

Case called out. Complainant and the counsel for complainant are present. Heard. The complainant has filed this complaint under section 223 of Bharatiya Nagarik Suraksha Sanhita 2023 for the offence punishable under section 138 of NI Act. As per section 223 of B.N.S.S, it reveals that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard but as per section 142(1) of Negotiable Instrument Act, notwithstanding anything contained in the code of Criminal procedure 1973, no court shall take cognizance of an offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque. Therefore, after repeal the Criminal Procedure code, 1973, the Bharatiya Nagarika Suraksha Sanhitha 2023 was replaced. Hence, the B.N.S.S 2023 act is not applicable at the time of taking cognizance for offence punishable under section 138 of NI Act. As per dissension of Hon'ble Supreme Court of India the case of Indian Bank Association and others V/s Union of India and other in para No. 23.1 given direction is that the judicial Magistrate on the day when the complaint under section 138 of 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 issue of

summons. Therefor, in view of above said settled principle of law, I have perused the complaint and other enclosures. There is prima-facie case made out against accused. Hence cognizance is taken for the offence punishable under section 138 of NI Act for sworn statement at 1:00 P.M Prl. Civil Judge and JMFC, Hosanagara. Case called out. The complainant is present and filed affidavit in lieu of examination in chief and examined as PW1 and got marked the Exp1 to Exp5. Heard, learned counsel on complainant. ORDER The complainant has filed this complaint under section 223 of BNSS 2023 against the accused for the offence punishable under section 138 of NI Act. Complainant present and files his affidavit in view of Sworn Statement, Exp1 to Exp5 were marked. On scrutinizing the complaint and the documents produced before me, I found sufficient materials to proceed against the accused for the offence punishable under section 138 of NI Act. On going through the complaint averments and circumstances of the case it appears to this court that the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be imposed. If the accused is tried summarily it may not be possible to award compensation out of the fine amount that may be imposed. Therefore, it is undesirable to try this case summarily. Further, if this case if tried summarily, the evidence which is recorded by me

cannot be acted upon my successor in view of the bar under section 365 of BNSS 2023, in the result I proceed to pass the following. ORDER The case is converted into summons case. Register the case as CC in register No. III CCR against the accused for the offence punishable under section 138 of NI Act. Issue summons to accused through Speed Post and wants to plead guilty or has any defense to make. If PF and postal covers and all the relevant copies of the complaint and documents are furnished. Office is hereby directed to keep the original cheque in the safe custody. Office is hereby further directed unless and until all the documents are furnished by the learned counsel for complainant summons should not be issued. Returnable by: 14.07.2026