

23.01.2026

Present: Sh. V. Shashank Kumar, Ld. Counsel for complainant through Cisco Webex.

Matter is listed for consideration.

The Hon'ble Supreme Court of India has held in its decision in the case of **Sanjabij Tari Vs. Kishore S. Borcar & Anr. dt. 25.09.2025** that the accused need not be heard at the pre-cognizance stage, in a complaint filed u/s 138 NI Act.

The record including the cheque, cheque return memo, legal notice and delivery receipts perused. The complaint has been filed within the limitation period.

Perusal of the complaint, documents and testimony of the complainant shows that prima facie case under section 138 NI Act is made out against the accused. I take cognizance of offence punishable u/s 138 NI Act.

In matter of "**A. C. Narayanan Vs. State of Maharashtra & Anr.**" (2014) 11 Supreme Court Cases 790, **Full Bench** of **Hon'ble Supreme Court of India** has held as under : -

"29. From a conjoint reading of Sections 138, 142 and 145 of the NI Act as well as Section 200 of the Code, it is clear that it is open to the Magistrate to issue process on the basis of the contents of the complaint, documents in support thereof and the affidavit submitted by the complainant in support of the complaint. Once the complainant files an affidavit in support of the complaint before issuance of the process under Section 200 of the Code, it is thereafter open to the Magistrate, if he thinks fit, to call upon the complainant to remain present and to examine him as to the facts contained in the affidavit submitted by the complainant in support of his complaint. However, it is a matter of discretion and the Magistrate is not bound to call upon the complainant to remain present before the court and to examine him upon oath for taking decision whether or not to issue process on the complaint under Section 138 of the NI Act. For the purpose of issuing process under Section 200 of the Code, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the NI Act. It is only if and where the Magistrate, after considering the complaint under Section 138 of the NI Act, documents produced in support thereof and the verification in the form of affidavit of the complainant, is of the view that examination of the complainant or his witness(s) is required, the Magistrate may call upon the complainant to remain present before the court and examine the complainant and/or his witness upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the NI Act."

The complaint, affidavit of evidence and documents considered in light of above cited judgment. In the opinion of this Court, there is no need to examine the complainant on oath as present complaint is duly supported by verification in the form of affidavit of the complainant. Thus, there are prima facie sufficient grounds for proceeding against the accused for offence punishable under Section 138 NI Act.

Hence, issue summons to the accused on all the available addresses through all modes including whatsapp, email and on filing of PF/RC, returnable on **01.04.2026**.

Ld. Counsel for complainant is directed to file affidavit of service through e-modes on NDOH.

Surabhi Sethi
JMFC (NI ACT) 02, WEST
23.01.2026