

MHAU030031872025



Summ. Cri. Case No.2587/2025

Mrs Alaknanda Navnath Giri Through GPA
Holder Mr Navnath Rambhau Giri V/s. Khan
Azim Shakeel Khan

E-Filing No.AMH20210051051C202500001

ORDER BELOW EXH – 01.
(Passed on 04/02/2025)

This is E-filed case. Perused the complaint, documents placed on record & examination of complainant under *Section 223 of Bharatiya Nagrik Suraksha Sanhita, 2023 (B.N.S.S.)* and prima-facie found substance to proceed in this matter.

02. Taking cognizance for the offence punishable Under Section 138 of Negotiable Instrument Act is on the basis of affidavit and other documents filed on record and as per Section 142 of Negotiable Instrument Act. There is special procedure prescribed under Section 142 of Negotiable Instrument Act for taking cognizance for the offence punishable under Section 138 of Negotiable Instrument Act. As there is special procedure for taking cognizance under Negotiable Instrument Act and therefore, in my view and as held by *Hon'ble Apex Court in N. Harihara Krishnan V/s. J. Thomas (2018) 13 SCC 663, the procedure under the Bharatiya Nagarik Suraksha Sanhita, 2023* for hearing of accused before issuance of process is not applicable for the cases filed under Negotiable Instrument Act.

03. Heard learned advocate for complainant on the point of issuance of process.

04. It is submitted that Cheque No.000018 was issued on 09/09/2024 of Rs.50,000/- and it is returned with memo lastly dated 27/11/2024. The notice was issued on 13/12/2024 and deem served on 14/12/2024. It is further submitted that, complaint is filed on 25/01/2025. It appears to be filed within limitation period.

05. Firstly, from the contents of complaint and the examination of complainant on oath, it appears that, the cheque in question was given by the accused to complainant towards legally enforceable debt or liability. Complainant appears to have made efforts to encash the cheque amount. There appears a Memo given by banker of accused that, the cheque in question is dis-honoured for the reason mentioned in it. Within stipulated time, complainant appears to have given mandatory notice to accused asking the accused to make payment of said amount within 15 days. As per complainant, even after receiving the notice, accused has not made payment of cheque amount within said period. Thus, it appears that, the cause of action has accrued in favour of complainant to file this case. This Court is certainly having territorial jurisdiction to take cognizance of and try this case. Resultantly, at this juncture all fundamental ingredients of offence punishable under section 138 of the Negotiable Instruments Act are prima-facie appearing. Hence, I think it fit to issue the process against accused for said offence. In the result, I pass the following order;

:-: O R D E R :-:

As per ***Section 227 (1)(a) of The Bharatiya Nagrik Suraksha Sanhata. 2023***, issue process and summons against the accused for the offence punishable under ***section 138 of The Negotiable Instrument Act.***

(S.S.CHHALANI)

Judicial Magistrate First Class,
Court No.12, Aurangabad.

Date:- 04/02/2025

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CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/Order are same, word to word, as per the original Judgment/Order.

Name of Stenographer	<i>Akash S. Chavan</i> Stenographer Grade -III
Name of Court	12 th Jt.C.J.J.D. & J.M.F.C., Aurangabad
Date of Dictation	04/02/2025
Judgment/order signed by the PO on	04/02/2025
Judgment/order digitally signed by the PO on	04/02/2025
Judgment/order uploaded on	04/02/2025