

55, 56, 58, 60, 65, 66 CC NI ACT / 20591/2024, 20592/2024, 20594/2024, 20596/2024, 20601/2024, 20602/2024

Hero Fincorp Ltd Vs. _____

20.08.2024

Fresh complaint case received by way of assignment. It be checked and registered.

Present: Mr. Alok Shankar, Ld. counsel for the complainant.

Arguments on summoning heard.

I have gone through the entire record including the complaint and the documents. It is alleged that accused has issued the cheque in question to the complainant to discharge his liability. On its presentation the same was dishonored. Therefore, demand notice was sent to the accused by the complainant. Despite service/ deemed service of said notice, accused has failed to make the payment as per provisions of Negotiable Instruments Act.

Complaint is filed within the prescribed period of limitation. In my considered opinion, prima facie there is sufficient material available on record to summon the accused.

The counsel for the complainant requests that the pre-summoning may be carried out in absence of AR of the complainant in terms of the dictum of A C Narayanan judgment. She/He further submits that dictum of A C Narayanan is also applicable to complaints u/s 138 NI Act.

In matter of “A. C. Narayanan Vs. State of Maharashtra & Anr.” (2014) 11 SCC 790, Full Bench of Hon'ble Supreme Court of India has held that “...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...”

Complaint, affidavit of evidence and documents considered in light of above cited judgment. In opinion of this Court, there is no need to examine the complainant's evidence for purpose of issuance of process. In view of complaint, documents produced and verification in the form of affidavit of evidence, there are sufficient grounds for proceeding further against accused person(s) for offence punishable under Section 138 NI Act.

Hence, accused be summoned for offence u/s 138 of Negotiable Instruments Act on filing of PF/RC. In the event the house/office/premises is found to be locked/refusal to accept the service/any other contingency the process be served through affixation. PF be filed within seven working days.

Matter be taken up now on **21.01.2025**.

As per the guidelines laid down as in the case titled as “Damodar S. Prabhu Vs. Sayed Babalal H”, AIR2010(SC) 1907, Ahlmad is directed to make a mention on the summons issued against the accused (by adding separate sheet, if required) that “accused can make an application for compounding of the offence at the first and second hearing of the case and if such an application is made, compounding may be allowed by the Court without imposing any costs on the accused.”

Divya Singh
JM First Class (NI Act-02)/South West
Dwarka Courts
20.08.2024