



2026:AHC:65932

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 12667 of 2026

Vishal Pathak

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Laxmi Narayan Mishra
Counsel for Opposite Party(s)	:	G.A.

Court No. - 74

HON'BLE DEEPAK VERMA, J.

1. Heard Sri H.K. Chaturvedi and Sri Laxmi Narayan Mishra, learned counsel for the applicant, learned AGA for the State and perused the record.
2. The present application u/s 528 BNSS has been filed by the applicant with the prayer to quash the entire proceeding along with cognizance and summoning order dated 16.10.2025 passed by Additional Chief Judicial Magistrate, Court No. 5, Meerut in Complaint Case No. 3354 of 2025 (Mahip Singh Vs. Vishal Pathak), under Section 138 N.I. Act, Police Station- Civil Lines, District- Meerut.
3. The learned counsel for the applicant has challenged the summoning order dated 16.10.2025 and complaint lodged by opposite party no. 2 u/s 138 N.I. Act on the two grounds. The first ground is that in view of Section 223 (1) of BNSS, the applicant was not given opportunity of being heard prior to the taking of cognizance, as allegedly mandated under the said provision and second argument is that the applicant has paid all amount through RTGS and no dispute remain pending between the parties, therefore, the proceedings be quashed.
4. Learned AGA has opposed the submission made by learned counsel for the applicant and submits that the first argument of learned counsel for the applicant is that the applicant was not given opportunity in the provision u/s 223 (1) of BNSS, is not acceptable in view of the judgment of Hon'ble Apex Court passed in the case of **Sanjabij Tari Vs. Kishore S. Borcar**

and Another reported in **Criminal Appeal No. 1755 of 2010** decided on **25.09.2025** in which the Hon'ble Apex Court in paragraph no. E has held that:-

"E. Recently, the High Court of Karnataka in Ashok Vs. Fayaz Aahmad, 2025 SCC OnLine Kar 490 has taken the view that since NI Act is a special enactment, there is no need for the Magistrate to issue summons to the accused before taking cognizance (under Section 223 of BNSS) of complaints filed under Section 138 of NI Act. This Court is in agreement with the view taken by the High Court of Karnataka. Consequently, this Court directs that there shall be no requirement to issue summons to the accused in terms of Section 223 of BNSS i.e., at the pre-cognizance stage."

5. The proceeding under section 138 N.I. Act is a summary proceeding and the provision under Section 223 (1) BNSS could not be applicable so first ground raised by the counsel for the applicant in view of the judgment of the Hon'ble Apex Court is not acceptable. The second ground raised by learned counsel for the applicant is disputed question of fact as he has annexed the documents with regard to payment made to the opposite party no. 2 through RTGS and annexure no. 3 discloses the statement of the account, which require examination by the trial court. As such, same is not tenable in the eye of law.

6. Considering the arguments raised by the counsel for the parties, this Court finds that the second submission raised by the learned counsel for the applicant is disputed question of fact which cannot be examined at this stage while exercising jurisdiction under Section 528 BNSS. In view thereof, the arguments raised by learned counsel for the applicant is tenable and acceptable.

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."

8. 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."

9. 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."

10. 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

Nisha