

CS/82298/2018

Reg No. CS/82298/2018

CNR No. WBCS02-084289-2018

JO Code:WB01349

Order Dated: 26.11.2025

Today is fixed for passing of the Order upon the Non maintainability petition as filed by the accused person.

The complainant is absent by petition.

The accused person is present before the court.

Now the record is taken up for passing of the Order.

Ld. Advocate for the accused admitted that the accused had taken a loan of Rs. 16 lakhs from the complainant to purchase a truck. However, he contends that due to a road accident, the accused failed to pay two installments to the complainant. As a result, the complainant through their agent took possession of his vehicle. On 8.02.2017, the complainant issued pre-sale notice to the accused claiming Rs. 14,74,338/- as the due amount. The accused however failed to repay the said amount and as a result, the complainant sold the said truck for an amount of Rs. 15 lakhs. Thereafter, on 11.08.2018, the financier complainant issued a notice u/s 138 of the NI Act and to which the accused denied all the allegations made against him in the said notice. It has been contended that one blank cheque was given by the accused as security to the complainant and on several request also the complainant failed to return the said blank cheque. Again on 17.12.2018, the complainant sent a legal notice wherein they claimed Rs. 8,19,837.15/- from the accused which was denied by the accused by way of a reply. Therefore, the accused contends that no dues are remaining to be paid on the part of the accused and the present case has been filed in order to harass the accused person. Hence, the accused has prayed that the complaint filed under Sec 138 NI Act is non maintainable and liable to be rejected.

On the contrary, the Ld Advocate for the complainant raised objection on the ground that the contention raised by the accused is false and the said petition should be rejected.

On perusal of the case record, it appears that a pre-sale notice dated 08.02.2017 was certainly sent to the accused person. However, the accused has not produced any document to show that the vehicle was sold for an amount of Rs 15 lakhs to the third party. Therefore, in the absence of any such document, this Court, at this preliminary stage, cannot come to a conclusion that no dues are remaining to be paid by the accused person to the complainant. At this stage when the accused has already pleaded not guilty and the question raised by the accused deals with factual issue, this Court is of the opinion that such questions of fact can be adjudicated only after the evidence is recorded.

In the above facts and circumstances, the petition as filed by the accused person is liable to be rejected.

Hence the petition as filed by the accused person is hereby be rejected.

To 05.03.2026 for evidence.

D/C by me

Judicial Magistrate, 4th Court

Calcutta

Judicial Magistrate, 4th Court

Calcutta