



2026:AHC:63241

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 5645 of 2026

Ramashrey Yadav

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	R.V. Pandey
Counsel for Opposite Party(s)	:	G.A.

Court No. - 74

HON'BLE DEEPAK VERMA, J.

1. Supplementary affidavit filed today on behalf of the applicant, is taken on record.
2. Heard learned counsel for the applicant and learned AGA for the State.
3. The present 528 B.N.S.S. application has been filed to quash the impugned summoning order dated 07.05.2025 in Complaint Case No.10725 of 2024 (Madan Ojha vs.Ramashrey Yadav), under Section 138 N.I.Act, pending in the court of Chief Judicial Magistrate, Chandauli.
4. It is alleged in the complaint that the applicant borrowed money from the opposite party no.2 and applicant paid the amount through Cheque No.203571 for amount of Rs.4,50,000/- dated 10.04.2024. When cheque was presented before the Bank, same was dishonoured. Then opposite party no.2 sent notice to the applicant but the applicant did not return the amount, then present complaint lodged by opposite party no.2 against the applicant. Learned counsel for the applicant submits that the applicant is innocent and applicant has intentionally stopped the cheque. Applicant had issued cheque in favour of opposite party no.2 to purchase the property but opposite party no.2 had not executed sale deed then the applicant stopped payment. Allegation alleged in the complaint is false and baseless, not supported by any evidence. Allegation is wholly false and against the true facts. Summoning by learned magistrate, is without application of judicial mind.
5. Per contra, learned A.G.A. opposed the submission raised by learned counsel for the applicant.
6. Considered the argument raised by learned counsel for the applicant and perused the record. From the record and contents of complaint, it is said that applicant borrowed money from the complainant and returned the same through cheque in favour of opposite party no.2. Submission raised by learned counsel for the applicant

are disputed question of fact, which cannot be examined at this stage. Applicant will have opportunity to produce evidence at the time of trial. At this moment, while issuing summons court has to see whether prima-facie offence is made out or not. From perusal of statements, prima-facie offence is made out against the applicant.

7. 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.

17. 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."

7. 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."

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

*9. However, it is directed that if applicant shall surrender before the concerned Court below within three weeks from today and in case applies for bail, the bail application shall be decided expeditiously by the courts below in accordance with law laid down by the Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and another, reported in 2021 SCC OnLine SC 922**.*

10. For the period of three weeks from today or till the time of surrender of the applicant before the Court below, whichever is earlier, no coercive action shall be taken against him.

March 26, 2026
SKD

(Deepak Verma,J.)