

CNR No:HRKR030008612024 CASE No:COMA-41-2024

M/s Manapuram Finance Ltd. Vs Mohit Sharma

Present: Sh.Kunal Chopra, Advocate for the complainant.

Heard on the point of summoning of accused. From the material brought on the file, it is prima facie established that the accused in order to discharge his existing liability, initiated electronic funds transfer vide mandate Form but the same cannot be executed because of the reason specified in Bank memo Ex.C1 i.e. Balance Insufficient. Legal Notice Ex.C2 was also sent within 30 days of the receipt of above information to the person arrayed as accused asking him to pay the amount but the payment was not made by the accused.

Since the accused has not made the payment within stipulated period despite service of notice as such there are sufficient grounds to proceed against the accused under Section 25 of the Payment and settlement Systems Act.

As far as Section 223 of BNSS is concerned for issuance of prior notice to the accused for summoning order. Relying upon the judgment of the Hon'ble Madras High Court title as ***M/s Ultimate Computer Care Proprietor Apibo Vs. S.M.K Systems through Prop. R.Sarvanakumar, decided on 12.02.2025*** wherein Hon'ble Madras High Court held that in the complaint under Section 138 NI Act 1881 there has been prescribed a special procedure under special law/act and provision of special enactment/act self prevail over the general enactment/provision of law. As per Section 5 of BNSS 2023 and the procedure of hearing the accused at the stage of taking cognizance as prescribe in the proviso to Section 223 BNSS shall not applied to complaint under Section 138 NI Act 1881. Further it is worth noting that in a complaint under Section 138 of NI Act, the cognizance is taken as per Section 142 of NI Act and not under the provision of Criminal Procedure Code/Bhartiya Nagrik Suraksha Sanhita, 2023. Once there is a express provision under Section 142 of NI Act to deal with cognizance of cases and issue of process therein, the provision of special Law shall applicable and the provisions of general Law i.e. Cr.P.C/BNSS will not be applicable

therein, unless and until the Court specially provides for the same in this regard by changing the nature of the trial. At this stage, the cognizance is taken under Section 142 of NI Act as per which there is no requirement to issue any pre- summoning court notice to the accused before issuance of process and therefore in light of the discussion above, there is no requirement to issue pre- summoning court notice to the accused under Section 223 of BNSS 2023 and as such this Court shall proceed with taking cognizance of the offence and for issuance of process against the accused.

Case file perused. In the present case, accused is residing beyond the territorial jurisdiction of the Court. Thus relying upon the judgment of Hon'ble Supreme Court in "Suo Moto Writ Petition (CRL.) No.2 of 2020" in para 24 (2) and para No.24 (3), this Court has conducted inquiry under Section 225 BNSS after examination of documents and evidence of the complainant on oath in preliminary evidence and had satisfaction to proceed against the accused under Section 138 of N.I. Act. There is prima facie sufficient material to issue process against the accused u/s 138 Negotiable Instruments Act. The detailed expression of opinion is avoided as it is no longer necessary in view of the observation of Hon'ble Supreme Court of India in U.P. Pollution Board Versus Mohan Meekan, 2000(2) RCR 421 and reiterated in Deputy Chief Controller of import and export Versus Roshan Lal Aggarwal, 2003(2) RCR (Crl)110(SC).

Since there is prima facie sufficient material to issue process against the accused u/s 138 Negotiable Instruments Act, let, accused be summoned through RC/ speed post for **23.01.2026** on filing of PF, RC and copy of complaint within a week.

Date of Order: 20.05.2025

Anju

(Rakesh Kumar)

JMIC, Karnal

UID No . HR00448