

CRIMINAL INQUIRY NO.18922-2022

Complainant: KOTAK MAHINDRA BANK LTD.

Vs.

Accused: OM SHIVA

ORDER BELOW EXHIBIT - 1:

Read the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 ("the Act" for short), affidavit under Section 145 the Act and the documents annexed therewith.

Read the decision of Hon'ble Supreme Court in Indian Bank Association & Others Vs. Union of India & Others, (2014) 5 SCC 590 which directs that on the day when the complaint is filed, Court shall scrutinize the complaint and if the complaint is accompanied by the affidavit & the documents and if they are found to be in order, the court can take cognizance of the offence by issuing summons.

Furthermore, the Hon'ble Apex Court in Suo Motu Writ Petition (Cri.) No.2/2020 has also held that when accused resides beyond the territorial jurisdiction of the Court, an inquiry, on receipt of the complaint, shall be conducted, which may be held on the basis of affidavit and in suitable cases, the Court can restrict the inquiry to examination of documents without insisting for examination of witness. Meaning thereby, if the affidavit and examination of documents filed with the complaint are found in order, cognizance can be taken without examining witness, relying on the affidavit & the documents.

A bare reading of the complaint, affidavit in evidence and the documents makes it evident that, *prima facie*, ingredients of the offence under Section 138 of the Act are attracted. Perusal of the record also indicates that the complainant maintains account at Ahmedabad and the cheque is also dishonoured at Ahmedabad. As the complaint, the affidavit and the documents are found in order, this Court is of the view that cognizance of the offence can be taken by issuing summons. As the cheques bears the signature of accused, process can be issued against the accused.

Accordingly, **the instant Criminal Inquiry stands disposed of and the complaint is ordered to be registered as Criminal Case.** Summons under Section 204 of the Code of Criminal Procedure, 1973 is ordered to be issued against the accused.

Summons be issued in the prescribed form as per the direction of the Hon'ble Apex Court in Indian Bank Association (supra) and Circular issued by the Hon'ble Gujarat High Court. In addition to normal mode of service, the complainant is also permitted to serve the summons through R.P.A.D. and email. In case of service by email, the complainant is required to declare that the email address is correct.

Next Date: 27-12-2022

Place: Ahmedabad

(Chiragkumar R. Patel)

Date: 22-11-2022

Additional Chief Metropolitan Magistrate,
(N.I. Act, Court No.32), Ahmedabad (GJ-01136).