

Complainant :- NAMRA FINANCE LIMITED

ORDER BELOW EXHIBIT – 1:

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

looking to the suo moto writ..... RE" EXPIDITIOUS " trial of cases under ni Act 138 it s require to note that accused got opporunity to pay panding due before filing this case but he has fail to pay and looking to the section 223 bnss which expect for hearing of accused but accused has knowledge of return check in that circuntances required to take cognizance without delay for speedy justice and trial which is mandate of the act in commercial tranjection so in that circuntances court empower to take cognizance on basisi of affidavite under sec 145 and basis of ex.1 and original document .

looking to guidelines of *abdulkhater vs state kerala 2024 scc 3919* and cri.writ 12287\2024 dated 23\7\2024 [all h.c] and resolution of hon.guj.high court all appeal filed after date 01/07/2024 to be under bnss new act ./ gives the sense that old matter can be proceeded under new bnss because procedural aspect does not affect merit thus court can issued process and applied bnss in mattres which is pending before july 2024.

Read the decisions of Hon'ble Supreme Court of India 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, the Magistrate shall scrutinize the complaint and if the complaint is accompanied by the affidavit & the documents and if they are found to be in order, 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.

Orders of Hon'ble Apex Court issued in **Suo Motu Writ Petition (Civil) No.03/2020** are also taken into consideration, which pertain to limitation.

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. Therefore, this Court has jurisdiction. 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.

Accordingly, **the complaint is ordered to be registered as Criminal Case.** Summons under section 227 of the **Bhartiya Nagarik Suraksha Sanhita, 2023** is ordered to be issued against the accused for the offence under Section 138 of the Act. 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 view of circular No. 2619/2018. Moreover, **accused ./who is drawer of the cheque and with firm if applicable is/are hereby directed to furnish a surety each accused amount of Rs. 5000-** before this Court for the purpose of securing his/her presence during the trial of the present complaint.

Date :15/05/2025

(j s shah)
11th^dAddl.ChiefJudicialMagistrate,
COURT NO.31Ahmedabad City,

Next Date : 25/08/2025