

Order below Exh. 01 in S.C.C. No.82/2025
(CNR No.MHRT080002112025)

The present matter is filed u/sec. 138 of the Negotiable Instruments Act. Perusal of record reveals that notice as per first proviso to section 223(1) of Bharatiya Nagarik Suraksha Sanhita, 2023, was issued to the accused. After receiving notice, the accused appeared before the Court. Hence, both the Ld. Advocates appearing on behalf of the parties argued on the point of issue process against the accused. During arguments, the Ld. Advocate for the complainant relied upon **Parvaiz Ahmad Bhat and another Vs. Fida Mohamamd Ayoub (decided on 28/12/2021) and Naveen Kumar Sharma and Anr. Vs. State of U.P and Anr. (decided on 06/04/2023).**

02. Perusal of record reveals that the present complaint has been filed on dated 05/05/2025. The manner of taking cognizance of offence under section 138 of Negotiable Instruments Act i.e. on affidavit etc, is as per section 142 of the Negotiable Instruments Act read with section 190 (1) (a) of the Code of Criminal Procedure, 1973 or section 210(1)(a) of the Bharatiya Nagarik Suraksha Sanhita, as the case may be. By virtue of section 4 (2) of the Cr.PC or the BNSS, this special procedure of section 142 of the Negotiable Instruments Act is applicable and the proviso to section 223 (1) of the BNSS is not applicable. Hence, the pre-cognizance notice the accused in a complaint case, for the offence under section 138 of Negotiable Instruments Act is not necessary. I am guided by the principles laid down in the case of **N. Harihara Krishan Vs. J. Thomas; (2018) 13 SCC 663.**

03. Hence, for passing order of issue process, against the accused, it is necessary to see the record prima-facie and consider affidavit etc, as per section 142 of the Negotiable Instruments Act read with section 190 (1) (a) of the Code of Criminal Procedure, 1973 or section 210(1)(a) of the Bharatiya Nagarik Suraksha Sanhita.

04. The verification statement of the complainant is filed before my Predecessor. Considering it and documents produced on the record and also the authorities relied upon by the complainant during argument, I am of the view that the complainant has prima-facie made out the case against the present accused under section 138 of the Negotiable Instruments Act, 1881. Hence, issue process against the accused under section 138, the Negotiable Instruments Act, 1881.

Dated : 04/08/2025

(Rohini R. Kulkarni)
Judicial Magistrate F. C.
Deorukh.

CERTIFICATE

I affirm that the contents of this P. D.F. file are same, word to word, as per the original order/judgment/evidence.

Name of the Stenographer : S. A. Bhale

Court name : Civil Judge, J. D. and J.M.F.C.,
Devrukh.

Date : 04/08/2025

Order signed by the presiding : 04/08/2025
officer on

Order uploaded on : 05/08/2025