

Cognizance order:

This case CNR No.TNTR350030042022

Date: 07.01.2023

1. Complainant present. Counsel for complainant also present. For the purpose of taking cognizance, the complainant had filed affidavit before this court in with necessary documents. Sworn examination of the complainant is received through affidavit. The Hon'ble Supreme Court judgment in In Re Indian Bank Association and others – Vs – Union of India & Anr 2014 (5) SCC 590 and M/S Meters And Instruments – Vs – Kanchan Mehta{2018 (1) SCC 560} have directed the trial courts dealing with cheque dishonour cases in particular to follow summary procedure for an offence under section 138 of NI Act. The Hon'ble Supreme court Judgment in In Re Bir Singh Vs Mukesh Kumar, CDJ 2019 SC 148, has also reiterated as follows:

"34. It is well settled that a judgment is a precedent for the issue of law which is raised and decided. It is the ratio decidendi of the case which operates as a binding precedent. As observed by this Court in State of Punjab & Ors. Vs. Surinder Kumar & Ors (1992) 1 SCC 489, what is binding on all courts is what the Supreme Court says under Article 141 of the Constitution, which is declaration of the law and not what it does under Article 142 to do complete justice".

2. Therefore in that accord the Hon'ble apex court judgment in In Re Indian Bank Association and others – Vs – Union of India 2014 (5) SCC 590, held in para 16 as follows:

"16. We have indicated that under section 145 of the Act, the complainant can give his evidence by way of an affidavit and such affidavit shall be read in evidence in any inquiry, trial or other proceedings in the Court, which makes it clear that a complainant is not required to examine himself twice (i.e) one after filing the complaint and one after summoning of the accused. Affidavit and the documents filed by the complainant along with complaint for taking cognizance of the offence are good enough to be read in evidence at both the stages (i.e) pre-summoning stage and the post summoning stage. In other words, there is no necessity to recall and re-examine the complaint after summoning of accused unless the Magistrate passes a specific order as to why the complainant is to be recalled. Such an order is to be passed on an application made by the accused or under section 145(2) of the Act, suo moto by the Court. In summary trial, after the accused is summoned, his plea is to be recorded under Section 263(g) Cr.P.C. and his examination if any, can be done by a Magistrate and a finding can be given by the Court under Section 263(h) Cr.P.C. and the same procedure can be

followed by a Magistrate for offence of dishonour of cheque since offence under Section 138 of NI Act is a document based offence. We make it clear that if the proviso (a), (b), & (c) to section 138 of the Act are shown to have been complied with, technically the commission of the offence stands completed and it is for the accused to show that no offence could have been committed by him for specific reasons and defences".

3. Also as per the Judgment in *In Re Rajesh Agarwal Vs State & Anr*, 2010 VII AD (Delhi) 576, the Hon'ble Delhi High Court has held in para 5 as follows;

"In order to ensure that the cases u/s 138 N.I. Act are tried before the Court of MM/JM in an expeditious manner, the legislature provided for summary trial. Section 145 of N.I. Act provides that evidence of complainant may be given by him by way of affidavit and such affidavit shall be read in evidence in any inquiry, trial or other proceedings in the court. This also makes clear that a complainant is not required to examine himself twice (i.e) one after filing the complaint and one after summoning of the accused. The affidavit and the documents filed by the complainant along with complaint for taking cognizance of the offence are good enough to be read in evidence at both the stages i.e. pre-summoning stage and the post summoning stage. The complainant is not required to be recalled and re-examined after summoning of accused unless the JM passes a specific order as to why, the complainant is to be recalled. Such an order is to be passed on an application made by the accused or under section 145(2) of N.I. Act or suo moto by the Court".

4. Considering the supra stated Hon'ble supreme court judgment in *In Re Indian Bank Association and others – Vs – Union of India* 2014 (5) SCC 590, and *In Re M/S Meters And Associates and others – Vs – Union of India* 2018 (1) SCC 560} and *In RevBir Singh vs Mukesh Kumar* CDJ 2019 SC 148, this court is constrained to take the complainant's affidavit and list of documents mentioned and filed along with the affidavit to be read in evidence at both the stages i.e. pre-summoning stage and the post summoning stage. Hence the affidavit and documents filed by the complainant to be read in evidence at this stage and also be treated as evidence at both the stages as aforesaid.

5. Therefore the complaint and affidavit of complainant which is filed along with the documents shall be read in evidence for the purpose of taking cognizance of this case as well as to be treated as evidence in the post summoning stage of the case in course of trial. On perusal of complaint and affidavit filed along with documents by the complainant in this case, it seems that there exist ingredients for an offence under section 138 of N.I. Act and prima facie case also disclosed in that connection. Since the accused is residing inside the jurisdiction of this court, holding separate enquiry u/s 202 Cr.P.C is not required. Therefore prima facie case satisfied today this case is

taken cognizance by this court on file since this court is of the view that there are sufficient grounds for proceeding for an offence under section 138 of N.I. Act and consequently this case is numbered in STC.No.20/2023. Hence Issue summon to the accused along with copy of the complaint under section 204(3) of Cr.P.C, on payment of necessary process fee. Call on by 10.02.2023.

Sd/-(Tmt.A.Theviya)
JUDICIAL MAGISTRATE,
FAST TRACK COURT,
AMBATTUR.

//True Copy//
JUDICIAL MAGISTRATE,
FAST TRACK COURT,
AMBATTUR.