

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 5186 OF 2025

Ingram Micro India Private Limited ...Petitioner

Versus

State of Maharashtra and anr. ...Respondents

Mr. Jitendra Bakliwal, a/w Deepak Saxena and Drishti Ojha,
i/b Legal Prism, for the Petitioner.

Mr. Kiran Shinde, APP for the State.

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CORAM: N. J. JAMADAR, J.

DATED: 9th OCTOBER, 2025

Oral Order:-

1. Heard the learned Counsel for the petitioner.
2. The challenge in this petition is to an order passed by the learned Magistrate on 16th April, 2025, whereby the learned Magistrate, Vikhroli, Mumbai, ordered the issue of notice to the accused under Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS") in a complaint filed by the petitioner for an offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 ("NI Act, 1881").
3. The learned Counsel for the petitioner submits that, in view of the special provisions contained in Section 142 of the NI Act, 1881, for taking cognizance of the offence punishable under Section 138 of the NI Act, 1881, the recourse to the provisions

contained in Section 223 of the BNSS was not warranted. The provisions contained in Section 5 of the BNSS were lost sight of the learned Magistrate. The provisions contained in Section 142 of the NI Act, 1881 constitute the special procedure prescribed for taking cognizance of the offence punishable under Section 138 of the NI Act, 1881. Therefore, the learned Magistrate ought not to have issued notice to the accused under Section 223 of the BNSS. Reliance was placed on the decisions of the Supreme Court in the cases of *N. Harihara Krishnan vs. J. Thomas*¹ and *Ashok s/o. Siddappa Bankar vs. Fayaz Aahmad s/o Aurangzeb Naikar*².

4. The controversy is set at rest by the Supreme Court in a recent pronouncement in the case of *Sanjabij Tari vs. Kishore S. Borcar and anr.*³. The Supreme Court, while considering the aspect of the large pendency of the cases under NI Act, has issued certain directions in paragraph 36 of the said judgment.

Clause (E) of the said directions reads as under:

“36(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,

1 ABC 2019 (II) 303 SC.

2 Cri. Petition No.101514/2025 dtd. 28/4/2025.

3 Cri. Appeal No.1755 of 2010, dated 25/9/2025.

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.”

5. In the case of ***Ashok Bankar*** (supra), the Karnataka High Court has, *inter alia*, observed as under:

“23. Since Negotiable Instrument Act, 1881 is special enactment and in view of Section 5 of BNSS r/w Section 143 of NI Act as far as the cases tried by the learned Magistrate under Section 138 of NI Act, there is no need for the Magistrate to give an opportunity of being heard to the accused before taking cognizance on the complaint of payee/holder in due course of cheque for offence punishable under Section 138 of NI Act.”

6. The Supreme Court has approved the decision in the case of ***Ashok Bankar*** (supra) and directed that there shall be no requirement to issue summons to the accused in terms of Section 223 of the BNSS at the pre-cognizance stage. In view of the aforesaid decision of the Supreme Court and Section 142 of the NI Act, being a special law, and saved by the provisions contained in Section 5 of the BNSS, the impugned order issuing notice to the accused under Section 223 of the BNSS cannot be sustained.

7. Since the accused is not required to be heard at the stage of taking cognizance of the offence punishable under Section 138 of the NI Act, this Court does not consider it necessary to issue notice of this petition to the accused – respondent No.1.

8. The petition stands allowed.
9. The impugned order stands quashed and set aside.
10. The learned Magistrate shall proceed with the complaint in accordance with law.

[N. J. JAMADAR, J.]