

08.12.2021

PROCEEDINGS CONDUCTED THROUGH PHYSICAL HEARING/CISCO WEBEX

This court has a pendency of more than 7200 cases including 6400 private party cases.

Today 78 regular cases are listed.

Present: Sh. Yash Chaturvedi, Ld. Counsel for complainant.

Submissions heard and file perused.

This is complaint filed for offence punishable under Section 138 N.I. Act. Complaint, affidavit of evidence and other annexed documents perused. I take cognizance of said offence.

In matter of “**A. C. Narayanan Vs. State of Maharashtra & Anr.**”(2014), II Supreme Court Cases 790. **Full Bench of Hon'ble Supreme Court of India has held as under:**

“29 From a conjoint reading of Sections 138, 142 and 145 of the NI 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

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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 NI 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 NI Act.** It is only if and where the Magistrate, after considering the complaint under Section 138 of the NI 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 NI Act.

Complaint, affidavit of evidence and documents considered in light of above cited judgment. In opinion of this Court, there is no need to examine the complainant's evidence for purpose of issuance of process. In view of complaint, documents produced and verification in the form of affidavit of evidence, there are sufficient grounds for proceeding further against accused.

Let the accused be summoned on filing of PF/RC and Speed Post

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with directions to the process server to serve the accused person through affixation in case of non availability, refusal, or if the premise was found locked, returnable for 29.06.2022. Steps be taken within two weeks Ahlmad to issue summons within 10 days from filing of PF. Complainant is directed to utilize all the modes for the service of summons.

As per the guideline laid down in the case titled Damodar S. Prabhu Vs. Sayyed Baba Lal H. report in (2010) 5 SCC 663, Ahlmad is directed to make a mention on the summons issued against the accused 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 cost on the accused”.

(Vikas Madaan)
MM (NI Act) N/W, ROHINI,
DELHI/ 08.12.2021