

Torque Pharmaceutical Vs. M/s Brajraj Pharmaceutical

Present: Complainant represented by counsel Sh. Nitin Ahluwalia

The complainant/CW tender into preliminary evidence his affidavit Ex.CA/CW1 alongwith documents, Ex.C1/CW1 to Ex.C11/CW1 and close the preliminary evidence vide separately recorded statement. The perusal of case record reflects that the complaint is within prescribed period of limitation, and that the Court is having territorial jurisdiction to try the instant complaint. The specific and cogent averments of complaint, affidavit and documents on record prima facie reflects:-

1. drawing of cheque(s) by accused on an account maintained by it with a banker for payment to complainant from out of that account for discharge in whole/part any debt or liability.
2. presentation of the cheque(s) by the complainant (payee or the holder in due course) to the bank,
3. returning the cheque(s) unpaid by the drawer bank for want of sufficient funds to the credit of the drawer of any arrangement with the banker to the sum covered by the cheque(s).
4. giving notice in writing to the accused/drawer of the cheque(s) on the receipt of the information by the complainant from the bank regarding the return of the cheque(s) as unpaid demanding payment of the cheque(s) amount.
5. failure of the accused/drawer to make payment to the complainant/ payee or the holder in due course of the cheque(s) of the amount covered by the cheque(s) within 15 days of the receipt of the notice.
6. institution of the instant complaint within the prescribed period of limitation before the court of competent jurisdiction.

I have heard learned counsel for the complainant and have perused the case file/record with his able assistance on the question of summoning of the accused.

While hearing the submissions of Ld counsel for the complainant, it came to the notice of this Court that accused is not residing within jurisdiction of this Court and accordingly, the procedure as provided under **Section 225 BNSS** is required to be followed. Since, the complaint is totally based on documentary evidence, no benefit would be achieved by sending the matter to police for investigation, particularly when matter can be enquired by this Court in view of the judgment passed by the Hon'ble Apex Court in the case titled as **Sunil Todi & ors vs State of Gujarat & ors** vide judgment dated 03.12.2021 (SC-2021). However, in view of the judgment, the examination of witnesses are not required, but the documents filed with the complainant is sufficient to proceed with the complaint. Since, the tendering of documents by way of an affidavit along with other documents is hereby allowed by examining CW-1 as witness for the purpose of Section 225 BNSS.

In view of the facts and circumstances of the instant case and dictum of settled legal position, this court is of the considered view that in totality and with greatest circumspection that there is a force in the line of the reasoning adopted by the counsel for the complainant as it

prima facie transpires from the averments of complaint, affidavit and documents on record that there is “sufficient material” to issue process against the accused in consonance with the provision of law as contained under the Section 138 of Negotiable Instruments Act, 1881.

Furthermore, the detailed expression of opinion is avoided as it is no longer necessary in view of the law laid down by Hon'ble Supreme Court in case cited as “*UP Pollution Board Vs. Mohan Meaken Ltd. 2002(2) RCR (Criminal) 421*” and “*Deputy Chief Controller of Imports and Exports Vs. Roshan Lal Aggarwal 2003(2) RCR (Criminal) 110*”.

Accordingly, notice / process / summons be issued to the accused persons for the alleged commission of offence as contained under the provisions of Section 138 of Negotiable Instruments Act, 1881 simultaneously through ordinary process as well as through Registered cover/AD/UPC/Speed Post/affixation, for **10.07.2025** on deposit/filing of registered cover / AD / UPC/ speed post bearing proper, correct and complete address of the accused for effective & expeditious service of process without delay, alongwith the requisite process fee, copy of complaint, list of witnesses etc., forthwith and positively within 7 days, failing which, the complainant cannot seek any assistance from the court, furthermore it may be deemed / presumed that the complainant is not interested for the effect prosecution & pursuance of the instant complaint and court may proceed under the provision of Section 204(4) Cr.P.C. as to the *dismissal of the instant complaint due to non prosecution*.

In addition to above, **Dasti summons**/ notice / process may also be given, if desired.

Ramandeep Kaur
Judicial Magistrate Ist Class,
Chandigarh.
UID No. PB0679

Date of Order: 15.04.2025
Manjeet Stenographer Gr. II