

ORDER BELOW EXHIBIT-1 IN SCC NO.187/2023

1. Perused the complaint, verification and documents placed on record.
2. Heard Mr.V.S.Sahastrabudhe, Learned advocate for the complainant. Averments in the complaint *prima-facie* constitute offence punishable Under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “N.I. Act”).
3. The complainant is verified. He deposed that the documents filed on record are *prima-facie* sufficient material to issue process against the accused. On perusal of R.P.A.D. it appears that notice was issued to the accused. It appears that from 28.01.2023 to 04.02.2023 accused was absent at the address mentioned on the registered post. The notice has been returned to the complainant after reasonable time. On oral query whether the notice was served to the accused. The learned advocate for complainant relied on the Judgment of **Hon'ble Bombay High Court** in the case of **Malanbai Ratnaparkhi Vs. Govind R. Motade & another reported in 2002 Bom. C.R.(Cri.) 805** wherein it was held that, *“in terms of provision contain under Section 27 of the General Clauses Act, there was a presumption of service of such notice on the petitioner. Whether really there was a false endorsement and whether the petitioner was absent at the residence when the postmen approach resident are the facts within the knowledge of the petitioner and were required to be established by the petitioner. The burden of proving the fact is upon him”*.
4. On perusal of relied judgment it appears that the judgment is squarely applicable to the present set of facts. In order to constitute the offence the necessary ingredients is to sent to the notice on the correct address. It is not necessary to serve the same to the accused. Thus, complainant has complied the condition precedents before filing the complaint.
5. On perusal of the documents it appears that the verification and examination of documents are sufficient ground to proceed as per Section 204 of Cr.P.C.

6. After verifying original cheque, memo of cheque returned and demand notice, acknowledgment there is sufficient material to issue process against the accused. The cheque has been dishonored on 21.01.2023. The concerned bank has issued return memo on 23.01.2023. The complainant issued notice to the accused on 24.01.2023. Complainant received notice with endorsement that accused was absent on 04.02.2023. The complaint is presented on 27.02.2023. The perusal of aforesaid documents shows that the complaint is within the period of limitation. The accused resides at Risod. Accused resides beyond the territorial jurisdiction of this Court. On perusal of document i.e. document of receiving handloan it appears that, there was transaction of Rs.3,80,000/-. Complainant gave the handloan to the accused. Complainant placed the original documents on record. Therefore, the examination of documents on record are sufficient to issue process against the accused. Hence, I proceed to pass the following order :-

ORDER

1. Issue process against the accused vide Section 204 of the Code of Criminal Procedure, 1973 for the offence punishable under Section 138 of N.I.Act, returnable on 13.04.2023.

Sd/-

Malegaon
Date : 09.03.2023

(Pravin U.Kulkarni)
Judicial Magistrate First Class
(Court No.2) Malegaon.