

ORDER BELOW EXH.1 IN SCC No.169072-2024

1. Perused the complaint along with affidavit. Perused the documents filed on record by the complainant. This is complaint filed under section 138 of Negotiable Instruments Act [N.I. Act in short]. Section 5 of BNSS provides that the said Sanhita shall not affect in special or local law or on any special form of procedure prescribed by any other law. N. I. Act is special law relating promissory notes, bill of exchange and cheques. Section 142(1) of N.I Act empowers the court to take cognizance of offence punishable under section 138 of N. I. Act.

2. Hon'ble Karnataka High court in ***Ashok S/O Siddppa Bankar Vs. Fayaz Aahmad S/O Aurangzeb Naikar on 28 April,2025*** held that an accused does not need to be heard before cognizance is taken in cheque bounce case under section 138 of N.I Act, because the N.I act is a special law and its procedure takes precedence over the general procedural requirement in section 223 of BNSS. This means the first proviso to section 223 of BNSS which mandates giving the accused an opportunity to be heard before cognizance is taken, does not apply to cheque bounce complaints. In ***Sanjabij Tari Vs. Kishore S. Borcar and another [Cr. Appeal No.1755/2010]*** Hon'ble Supreme Court has confirmed the observations of Hon'ble Karnataka High Court in above citation. Therefore, in view of said citation and provision,

it is not necessary to issue notice to accused.

3. On perusal of the complaint, prima-facie case is made out against accused for offence punishable under section 138 of the Negotiable Instruments Act, 1881. Hence, process be issued against the accused for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 on process fees.

Date : 29/11/2025
Pune.

(Revati R. Deshpande)
Addl. C.J.M. (Court No.10), Pune.