

ORDER BELOW EXH. 14

The application below Exh. 14 is filed on behalf of accused for discharge the accused.

02. As per application, there is no transaction is occurred between complainant and accused. The false case is filed against accused. Therefore application is allowed and accused be discharged.

03. The complainant has filed his say on overleaf of this application and opposed it. According to him, There is no provision to dismissed the summary proceeding. Accused have right to challenged the issue process order but he not avail it. the application is filed to prolong the matter and there is no specific ground is mentioned. So application be rejected.

04. Heard both sides. Perused the application, say thereon and submission of both sides following point is arose for consideration to which I have recorded my findings along with reasons.

Sr. No.	Points for Determination	Finding
1.	Whether application is liable to be allowed ?	No.
2.	What Order	As per Final Order

REASONS**AS TO POINT NO. 1 AND 2 :-**

05. Heard Both Sides, they argued in the line of their application and say. Ld. advocate for the accused submitted that,

there is no material to proceeding against accused and there is no transaction is occurred as per say of complainant. During argument he submitted that, the accused is liable to be discharge under section 258 of Cr.PC. and proceeding be stopped. Per contra, ld. advocate for complainant during argument submitted that, after verification and perusal of necessary document court has been issued process and accused not challenged the issue process order. The matter is pending for recording particulars of the accused.

06. The Sec. 202 Cr.P.C. is amended as per the Criminal Procedure (Amendment) Act, 2005 I.e 25 of 2005 and brought on it effected from June 2006. as per Sec.202 such amendment is mandatory in nature. As per Sec. 322 of the Cr.PC., the procedure is given in cases which a magistrate cannot be disposed off. This Sections provides the procedure to be followed by the magistrate in course of any inquiry or trial when he is of the opinion that the offence committed is one which he is not competent to try or is otherwise competent to deal with. In such cases, the magistrate is bound to stay the proceeding and submit the case with a brief report explaining its nature to the Chief Judicial Magistrate or to such other magistrate having jurisdiction, as the Chief Judicial Magistrate may direct. The magistrate to whom the case is forwarded may if so empowered, either try the case himself or refer it to a magistrate subordinate to him having jurisdiction or commit the accused for trial. Thus, a magistrate though competent to try the case himself, may transfer it to the Chief Judicial Magistrate keeping in view the seriousness of the offence and it s

public repercussion. The accused prayed for taking recourse of Sec. 322 of the Cr.P.C. He prayed for stay of proceeding and released of accused. He neither raised issue of jurisdiction nor prayed for transfer this case to another court.

07. Section 258 of the Code empowers the Magistrate to stop the proceedings at any stage for reasons to be record in writing and pronounce a judgment of acquittal in any summons case instituted otherwise than upon complaint. Section 258 of the Code is not applicable to a summons case instituted on a complaint. Therefore, Section 258 cannot come into play in respect of the complaints filed under Section 138 of the Act.

08. Revert back to present case in hand, Perused record, it reflect that, present complaint is filed on 20/10/2021 and verification affidavit is filed on record. Along with complaint at Exh.03 the complainant has filed seven documents i.e. copy of disputed cheque, receipt, bank memo, notice, statement of bank, resolution of society etc. Thereafter, perused record, verification statement and document placed on record and after hearing for complainant passed issue process order at Exh. 01 on 22/04/2022. Thereafter, on service of summons, accused appeared through advocate and filed bail bonds and and matter is posted for recording of particulars of accused. At this juncture present application is moved.

09. It appear that, upon receipt of complaint, the complainant called upon for verification and verified document filed with complaint. Considering sufficient ground to proceed,

issued process against the accused. It is prima-facie appears that, the inquiry was conducted to arrive at whether there where sufficient ground is or not to proceed against accused. Moreover, for conduct of inquiry under Sec.202 evidence of witnesses on behalf of complainant is also permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of document without insisting for examination of witnesses. Perusal of compliant and documents, it appears that, accused is residing in the jurisdiction of this court. Further it shows that, complainant is registered co-op-society and as per resolution the compliant is filed through its secretary. As per averment in compliant, accused obtained loan from the complainant society on demand the said outstanding amount he issued disputed cheque to the complainant society and it is dishonored. Thereafter, complainant issued notice but he not given reply to it. In view of above discussion, there is sufficient material to proceed against accused. Therefore, the application of accused is liable to be rejected. In the result, I answered issued no. 1 in negative ad in view of issue no. 2 following order is passed :-

ORDER

Application at Exh. 14 is rejected.

Date:- 19/08/2023

(S.N. Gavali)
Judicial Magistrate First Class,
Risod.

CERTIFICATE

I affirm that the contents of this P.D.F. File Order/Judgment are same word to word, as per the original **Order**.

Name of the Jr Clerk	:	Rohan S. Koshti (L.G.)
Name of court	:	Jt.C.J.J.D.& JMFC, Risod.
Date Of Order	:	19.08.2023
Order signed by the Presiding Officer	:	19.08.2023
Order uploaded on	:	19.08.2023