

## **ORDER BELOW APPLICATION EXHIBIT-1**

The present case is filed under the provision of Section 138 of The Negotiable Instrument Act. The complaint under this act is governed by summary procedures. This is a private complaint against accused. If we read the record then, it appears that process issued on accused are not duly served. The complaint is pending for service of process on accused from more than one year. As the accused is/are not traceable on address furnished by the complainant, service of process has not been effectuated. The present complaint is pending for service of process for more than one year and so, the reference of paragraph 211(1) of Criminal Manual becomes relevant. Which is as per the follow:

### **Chapter VI- Para 211(1)**

"All cases, in which the accused are of unsound mind are consequently unable to make a defence, or are absconding and cannot be traced or served with warrant, summons or notices for a period of one year or more from the date of receipt of the **charge sheet**, should be placed on the dormant file. A separate register (in the Form No. 534) should be maintained, showing all cases which are put on dormant file. such cases need not be shown in the monthly Criminal returns."

Hon'ble High Court of Gujarat has also issued the guidelines in this context through the later conveyed vide Outward No. D.2917/2018 of dated 03/08/2018. Where reference of Chapter XXI- Para 211(1): Chapter XXI - Para 363(8) and Chapter XXI -Para 363(9) from Criminal Manual, is made and specified that Para 363(8) and 360(9), as also in Para 7(1) of chapter XXXII, the words "**charge sheet or the complaint**" are used, therefore the said provisions are applicable to the police cases, as also to the private complaints.

In the judgement of **Agasti Seva Sangh Vs. Rohidas Dharma Rathod in 2014 (1) Bom.L.R. (Cri.) 609**: Hon'ble the High Court of Bombay has set a ratio that, "cases under The Negotiable instrument Act, which are pending for disposal, due to non-service of process on accused can also be put on dormant file."

The cases under The Negotiable Instrument Act are coming under the category of private complaint. The record of the complaint shows that, the case is pending for service of process on accused for more than one year and considering the attempts made on record, it appears that accused is not likely to be found within a reasonable time and it is not possible to secure the attendance of the accused within a reasonable time. In compliance with the guidelines of Hon'ble the High Court of Gujarat, provision of Criminal Manual and guiding principles of **Agasti Sarv Seva Sangh Vs. Rohidas Dharma Rathod published in 2014 (1) Bom.L.R. (Cri.) 609**, if this complaint may be considered and ordered to be placed on dormant file then, it will not prejudice the rights of complainant. The procedure followed in case of cases kept on dormant file, is also keeping complaint in active mode and process are served upon accused at the interval of three months. As and when, the accused is served with the process the complaint is taken on board and proceeded further. Hence, considering these legal provisions and condition on record, this complaint is ordered to be kept on dormant file in accordance with provision of Criminal Manual Paragraph 211(1).

It is hereby ordered that note of this order shall be made into the register for the dormant file, maintained in prescribed form, **(Form No. 54)**. The case put on the dormant file shall be transferred to the record room six months after the date on which they are kept on the dormant file.

Date : 08/09/2018  
Place : Ahmedabad

(Neha Ratusaria),  
Code No. GJ001333  
6th Additional Civil Judge,  
Ahmedabad.