Compuage Vs. Dinesh

ORDER BELOW EXH.1 IN C.C. No.1256/SC/2025

Read. Perused the complaint, copies of the documents on record.

2 Recent case law **Sanjabij Tari Vs. Kishore S. Borcar And Anr,** Criminal Appeal No.1755 of 2010 has settled the principle regarding issuance of notice under section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (the BNSS) which has been brought into statute books w.e.f. July 2024, concerning section 138 of the Negotiable Instruments Act. Wherein, it is observed in following para...

> E. Recently, the High Court of Karnataka in Ashok Vs. Fayaz Aahmad, 2025 SCC OnLine Kar 490 has taken the view that since NI Act is a special enactment, there is no need for the Magistrate to issue summons to the accused before taking cognizance (under Section 223 of BNSS) of complaints filed under Section 138 of NI Act. This Court is in agreement with the view taken by the High Court of Karnataka. Consequently, this Court directs that there shall be no requirement to issue summons to the accused in terms of Section 223 of BNSS i.e., at the pre-cognizance stage.

Before commencement of the BNSS, the statute which governed the field was the Code of Criminal Procedure 1973 for its application pre July 2024 and it did not prescribe any such requirement to issue prior notice. Hence, the complaint is considered as follows.

3 The offence under section 138 of the Negotiable Instruments Act is mainly based upon documentary evidence. It is summary trial in nature and a special statute. Therefore, in view of the ratio laid down by the Hon'ble the Apex Court **Indian Bank Association And Ors Vs. Union of India and Ors,** Writ Petition Civil No. 18/2013 the complaint can be considered on available record.

4 It appears that the cheque has been presented with the bank within a period as mandated under Section 138 (a) of the Negotiable Instruments Act (Act). The payee/holder in due course of the cheque made demand for the payment by giving the notice within stipulated period of limitation. Whereupon, the drawer of the cheque has failed to make the payment within 15 days of receipt of the notice. Prima facie, the complainant has already placed on record said documentary evidence. The delay has already been condoned as per the order passed on 16.07.2025.

5 The complainant has pleaded that their banker is located within territorial jurisdiction of this court and the cheque was deposited in Bombay Mercantile Co-operative Bank Limited, Mohammed Ali Road branch, Mumbai for which this court does exercise jurisdiction to try this complaint.

6 Hence, prima facie case has been made out against accused to issue process and accordingly following order is passed.

ORDER

Issue process against the accused under Sections 138 read with 142 of the Negotiable Instruments Act on requisite compliance.

(V.B. Gulve-Patil)
Judicial Magistrate First Class,
20th Court, Mazgaon, Mumbai.

Date : 20.12.2025