

**Complaint Case No:-115 of 2016**

**Order dated 10-12-2018**

The accused person of this case in order to mark his presence before this court has filed hazira. The complainant is also present by filing hazira.

As stipulated by the previous order today is fixed for appearance and plea. Accordingly record is taken up for examination of accused under section 251 Cr.P.C.

The substance of the accusation to the effect that the accused in furtherance of payment of his credit card bill towards the complainant bank had liability and in order to discharge his liability issued a cheque bearing no. 711074 dated 06-12-2016 drawn at United Bank of India, Peerless Hospital, Kolkata Branch, amounting to Rs. 73,365/- in favour of the complainant, and that cheque was deposited in the bank by complainant for encashment but the same was returned dishonoured due to insufficiency of fund and after which the complainant served a demand notice through his ld advocate to the accused person , but he failed to repay the cheque amount within the stipulated period and thereby committed offence punishable U/s 138 N.I. Act is read over and explained to the accused to which he pleads not guilty by saying “Ami Nirdosh” and claimed to be tried.

Before proceeding any further it must be mentioned that section 143 of the N.I. Act (as amended) has provided that in cases of this nature section 262 to 265 would as far as possible applicable. But it has been provided by the proviso clause appended to the section that the magistrate is empowered to hear the case in the manner provided by the code. In this case at the this threshold; it would be un-pragmatic to derive to any conclusion as regards the span of imprisonment which might have to be imposed if evidences warrant so, and this court must not pre-judge the fact that in this case imprisonment would be limited to one year only and not more. Rather this court considering the nature of accusation and the evidences that might come up during trial, this court should be flexible and be ready for any possibility. Ld lawyers for both the parties were heard on this point.

Based on this above delineations; it is high desirable that the case be tried as per the procedure formulated for trial of summons cases and taking recourse of second proviso to section 143 of the N.I. Act (as amended) this case will not be tried summarily.

It is also pertinent to add that in Indian Bank Association and Others v. Union of India (Supreme Court), WRIT PETITION (CIVIL) NO.18 OF 2013, Dated- April 21, 2014 the Hon’ble Supreme Court has passed certain direction to be followed by the trial courts while dealing with cases under section 138 of the Negotiable Instruments Act. In total obedience to such directions the affidavit in chief already filed by the complainant at the time of issuance of process be considered as examination-in-chief on behalf of the complainant.

Fix **23-04-2019** for examination of the complainant and cross-examination by the accused person.

Typed by me;

ACJM

Additional Chief Judicial Magistrate

Bidhannagar