

51 CC NI ACT / 8640/2026 Axis Finance Limited Vs. NASIRHUSEN
MAHEBUBHUSEN TAI /0 ()

23.05.2026

Present: Sh. Prashant Jain, Ld. proxy Counsel for complainant.

In the recent judgment CrI.

Appeal No. 1755/ 2010 Sanjabij Tari vs. Kishore S. Borcar & Anr. of Hon'ble
Supreme Court of India, the Apex Court has observed,

‘E. Recently, the High Court of Karnataka in Ashok Vs. Fayaz Aahmad, 2025 SCC OnLine Kar 490 has taken the view that since NI Act is a special enactment, there is no need for the Magistrate to issue summons to the accused before taking cognizance (under Section 223 of BNSS) of complaints filed under Section 138 of NI Act. This Court is in agreement with the view taken by the High Court of Karnataka. Consequently, this Court directs that there shall be no requirement to issue summons to the accused in terms of Section 223 of BNSS i.e., at the pre-cognizance stage.’

Thus in light of these observations of the Apex Court, it is abundantly clear that henceforth there shall be no requirement to issue notice to the accused in terms of section 223 BNSS at the precognizance stage. Therefore the matter now proceeds directly to the stage of cognizance and summoning of the accused.

Complaint and documents annexed with the file perused. Complaint is within limitation and within the jurisdiction of this Court. I hereby take cognizance of the offence punishable u/s 138 NI Act.

Arguments on summoning heard. It is alleged that accused has issued the cheque in question bearing no. 000039 dated 29.12.2025 for Rs. 6,73,336 to the complainant in discharge of liability. On presentation, the same got dishonoured vide return memo dated 30.12.2025, for the reason ‘Funds Insufficient’. Thereafter, demand notice dated 12.01.2026 was sent to the accused by the complainant. Despite service/ deemed service of said notice, accused has failed to make the payment within 15 days as per provisions of the Negotiable Instruments Act, 1881.

The Hon'ble Supreme Court in the decision reported as **A.C. Narayanan vs. State of Maharashtra (2014) 11 SCC 790** has held as under,

“29. From a conjoint reading of Sections 138, 142 and 145 of the N.I. 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....

...33.4 In the light of Section 145 of the NI Act, 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 and the Magistrate is neither mandatorily obliged to call upon the complainant to remain present before the Court, nor to examine the complainant or his witness upon oath for taking the decision whether or not to issue process on the complaint under Section 138 of the NI Act.”

Similar directions have been issued in ***Indian Bank Association & Ors. vs. Union of India (2014) 5 SCC 590*** and ***Rajesh Agarwal vs. State (2010) 171 DLT 51***.

On consideration of the complaint, annexed documents and the verification affidavit of the complainant, this Court is of the opinion that *prima facie* there are sufficient grounds for proceeding against the accused mentioned below for the commission of offence under Section 138, Negotiable Instruments Act, 1881. There is no requirement for examination of the complainant or witnesses for purpose of issuance of process in view of the above-mentioned directions of the Hon’ble Apex Court and Hon’ble Delhi High Court. In terms of inquiry, all the statutory requirements have been complied with. The complaint is filed within the period of limitation as prescribed under Section 142(1)(b) of the Negotiable Instruments Act.

Let accused NASIRHUSEN MAHEBUBHUSEN TAI be summoned on filing of PF, RC/ Speed Post/ approved Courier service/E-mail. **Compliance of the same be done within 15 days from today.**

Complainant is directed to place the tracking report of summons sent through speed post on record on the next date.

As per the guidelines laid down as in the case titled as ***Damodar S. Prabhu Vs. Sayed Babalal H, AIR 2010 (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.”

Put up for appearance of the accused on 25.07.2026.

(ARIBA KHAN)
JUDICIAL MAGISTRATE
FIRST CLASS-02/NI ACT(SD)
SAKET/NEW DELHI/23.05.2026