



2026:AHC:65557

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 11444 of 2026

Sri Tej Prakash

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Rishu Bhartiya, Shashank Kumar
Counsel for Opposite Party(s)	:	G.A.

Court No. - 74

HON'BLE DEEPAK VERMA, J.

1. Heard Sri Shashank Kumar, learned counsel for the applicant and Sri P. P. Pandey, learned AGA for the State.

2. The present 528 BNSS application has been filed to quash the impugned order dated 13.01.2026 passed by the Additional District & Sessions Judge, Court No.25, Agra on Application under Section 143-A of the N.I. Act filed by the Opposite Party No.2 in Criminal Revision No. 476 of 2025 (Sri Tej Prakash Vs. Sri Jagdish Gogiya and another) and order dated 07.04.2025 passed by the Additional Chief Judicial Magistrate, Court No.4, Agra in Complaint Case No. 22955 of 2023 (Sri Jagdish Gogiya Vs. Sri Tej Prakash) under Section 138 of the N.I. Act, Police Station Kotwali, District Agra including the entire proceedings of said complaint case.

3. Counsel for the applicant submits that it is alleged in the complaint that opposite party no.2 lodged complaint U/s 138 of N.I. Act stating therein that there were business transaction between the applicant and opposite party no.2 for last 7-8 years. The complainant was engaged in selling shoes materials and on the demand of the applicant, the opposite party no.2 delivered sole of the shoes amounting Rs. 6,44,800/- for payment of the said amount the applicant had given some security cheques to the complainant. It is stated in the complaint that total amount of the complainant due upon the applicant was Rs.16,37,782/ out of which Rs.1,71,834/- had been returned by the applicant. For the remaining

amount applicant had given some cheques to the complainant and the same was placed before the Bank, the same got dishonored with remark "insufficient amount". Registered notice was in regard to dishonor of cheque was issued but applicant did not return the amount then instant complaint has been lodged. During pendency of complaint, complainant moved application U/s 143-A for interim compensation before learned Magistrate and learned Magistrate allowed the 143-A application. Applicant moved objection before learned Magistrate against the 143-A application but learned Magistrate has not considered the objection of the applicant and directed the applicant to pay 20% of total balance amount, which comes Rs.66.800/-, to the opposite party No.2 as interim compensation.

4. Applicant's counsel further submits that aggrieved with the order dated 07.04.2025, allowing interim compensation to opposite party No.2, applicant filed revision bearing Criminal Revision No.478 of 2025 before learned District and Sessions Judge, Agra but the same was rejected vide order dated 13.01.2026. He further submitted that the order dated 07.04.2025 passed by learned Additional District and Sessions Judge allowing the application U/s 143-A of N.I. Act, is illegal and arbitrary as well as Revisional Court has also passed order dated 13.01.2026 is without application of judicial mind and is liable to be set aside. Applicant had filed objection before trial court but trial court did not consider the objection and only consider the prayer of opposite party no.2 for interim maintenance and allowed 143-A application of opposite party No.2. In support of his contention, he has placed reliance over the judgment passed by Hon'ble The Apex Court in the case of Rakesh Ranjan Shrivastava Vs. The State of Jharkhand and another, in Criminal Appeal No.741 of 2024 passed on 15.03.2024, in which Hon'ble The Apex Court has framed some parameters for consideration of application U/s 143-A of N.I. Act. In relevant para 19 is quoted herein below:-

"19. Subject to what is held earlier, the main conclusions can be summarised as follows:

a. The exercise of power under sub-section (1) of Section 143A is discretionary. The provision is directory and not mandatory.

The word “may” used in the provision cannot be construed as “shall.” b. While deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all relevant factors.

c. The broad parameters for exercising the discretion under Section 143A are as follows:

i. The Court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.

ii. A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case.

iii. If the defence of the accused is found to be prima facie plausible, the Court may exercise discretion in refusing to grant interim compensation.

iv. If the Court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. While doing so, the Court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc. v. There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive."

5. In view of the order passed by Hon'ble The Apex Court (above), the order passed by learned Magistrate is illegal and liable to be set aside.

6. *Per contra*, learned A.G.A. opposed the submission raised by applicant's counsel.

7. Considering the argument raised by applicant's counsel, firstly the submission raised by applicant's counsel is disputed question of facts which cannot be examined at this stage. Moreover, on perusal of order

dated 07.04.2025 by which application of opposite party No.2 was allowed by the order which shows that learned Magistrate has considered the objection of the applicant. Trial court has found that charges have been framed against the applicant and applicant has not plead guilty and ready to face trial. Learned Magistrate has found prima facie, offence under present proceeding. The trial court has found material evidence for interim compensation. Learned Magistrate in view of provision provided U/s 143-A of N.I. Act has allowed the application of opposite party no.2. On perusal of objection of applicant, wherein it is stated that cheque has not been issued by them and there is no signature over it and he has paid all the amount to opposite party no.2, the objection raised by applicant are disputed questions of fact. which would be examined by the trial court at the stage of trial. Hon'ble The Apex Court has laid down parameters for considering the application U/s 143A and on perusal of order it appears that learned Magistrate after considering the relation between the parties and requirement of interim compensation to opposite party No.2 has allowed the application U/s 143A of N.I. Act. This Court finds the order impugned passed by learned Magistrate as well as the order of Revisional Court are in parameters and guidelines of Hon'ble The Apex Court. Moreover, Section 143A itself provides interim compensation to the complainant/opposite party No.2 and also provides that if applicant acquitted by the trial court the amount can be returned from the complainant. The order impugned dated 13.01.2026 passed by the Additional District & Sessions Judge, Court No.25, Agra on Application under Section 143-A of the N.I. Act in Criminal Revision No. 476 of 2025 and order dated 07.04.2025 passed by the Additional Chief Judicial Magistrate, Court No.4, Agra in Complaint Case No. 22955 of 2023 under Section 138 of the N.I. Act, are just and proper. No interference is warranted.

8. 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."

9. 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."*

10. 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."

11. 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

Nitin Verma