marked Ex.P1 to 13. Ex. P1 is cheque, Ex.P2 is bank endorsements, Ex.P3 is Legal Notice, Ex.P4 and 5 are postal receipts and Ex.P6 and 7 unopened RPAD Cover and E.xP.6(a)and 7 (a) Notices,Ex.P8 is Proclamation Mahazar, Ex.P9 to Ex.P11 photos, Ex.P12 is requisition. Ex.P13 is property reports.

In the instance case, proclamation is duly published. The report available on record would show that, accused person has not possess any immovable property. The re-issuance of process of NBW would serve no purpose. The provisions of Sec.82 and 83 of Cr.P.C are complied.

In the derision of **Dalmia Resorts Internaional Pvt. Ltd Vs Deepak and Anr** reported in **2002 SCC Online Del 538**, the Hon'ble Lordship held that “even in the NI cases also proclamation and attachment order can passed but said order is exceptional remedies”. Herein the case also the matter is more than 10 years old and acused can not secure from the beginning. So, again keeping file pending no purpose would served. As such it was required for order of proclamation and attachment.

Our Hon'ble High Court of Karnataka also in **Mac Charles (I) Ltd. vs Chandrashekar And Anr** reported in **ILR 2005 Kar 3648**, while considering the validity of process of summons the Hon'ble Lordship held that “This being the position in a criminal trial, if the accused did not respond even after the service of notice to him by the other mode of service prescribed under [Section 65](#) or under [Section 144](#) of the Negotiable Instruments Act, the presence of the accused will have to be secured by resorting to the coercive methods like issue of warrants and proclamation in the manner as contemplated under the provisions of the [Cr.P.C.](#) This is very

much necessary because in the absence of an accused, a criminal trial cannot be proceeded with effectively and the accused cannot be convicted and sentenced to custodial sentence without his personal presence being secured before the Court. There may be cases where even by resorting to such coercive measures, the presence of the accused could not be secured within a reasonable time, then the provisions as contemplated under Chapter IV of the Karnataka Criminal Rules of Practice will have to be resorted to and the case against such accused will have to be split up and it is only for the purpose of invoking the provisions contained in Chapter IV of the Karnataka Criminal Rules of Practice, the Court can resort to the procedure as prescribed under [Section 299](#) of Cr.P.C. of recording the evidence of witnesses in the absence of the accused.” Therefore no bar under sec 82 and 83 of Cr.PC or NI Act for conducting proclamation and attachment of property of accused under alleged offence under sec 138 of NI Act.

4. Now this court is of the opinion that, the presence of accused cannot be secured within a reasonable time. Hence, it is just and necessary to submit a letter to the Hon'ble District and Sessions Court, Mandya seeking permission to transfer this case to the Register of Long Pending Cases i.e., register No.XIII In the result of the following :

ORDER

Office is hereby directed to submit a letter to the Hon'ble District and Sessions Court, Mandya seeking permission to transfer this case to the Register of Long Pending Cases i.e., register No.XIII submit the letter along with entire file. Awaiting order call the matter on

**I Addl. Civil Judge and JMFC
Maddur.**

To. No. /2024

Dated 11-07-2024

Office of the I Addl. Civil Judge
and JMFC, Maddur,

To:

The Hon'ble Prl. District and Sessions Judge,
Mandya

Respected Madam,

Sub: Submission of records in CC 2554 /17
seeking kind permission to transfer the
case to Long Pending Case Register

Ref: CC 2554/17 for the offence punishable
U/Sec 138 of NI Act pending on the
file of this court

* * *

With reference to above subject, I respectfully
submit that, a Criminal Case in CC.No. 2554 /17 has been
registered against the Accused Antony punishable offence
under Sec. 138 NIAAct.

2. Further respectfully submit that, accused
remained absent. Hence, process of NBW is issued.
Concerned police have failed to secure the presence of
accused persons. This court without any alternative has
issued proclamation and same duly published. Concerned
police have submitted that, no property is available in

the name of the accused. Therefore, provisions of Sec 82 and 83 of Cr.P.C are complied.

3. I further respectfully submit that, when the matter is posted for the evidence as required U/sec 299 Cr.P.C, the complainant examined as PW2 and officer who conducting of proclamation is examined as PW-1.

4. After complying the above mandatory requirement, this court has opined that, there are no chances of securing the presence of accused persons within a reasonable time. Accordingly, this court has submitted entire records along with this letter seeking permission to transfer the case to LPR.

5. Kind permission is sought for accordingly.

Yours' faithfully,

(Nalina S.C)
I Addl. Civil Judge and JMFC,
Maddur.

