**APPLICATION FOR RECALLING THE SUMMONING ORDER**

IN THE COURT OF.........................................

Complaint No......................... of 200

In the Matter of: -

AB............................................................. Complainant

versus

CD.................................................................... Accused

**APPLICATION FOR RECALLING THE SUMMONING ORDER DATED ........................ ON BEHALF OF ACCUSED/APPLICANT**

Most Respectfully Showeth: -

1. That vide order dated........................ this Hon’ble Court was pleased to issue process to the applicant for an alleged offence under section 138 N. I. Act, 1881.

2. That the said order of summoning the applicant as an accused is bad in law on the following amongst other grounds and is liable to be recalled: -

GROUNDS

a. Because the complaint is barred by limitation as per record produced by the Complainant, the bank’s intimation/advise regarding return of cheque is dated........................ and the notice under section 138 N. I. Act was to be given within 15 days from ................................................ but the alleged notice is purported to be dated................................................ and was sent on........................ which on the face of it is beyond the prescribed period of limitation provided under section 138 N. I. Act and as such the Complaint is incompetent and liable to be dismissed on this ground alone.

b. Because a perusal of the Complaint would show that there is no allegation whatsoever as to on what date the alleged notice dated ........................ was allegedly delivered to the applicant and when the cause of action arose to the complainant for filing the complaint, in the absence of it is settled law that cause of action for maintaining a Complaint under section 138 N. I. Act, arises on the failure of the addressee to pay the demanded amount within 15 days from the receipt of the notice. In this case admittedly no notice was ever served upon the applicant.

c. Because the Complainant is alleged to have sent the alleged notice on two addresses: -

(1) .......................

(2) .......................

The Complainant have however filed one envelope addressed at address No. 1 stated above, and which contains a remark "Refused" dated......................... It is pertinent to point out that the said envelope does not contain any Postal Stamp of any post office which shows that the envelope filed with the complaint is manipulated one and the envelope sent to post office has been replaced by the envelope filed in the Complaint and the Complainant is guilty of an offence of perjury for which the applicant reserves right to file an application under section 340 Cr. P. C. relating thereto.

d. Because the alleged notice dated........................ is purported to have been sent on........................ at the address ................................................ and is purported to have been refused en.......................... However the Complainant has not examined anyone from the Postal Department to prove that it was refused by the addressee. It is respectfully submitted that the applicant is not residing at the address................................................ at which address there are number of shops and it is not the exclusive address of the applicant place of business.

e. Because neither in the Complaint nor in the statement of the complainant it has been averred or stated as to what was the fate of the alleged notice said to have been sent at the address

f. Because there is not an iota of evidence of the Complainant being partner of applicant which assertion is falsified from the very fact that the alleged cheque itself shows that the applicant was sole proprietor of the firm and the cheque in question was without consideration whatsoever. In this connection it is submitted that the Complainant who used to visit the applicant frequently. During one such visit, when the applicant needed money urgently and the closing hour of the bank was nearby, the applicant hurriedly signed a cheque and gave it to the Complainant who offered to get the same encashed by going to the bank. The Complainant came back within 15 minutes and handed over the cash................................................ to the applicant. It now transpires that he retained the cheque fraudulently and dishonestly by filling it up of the sum filed by him and has now filed the present Complaint for dishonest gain.

3. That this Hon’ble Court passed the summoning order without taking into the aforesaid important facts which go into the root of the matter and ning order is bad in law far it does not give any reasons for coming to the prima facie that an offence under Section 138 N. I. Act had been made out.

PRAYER

It is therefore prayed that this Hon’ble Court may be pleased to recall summoning order dated......................... and drop the proceedings against applicant.

This Hon’ble Court may be pleased to pass such further order(s) as ma complete justice on the facts and circumstances of the case.

Applicant/ Accused

Through Advocate

Place:................

Dated:.................