

MS BROTHERS GARMENTS Vs SHIV KRISHANA GARMENT

Present:- Sh. Gaurav Gupta, counsel for the complainant.

CW is present and examined by way of affidavit along with documents and closed his preliminary evidence. Heard on point of summoning of accused. As per the Proviso to Section 223 of the newly enacted Bharatiya Nagarik Suraksha Sanhita, 2023, “*no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard.*”

2. However, Section 4 Clause (2) of The Bharatiya Nagarik Suraksha Sanhita, 2023 provides that:

“*all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences*” and,

3. Further, Section 5 of The Bharatiya Nagarik Suraksha Sanhita, 2023 provides that “*Nothing contained in this Sanhita shall, in the absence of a specific provision to the contrary affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.*”

4. Hence, as per the above-said provisions, where a special form of procedure has been prescribed, the same shall be applicable and not the provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023. Now coming to the case in hand, the present complaint has been filed under section 138

of the Negotiable Instruments Act. In cases under section 138 NI Act, a special form of procedure has been laid down as Proviso (b) to Section 138 of N.I. Act provides mandatory pre-trial notice to accused, which is unique and special mandatory provision. Further, Proviso (b) to Section 138 of N.I. Act provides that ***the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.***

5. Further, Section 143 contains special provisions for trial of offences under Section 138 of Negotiable Instruments Act 1881. Section 144 provides for Special Provisions for service of summons and Section 145 provides Special Provisions for evidence on affidavits.

6. Also, Section 142 of Negotiable Instruments Act deals with cognizance of offence and starts with the wordings that, “***Notwithstanding anything contained in the Code of Criminal Procedure 1973 (Now The Bharatiya Nagarik Suraksha Sanhita, 2023),***” which shows that the Negotiable Instruments Act 1881 provides its own procedure for cognizance of offences under Negotiable Instruments Act.

7. Further, as per the Notification dated 16th july 2024 passed by the Central Govt, S.O.2790(E), any **reference** of the **Code of Criminal Procedure, 1973**, such reference shall be read as reference of the “**Bharatiya Nagarik Suraksha Sanhita, 2023,**”

8. Therefore, on the basis of above said discussion, this Court is of the considered view, that, provisions of ***Proviso to Section 223 of The***

Bharatiya Nagarik Suraksha Sanhita, 2023 shall not be applicable in case of cognizance of offence as well as summoning of accused under ***Section 138 and 142 Negotiable Instruments Act, 1881.***

9. Now, complainant through its proprietor, who through his special power of attorney namely Bharat Bhushan, has stepped into the witness box as CW1 and reiterated the whole sequence of event in minute details through his affidavit Ex.CA, as got detailed by him in his written complaint. Complainant has also placed on record documents i.e. Ex.C1 to Ex.C23.

10. In the present case, the accused is residing at a place beyond the jurisdiction of this court, therefore, the court is duty bound to conduct an inquiry u/s 225 BNSS (Section 202 CrPC). Section 225 of the BNSS provides that any Magistrate on receipt of complaint of an offence of which he is authorized to take cognizance or which has been made over to him under Section 212 may, if he thinks fit, and shall, in case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by the Police Officer or by such person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. However, the scope of inquiry u/S 225 BNSS in complaints u/S 138 of NI Act is limited. The court can only rely upon the preliminary evidence adduced by the complainant and the documents attached with the complaint.

Accordingly, as per the mandate of Section 225 BNSS, the undersigned has inquired into the case herself and has scrutinized the documents carefully. On the basis of documents attached with the file and evidence tendered by the complainant in his preliminary evidence, this court is of the considered opinion that sufficient grounds are made out to summon the accused under Section 138 of NI Act. The detailed **expression of opinion is avoided as it is no longer necessary in view of the observations of the Hon'ble Supreme Court of India in U.P. Pollution Board vs. Mohan Meekan, 2000 (2) RCR (Criminal) 421 and reiterated in Deputy Chief Controller of Import and Export vs. Roshan Lal Aggarwal, 2003 (2) RCR (Criminal) 110 (SC).**

Accordingly the accused is summoned for 17.08.2026 through normal process. Dasti be also given if requested. Notice through RC/speed post be also issued for the date fixed on filing of RC/speed post within 7 days.

Date of Order: 03.07.2026

Komal Taneja Steno II

Direct Dictation

(Ms. Ritika Gupta)

Judicial Magistrate - Ist Class

UID NO . PB00804