



2026:AHC:66428

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 4663 of 2026

Rajan Rohtagi

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Aklank Kumar Jain
Counsel for Opposite Party(s)	:	Sanjay Agrawal, G.A.

Court No. - 74

HON'BLE DEEPAK VERMA, J.

1. Heard learned counsel for the applicant; learned counsel for opposite party no.2; learned A.G.A for the State as also perused the record.

2. Instant application has been filed to quash the summoning order dated 26.11.2025 passed by the Additional Chief Judicial Magistrate/Additional Civil Judge (Senior Division), Court No.2, Rampur in Complaint No.319 of 2025 (Ruchi Vs. Sri Rajan Rohtagi) under Section 138 of the Negotiable Instruments Act, 1881, Police Station Civil Lines, District Rampur.

3. Counsel for the applicant submits that instant proceedings under Section 138 N.I. Act is malicious. It is alleged in the complaint that applicant had given bearer cheque to opposite party no.2. The opposite party no.2 put the signature on the back of the cheque in presence of the applicant and signature of the opposite party no.2 has been verified by the applicant. When the opposite party no.2 submitted the cheque before the bank, the same was dishonoured as non CTS cheque. Counsel for the applicant submits that allegation alleged in the complaint is false, baseless and there are multiple disputes pending between the parties with regard to matrimonial dispute. There is no occasion to issue cheque to opposite party no.2 and present cheque is returned with remark 'non CTS Cheque' by the Bank. In view of that, present complaint under Section 138 N.I. Act, is not maintainable and cognizance by the learned Magistrate is without application of judicial mind. The impugned summoning order passed by the trial court is arbitrary and unsustainable and is liable to be set aside. He further submitted that summon issued by the learned Magistrate is non speaking and without

discussion of the facts and other material evidence. In support of his submission, counsel for the applicant has placed reliance upon the judgment of Hon. Apex Court in **Lallan Kumar Singh and Others Vs. State of Maharashtra** reported in 2022 SCC Online SC 1383. Para 38 of the said judgment is being quoted below:

"38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation (2015) 191 Comp Cas 177 (SC) ; (2015) 4 SCC 609, which reads thus :

"51. On the other hand, section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under section 192), upon a consideration of the materials before him (i. e., the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

However, the words 'sufficient ground for proceeding' appearing in section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

4. Learned A.G.A. and counsel for the opposite party no.2 have vehemently opposed the prayer for quashing the proceedings of the aforesaid case and has submitted that the order impugned do not suffer from any illegality or infirmity.

5. Considered the argument raised by counsel for the parties and perused the record. The submission of counsel for the applicant that in complaint there is no mention with regard to cause of liability by which the applicant had given cheque. In para-1 of the contents of complaint, it is stated that applicant in

order to pay borrowed money, issued present disputed cheque as partial payment and cheque is said to have bounced which contains signature of the applicant. The submission of applicant in this regard, cannot be accepted. In para-1 of the complaint, reason for issuing cheque in favour of the opposite party no.2 is stated that between the applicant and opposite party no.2 for some liability, cheque has been issued in favour of opposite party no.2. It is admitted case that applicant has issued a cheque and applicant's signature was present over the cheque and submission with regard that there is no occasion to issue cheque as there are several disputes remain pending between the parties, this argument cannot be examined, at this stage.

6. The submission with regard to the order dated 26.11.2025 passed by the learned Magistrate that it is non speaking order in view of the Apex Court's judgment in **Lallan Kumar Singh and Others (supra)**, on perusal of the summoning order, it is apparent that learned Magistrate has considered the facts of the case that on 27.04.2025, the applicant had given cheque and same was presented before the bank and it was dishonoured. The learned Magistrate has also considered the contents of complaint, statement of complainant, cheque, registered notices and other material evidence and found prima facie offence against the applicant and issued summons. On perusal of the summoning order, it cannot be said that order has been passed without application of judicial mind and the order impugned is non speaking order. The order impugned is just and proper and impugned order does not suffer from any illegality and infirmity. The submission raised by counsel for the applicant cannot be examined at this stage.

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."

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 30, 2026

Meenu Singh