

78 CC NI ACT / 58/2024 Ankit Goswami Vs. Akshat Goel /0 (Jyoti Nagar)

24.02.2024

Matter taken up through VC on CISCO Webex from Court room no. 408, New Building, KKD.

Present: Ms. Himani Mudgil, counsel for the complainant with complainant.

1.1. All original documents were submitted by Ld counsel for the complainant. Same has been verified today and found to be in order.

1.2. As regards the examination of the complainant under Section 200 Cr.P.C, the Hon'ble Apex Court in its judgment titled as “ **A.C. Narayanan v. State of Maharashtra & Anr., (2014) 11 SCC 790**”, has held as under:-

“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. Once the complainant files an affidavit in support of the complaint before issuance of the process under Section 200 of the Code, it is thereafter open to the Magistrate, if he thinks fit, to call upon the complainant to remain present and to examine him as to the facts contained in the affidavit submitted by the complainant in support of his complaint. However, it is a matter of discretion and the Magistrate is not bound to call upon the complainant to remain present before the Court and to examine him upon oath for taking decision whether or not to issue process on the complaint under Section 138 of the N.I. Act. For the purpose of issuing process under Section 200 of the Code, 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 N.I. Act. It is only if and where the Magistrate, after considering the complaint under Section 138 of the N.I. Act, documents produced in support thereof and the verification in the form of affidavit of the complainant, is of the view that examination of the complainant or his witness(s) is required, the Magistrate may call upon the complainant to remain present before the Court and examine the complainant and/or his witness upon oath for taking a

decision whether or not to issue process on the complaint under Section 138 of the N.I. Act.”

In light of the above-mentioned judgment, it is not incumbent upon this Court to examine the complainant on oath before issuing process.

1.3. I have carefully scrutinized the complaint, evidence by way of affidavit and annexed documents and same are found to be in order. Perusal of complaint, evidence by way of affidavit and annexed document shows that there is sufficient material available on record to proceed further against proposed accused for the offence punishable under section 138 Negotiable Instruments Act and summon the proposed accused.

1.4. In terms of inquiry conducted under Section 202 Cr.P.C, all the statutory requirements have been complied with. The present complaint is within the jurisdiction of this court and is filed within the period of limitation prescribed U/s 142(1)(b) of Negotiable instrument Act, 1881.

1.5. I take cognizance of said offence.

2. Hence, issue summons against the accused to appear on filing of P.F./R.C./Approved Courier well as through all permissible mode returnable on for 12.11.2004. If the accused could not be served in view of the provisions contained in Section 62, 63 and 64 of Cr.P.C., then process server is directed to serve the summons by way of affixation as per Section 65 of Cr.P.C and to file his report accordingly. If summons are served by way of affixation, photographs of the affixed summons showing the address/place where it is affixed be filed as well alongwith the report.

3. Service be also effected on the email, whatsapp message(s) and/or text message of accused person(s). Proof of service/tracking report be filed and updated in the digital file on or before the next date of hearing. The complainant can provide email address of accused person(s), if any for service. The service of summons through what's app message(s) and text message(s) is permitted provided the complainant files an affidavit to the effect that email address and/or number on which the said message(s) are sent is/are of the accused person(s) and further subject to filing of report of service.

It is hereby directed that in case of electronic service of summons, a digital copy of screenshot of such service be necessarily attached with report on summons.

4. Directions:

4.1. Directions To complainant:

- I. The complainant side is directed to file metadata form before filing of PF as per the guidelines in SOP drafted by Hon'ble Delhi High Court.
- II. To file PF and take steps within 02 weeks from today including providing copy(ies) of complaint including the evidence affidavit of complainant otherwise the complaint may be dismissed U/s 204(4) Cr. P.C.
- III. To file tracking report of summons sent through speed post/ registered post on record through e-filing portal atleast one week prior to NDOH and submit hard copy of the same as well.
- IV. Complainant is directed to be present on NDOH through Video Conferencing.

4.2. Directions To Reader-cum-ahlmad:

Send along with summons following documents:

- I. copy of this order.
- II. copy of the present complaint;
- III. and all other documents (including PSE of complainant, if any) annexed with complaint.
- IV. Mention the official email id and permanent video conferencing link /meeting number of this Court on the summons.
- V. Reader cum Ahlmad is further directed to send the e-copy of summons to the Nazarat Brach for electronic service of summons.
- VI. Reader cum Ahlmad is directed to make the following endorsement on the summons in terms of the guidelines of the Hon'ble Supreme Court passed in the case of **Damodar S. Prabhu v. Sayed Babalal H, (2010) 5 SCC 663** informing the accused that:

- (a) Accused can make an application for compounding of the offence at the first or 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.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the court at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the District Legal Services Authority.

VII. To preserve PF form, service report, postal/ courier envelopes and upload scanned copies thereof on the LAYERS 2.0 as well as on mirror image of file on cloud.

4.3. Directions to Accused:

Accused is directed to appear before this court on 12.11.2024 through video-conferencing on the Cisco Webex application through the permanent Cisco Webex VC Room ID nishahdara1@districtcourtdelhi.webex.com from a quiet place where facility of audio-video calling, internet and printer is available.

Now to come up for appearance of accused, grant of bail and framing of notice under section 251 Cr.P.C./ 145 (2) NI Act application on 12.11.2024.

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NOHRIA signed by
ANMOL
NOHRIA

(Anmol Nohria)
MM (NI ACT) Digital
Shahdara/KKD/Delhi
24.02.2024