

23.12.2020

Proceedings are conducted through Cisco Webex.

Present: Ms. Ambika Mehra, Ld. Counsel for the complainant.

The instant complaint has been filed u/s 138 of Negotiable Instrument Act, 1881.

Complainant has submitted the physical file along with all the documents in original with the Reader cum Ahlmad of the digital court. Reader cum Ahlmad has confirmed the same and is directed to keep the physical file in his safe custody.

Perusal of the digital file reveals that Advocates' Welfare Fund affixed on Vakalatnama is deficient by Rs.5/- being not available. Ld. Counsel for the complainant is directed to file the same as and when available.

Complaint, affidavit of evidence and other annexed documents perused. Prima facie, there is sufficient material to proceed further with the matter. Accordingly, this court takes cognizance of the said offence u/s 138 N.I.Act, 1881. In the case of **A.C. Narayanan Vs. State of Maharashtra (2014) 11 SCC 790, Hon'ble Supreme Court of India** has held that:

“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 N.I 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 N.I 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 N.I. Act.”

Following the law laid down in **A.C. Narayanan (supra)**, complaint, affidavit of evidence and other annexed documents considered. Accordingly, there is no need to examine the complainant for the purpose of issuance of process.

Complaint, affidavit of evidence and other annexed documents perused. Arguments on the point of summoning heard.

Prima facie the complaint is within limitation. In view of the averments made in the complaint, this court has the territorial jurisdiction to entertain this complaint.

After perusal of the entire record, the court is of the considered opinion that prima facie a case punishable u/s 138 N.I. Act, 1881 is made out against accused **Jakir Husain**.

Issue summons to accused **Jakir Husain** through post/approved courier on filing of PF& RC. PF&RC to be filed within 7 days from today. Ld. Counsel for the complainant is also directed to submit the metadata form along with PF&RC.

Process Server is also directed that in the event of non-availability of the accused or house/office/premises is found to be locked or accused refuses to accept the service, process be served through affixation.

Service is also permitted on the email ID and Whatsapp number of the accused provided the complainant files an affidavit to the effect that email ID and whatsapp number on which the said message(s) is /are sent is of the accused person and further subject to filing of the report of service.

Proof of service/tracking report be filed and updated on the digital file on or before next date of hearing.

Ahlmad is directed to make the following endorsement on the summons in terms of the guidelines of the Hon'ble Supreme Court in the case of **Damodar S. Prabhu vs Sayed Babalal 2010 5 SCC 663**:

(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 Service Authority.

The Ahlmad is also directed to mention the official e-mail id and video conferencing link of this court on the summons.

Put up for appearance of accused/furnishing of bail/consideration on notice on **25.01.2021**.

(NEHA SAINI)
MM (NI ACT) Digital Court-07
South West, Dwarka Courts, New Delhi
23.12.2020