



2026:AHC:63404

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 5900 of 2026

Virendra Pal

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Narendra Deo Upadhyay,
Vinay Bhushan Upadhyay
Counsel for Opposite Party(s) : G.A.

Court No. - 74

HON'BLE DEEPAK VERMA, J.

1. Heard Sri Narendra Deo Upadhyay, learned counsel for the applicant and Sri Vishwa Deepak Mishra, learned AGA for the State.

2. The present 528 BNSS application has been filed to quash the entire Proceedings of Complaint case No. 3850 of 2021 (Subodh Kumar Tyagi Vs. Virendra Pal) under Section 138 N.1. Act, Police Station Kotwali City, District Bijnor, Pending in the Court of Additional Civil Judge (JD)/Judicial Magistrate Court No.2 Bijnor, as well as Summoning order dated 21.04.2022, passed by Additional Civil Judge, Bijnor and order dated 01.07.2022 whereby bailable warrant have been issued & order dated 21.08.2025 passed by Additional District & Session Judge/Special Judge (E.C. Act), Bijnor passed in Revision No.01/2025 (Subodh Kumar Tyagi Vs State of U.P. & Another), & bailable warrant order dated 13.10.2025 & non bailable warrant order dated 11.11.2025.

3. Counsel for the applicant submits that it is alleged in the complaint that applicant received amount of Rs.33 lacs from opposite party No.2 for selling plot to the complainant, thereafter, no sale deed was executed by the applicant of the disputed plot then applicant returned the amount through

disputed cheque, which got dishonored then complainant sent registered notice but amount was not returned by the applicant then present complaint has been lodged. He further submits that notice issued by learned Magistrate is without application of judicial mind. On perusal of complaint, no offence under the alleged section is made out. Cheque was issued in favour of the complainant/opposite party no.2 but cheque was submitted in the account of one Asha Devi, who is mother of opposite party no.2. Since cheque was not submitted in his own account of the complainant, therefore, present complaint is not maintainable and is liable to be dismissed and applicant has paid all the disputed amount through UPI, which has been filed as Annexure 4 and on that account, no case is made out against the applicant, as there is no dues. Learned Magistrate, vide order dated 25.10.2024 dismissed the complaint of the applicant on the ground that despite order of the court complainant has not taken steps for summon and rejected the complaint U/s 204 Cr.P.C. The Opposite party no.2 filed criminal revision and criminal revision of the opposite party No.2 was allowed vide order dated 21.08.2025. The Revisional Court set aside the order dated 25.10.2024 and directed the trial court to proceed in accordance with law. The Revisional Court while allowing the revision has observed that on perusal of record it is apparent that bailable warrant of Rs.10,000/- was issued against the applicant. Present complaint is malicious prosecution and is liable to be set aside. In support of his contention, he has placed reliance over the judgment passed by co-ordinate Bench of this Court in the case of Rakesh Upadhyay Vs. State of U.P. and others, in Application U/s 482 No.14197 of 2024 passed on 01.05.2024.

4. *Per contra*, learned A.G.A. opposed the submission raised by applicant's counsel and submits that applicant had taken money from the complainant to execute sale deed but the same was not materialized then applicant returned the amount through cheque. Argument raised by applicant's counsel in

regard to non submission of cheque in his account cannot be accepted on this ground that Asha Devi is mother of opposite party no.2. There is no evidence that the account was running singly by mother of the opposite party no.2, as such, prima facie, offence is against the applicant. On perusal of contents of complaint and material evidence, prima facie offence is made out against the applicant. No interference is warranted.

5. Considering the argument raised by applicant's counsel, the submission raised by applicant's counsel is disputed question of facts which cannot be examined at this stage. Moreover, it is admitted case that the cheque has been issued by the applicant and there is signature of the applicant over the cheque, which got dishonored, Prima facie, offence is made out against the applicant. The impugned order of the case is just and proper.

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**.

March 26, 2026

Nitin Verma

(Deepak Verma,J.)