



2026:AHC:63585

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 8472 of 2026

Smt Sheetal Toksha

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Perdeep Kumar
Counsel for Opposite Party(s)	:	Amit Rai, G.A.

Court No. - 74

HON'BLE DEEPAK VERMA, J.

1. Heard Sri Pradeep Kumar Bishnoi, learned counsel for the applicant, Sri Amit Rai, learned counsel for opposite party No.2 and Sri P. P. Pandey, learned AGA for the State.

2. The present 528 BNSS application has been filed to quash the entire criminal proceedings of the Complaint No.256 of 2021 (Munesh Vs. Sheetal) under Section 138 of Negotiable Instrument Act, Police Station-Hafizpur, District-Hapur, pending before the Learned Judicial Magistrate, IInd, Hapur as well as Summoning Order dated 20.10.2021 passed by the Learned Judicial Magistrate, IInd, Hapur.

3. Counsel for the applicant submits that it is alleged in the complaint that applicant borrowed Rs.12,50,000/- from opposite party no.2, thereafter, applicant returned the amount by way of cheque issued in favour of opposite party No.2 when cheque was produced before Bank the same was dishonored with observation that payment stopped by the drawer, thereafter, opposite party No.2 issued notice to applicant but amount was not returned then present complaint has been lodged. Instant complaint has been lodged with malicious intention only to harass the applicant. Applicant has not taken any amount from opposite party No.2 and he has not signed the cheque and the cheque was filled by opposite party no.2. Applicant has lodged FIR against one-Babli Gujjar, U/s 420, 406 and 506 I.P.C. and Investigating Officer has submitted charge sheet and proceeding is going on. On perusal of contents of complaint as well as statement, no offence under the alleged section is made out. Prima facie, proceeding against the applicant is liable to be set aside.

4. *Per contra*, Sri Rai, learned counsel for opposite party no.2 opposed the submission raised by applicant's counsel and submits that on perusal of contents of complaint as well as statement of complainant and witnesses, prima facie, offence is made out against the applicant and summoning by learned Magistrate is just and proper.

5. Considering the argument raised by applicant's counsel, on perusal of complaint, prima facie, offence discloses against the applicant and cheque has been issued by the applicant in favour of opposite party no.2, which got dishonored by the Bank. Learned Magistrate after considering all relevant evidence, has issued summon and Court has

only to consider whether prima facie offence is made out or not. Learned Magistrate after examining the contents of complaint and other material evidence found offence against the applicant and issued summon. The submission raised by applicant's counsel are disputed question of facts which cannot be examined at this stage. It is admitted case that applicant has signed over the disputed cheque and the same has been issued in favour of opposite party no.2. Contents of complaint and material evidence on record discloses prima facie offence against the applicant, as such, no interference is warranted.

6. The Hon. Apex Court in **Sri Om Sales Vs. Abhay Kumar @ Abhay Patel and Another** reported in 2025 SCC OnLine SC 2897 has considered following judgments:

"14. In Maruti Udyog Ltd. v. Narender and others, this Court held that a presumption must be drawn that the holder of the cheque received the cheque of the nature referred to in Section 138, for the discharge of any debt or other liability unless the contrary is proved and, therefore, the High Court was not justified in entertaining and accepting the plea of the accused at the initial stage of the proceedings and quash the complaint.

15. Likewise, in Rangappa v. Sri Mohan, it was held that the presumption mandated by Section 139 of the N.I. Act includes the existence of a legally enforceable debt or liability. It was observed that such a presumption is rebuttable, and the accused must raise its defense in the trial.

16. In Rajeshbhai Muljibhai Patel v. State of Gujarat, it was held that the High Court should not quash the criminal complaint under Section 138 of N.I. Act by going into disputed questions of fact regarding the cheque in question being issued for the discharge of debt or liability. Moreso, when Section 139 of the N.I. Act raises a statutory presumption as regards the cheque being issued for discharge of debt or liability."

7. In **Rathish Babu Unnikrishnan v. State (NCT of Delhi)**, this Court held that when there is a legal presumption under Section 139 of N.I. Act, it would not be judicious to carry out a detailed enquiry on a disputed question of fact at a pre-trial stage to quash the complaint. The relevant observations in the judgment are extracted below:

"17. The proposition of law as set out above makes it abundantly clear that the court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defense without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

18. The consequences of scuttling the criminal process at a pretrial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial court is ousted from weighing the material evidence. If this is allowed, the accused may be given an unmerited advantage in the criminal process. Also, because of the legal presumption, when the

cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favor of the complainant / prosecution, as the accused will have the opportunity to adduce defense evidence during the trial, to rebut the presumption.

19. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited."

8. The Hon. Apex Court while deciding aforementioned case, in paragraphs 13 and 18 has observed that:

"13. However, the High Court, in its jurisdiction under Section 482, proceeded to test whether the cheque was issued for the discharge, in whole or in part, of any debt or other liability. In our view, such an exercise was unwarranted because, under Section 139 of the N.I. Act, there is a presumption that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability. This presumption can be rebutted by evidence led in trial. A fortiori, the said issue can appropriately be decided either at the trial, or later, upon conclusion of trial, by the appellate/ revisional court."

"18. Having regard to the aforesaid decisions of this Court as also the provisions of Section 139 of the N.I. Act, we are of the considered view that the High Court committed an error by conducting a roving enquiry, at the pre-trial stage, as regards the cheque being issued for the discharge of debt or liability. Such an exercise, in our view, was not merited in exercise of power under Section 482 of the Code more so when the complaint allegations disclosed that the cheque was issued for discharge of liability. As fulfillment of the necessary ingredients of Section 138 N.I. Act are prima facie made out from the complaint allegations, in our view, neither the summoning order nor the complaint could have been quashed by the High Court at the pre-trial stage."

9. In view of the Apex Court's Judgment, no interference is warranted by this Court. The present application is, accordingly, **dismissed**.

(Deepak Verma,J.)

March 26, 2026

Nitin Verma