

Order below Exh. 01

Complainant:- KOTAK MAHINDRA BANK LTD.

V/s

Accused :- KISHANBHAI BALDEVBHAI SAMATIYA

1. Heard, Perused the complaint and the documents appended therewith. It transpires from the cause title of the complaint itself that the accused has been residing outside the territorial jurisdiction of this Court. Hence, the matter is required to be inquired under section 225 of the BNNS 2023 by Court inquiry as well as in view of the directions of Hon'ble Supreme Court of India dated 16.4.2021 passed in Suo Motu Writ Petition (Criminal) No. 2/2020 titled

“In Re : Expeditious Trial of Cases Under Section 138 of N. I. Act 1881” . The directions are as under :-

“12. ... On a holistic reading of Section 145 along with Section 202, we hold that Section 202 (2) of the Code is inapplicable to complaints under Section 138 in respect of examination of witnesses on oath. The evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses. In suitable cases, the Magistrate can examine documents for satisfaction as to the sufficiency of grounds for proceeding under Section 202.

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24. The upshot of the above discussion leads us to the following conclusions:

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- 2) Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.
- 3) For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.”². In view of aforesaid observations and directions, it appears that this Court can in suitable cases, restrict the inquiry to examination of documents without insisting for examination of witnesses. Here in the present case, it transpires that the complainant has filed the present complaint against the accused under section 138 of the Negotiable Instruments Act. On perusal of the documentary evidence as aforesaid, it prima facie transpires that the accused had given a cheque of his account to the complainant and it also prima facie transpires that the accused had signed the said cheque. When the complainant had deposited the said cheque in the account maintained by him with the bank situated within the jurisdiction of this Court, it has been dishonoured. On overall view of the matter, prima facie it transpires that the accused has committed the offence punishable under section 138 of the Negotiable Instruments Act. It also transpires that the documents appended with the complaint are sufficient to proceed with the

complaint further against the accused by issuing summons upon the accused. Further, the Hon'ble Apex Court has observed that the Magistrate can restrict such inquiry to examination of the documents without insisting for examination of witnesses. The present case falls under the said category of exceptional cases and, therefore, I pass the following order :

:: ORDER ::

In view of aforesaid, upon inquiry under section 225 of the BNNS 2023 by Court itself, it appears that the offense of sec.138 of N. I. Act is made out and hence this complaint is ordered to be registered for offense u/s. 138 of N. I. Act. Summons may be issued to the all the accused persons to appear him on Dtd. **06/11/2025 .**

Place: Rajkot

Date : 03/10/2025.

(R.R.Mistry)

7th Addl. Chief. Judicial Magistrate,

Rajkot.

JUDGE CODE - GJ01169.