

The Nawanshahr Central Co-operative Bank Vs Varinder Kumar

Present :- Sh. S.K. Sareen, Adv Counsel for complainant.

CW-1 Karnail Singh Rana, Manager cum authorized officer is present and tendered affidavit along-with some documents and closed his preliminary evidence.

1. Heard on point of summoning of accused.
2. The accused has issued a cheque dated 17.02.2025 i.e. Ex.C3 in lieu of discharging his legally enforceable liability, and was returned dishonored vide memo i.e. Ex.C4 with the remarks "Funds insufficient". Thereafter notice was issued to accused dated 06.03.2025 i.e. Ex.C5, as required was issued, postal receipt Ex.C6, tracking report is Ex.C7, copy of resolution EX.C1, Copy of DP note Ex.C2 affidavit Ex.CW1/A, but the accused failed to pay the amount within the prescribed period.
3. As per the provision of Section 223 of BNSS 2023, provides that no cognizance of offence shall be taken by the Magistrate without giving opportunity of being heard to the accused. However, offence under Section 138 of NI Act is governed by a special statute which provides its own procedure. Further Section 4(2) of BNSS 2023 provides that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to same provisions but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Also Section 5 of BNSS 2023 provides that nothing contained in this Sanhita shall in the absence of specific provision to the contrary affect any special or local law for the time being in force, or any special jurisdiction, or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.
4. Further Section 142 of Negotiable Instruments Act deals with cognizance of offence which starts with the wording notwithstanding

anything contained in the Cr.PC 1973 (now BNSS 2023) which shows that the Negotiable Instrument Act 1881 provides its own procedure for cognizance of offences and provisions of CrPC 1973 (now BNSS 2023) shall not be applicable in case of cognizance of offences under the Act. Reliance in this regard can be placed upon finding of honorable Supreme Court of India in JV Baharuni vs State of Gujarat, Criminal Appeal no.2221 of 2014 wherein it has been held that provision of Section 143, 144, 145 and 147 expressly depart from and override the provisions of CrPC.

5. In view of the foregoing, this Court is of the view that proviso of Section 223 of BNSS 2023 shall not be applicable in case of cognizance of offence under Section 142 of NI Act.

6. Besides this, even otherwise, as per the judgement of the Hon'ble Supreme Court titled as Alavi Haji Vs Palapetty Muhammed & Anr on 18 May 2007 held that the accused is at liberty to tender the cheque amount within first 15 days of receipt of notice before the concerned Court when he is summoned by the Court and in case, he tenders the cheque amount, the proceedings under section 138 of N.I. Act are liable to be dropped. Thus, for this reason also, no prior notice is required to be given before taking cognizance in the complaint filed under section 138 of N.I. Act.

7. Accordingly, process is issued against the accused and he be summoned through process serving agency, E-mail of accused, message through mobile, whatsapp number of accused or any other electronic media (on Whasapp with blue tick screenshot) as well as through RC/speed post for 22.07.2025 on filing of PF,RC and copy of complaint within a week. Dasti summons be issued, if is requested.

Date of order: 21.05.2025

~Geeta~

(Tushar Kaur Thind)
JMIC/SBS Nagar
UID NO . PB0466