

Present: Sh. H.S. Kathpal, counsel for the complainant.

Fresh complaint presented today. It be checked and registered. **CW-1 Deepak Dubey** present and has tendered affidavit **Ex.CA** into evidence along with documents **Ex.C-1 to Ex.C-5** and closed preliminary evidence.

Arguments on point of summoning of accused under Section 138 of Negotiable Instruments Act, heard.

While hearing the submissions of learned counsel for the complainant, it came to the notice of this Court that accused is not residing within jurisdiction of this Court and accordingly, the procedure as provided under Section 202 of Cr.P.C is required to be followed. Since the complaint is totally based on documentary evidence, no benefit would be achieved by sending the matter to police for investigation, particularly when matter can be enquired by this Court itself.

In support of his complaint, learned counsel for the complainant submitted that the accused has issued the cheque **Ex. C2** in order to discharge his legally enforceable debt, which when presented for encashment were received back dishonoured vide cheque returning memo **Ex.C3** with the remarks '**funds insufficient**'. Thereafter, the complainant personally approached the accused and also served a legal notice **Ex.C4** through registered post demanding the payment of cheque amount but the accused failed to repay the cheque amount within stipulated time period.

In view of submissions of learned counsel for the complainant and the documentary evidence on record, this Court is of the considered view that the complainant presented the cheque in question for its encashment within the period of its validity. Within the period of 30 days of receipt of information from the bank regarding return of cheque as unpaid, the complainant served a legal notice demanding the payment of cheque amount through registered post. After expiry of 15 days from the receipt of legal notice by accused but before expiry of 30 days thereafter, the instant complaint has been filed by the complainant, which is thus within the period of limitation. Accordingly, notices/process/summons be issued to the **accused** for the alleged commission of offence as contained under the provision of Section 138 of Negotiable Instrument Act, 1881 simultaneously through ordinary process as well as through Registered Cover/AD/UPC/Speed Post for **17.03.2018** on deposit/filing of registered cover/AD/UPC/Speed Post bearing proper, correct and complete address of the accused for effective & expeditious service of process without delay, along with the requisite process fee, copy of complaint, list of witnesses etc., forthwith and positively within 7 days, failing which complainant cannot seek any assistance from the court, furthermore it may be deemed/presumed that the complainant is not interested for the effect prosecution & pursuance of the instant complaint and court may proceed under the provision of Section **204 (4) Cr.P.C** as to the dismissal of the instant complaint due to non prosecution.

In addition to above, Dasti Summon/notice/process may also be given, if desired.

Iram Hasan, (HCS)
Judicial Magistrate 1st Class,
Chandigarh(**UID No.HR0348**)

Pronounced. 24.01.2018
Rahul Chauhan, Steno Gr.III
Next Date: 17.03.2018
Purpose:_____