

Case called out. Complainant and counsel for complainant present. Verified the documents. Satisfied. Kept by for orders.

Prl. Civil Judge & J.M.F.C.,
Kollegal

**PCR to CC Register order Before Recording
Sworn Statement**

Heard L/Advocate for complainant.

Perused the materials available on record. The present private complaint is filed U/Sec.223 of B.N.S.S., for the commission of alleged offence P/U/Sec.138 of N.I. Act. As per proviso to Sec.223 of B.N.S.S., no cognizance of an offence shall be taken by the Magistrate without giving the accused for an opportunity of being heard. The said provision under B.N.S.S., is a general provision applicable to the cases of B.N.S.

When there is a special enactment then Sec.4 and 5 of B.N.S.S., provides a provides a procedure to follow. As per Sec.5 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.

As per Sec.5 when any special enactment provides special procedure for the trial and otherwise then the same special procedure shall have to be followed and not the general procedural law. In the absence of special procedures in the special enactment then the procedure laid down in general law has to be followed.

Sec.142 of N.I Act, 1881 provides procedure to take cognizance of the offences P/U/Sec.138 of the said Act. As per the Sec.142 of N.I Act if the requirements of proviso to Sec.138 and requirements of Sec.142 are complied then this court has to take cognizance in accordance with Sec.142 N.I Act. The opening words of Sec.142 itself clearly excludes the procedure of general law. It says as follows;

‘Notwithstanding anything contained in the code of Criminal Procedure, 1973’

It means that, the court has to follow Sec.142 of N.I Act to take cognizance. Sec.142 of N.I Act does not provide anything which says to hear the accused before taking cognizance for the alleged offence. So, in the private complaint filed U/Sec.223 of B.N.S.S., for the offence P/U/Sec.138 of N.I Act issuance of notice to the accused is not necessary.

Perused the contents of complaint. The complainant has filed the private complainant U/Sec.223 of B.N.S.S., against the accused for the commit of alleged offence P/U/Sec.138 of N.I., Act, 1881.

There is 5 days delay in filing complaint. Same was condoned on 04.04.2026. The Cheque is presented to the bank which is situated within the jurisdiction of this court. prima-facie case has been made out against the accused.

The office is hereby directed to register the Criminal case in register No.III.

Office is hereby directed to keep original cheque in the safe custody.

Issue summons to accused through speed post. If P.F., and postal cover is furnished.

Call on 31.08.2026.

Prl. Civil Judge & J.M.F.C.,
Kollegal

