



2026:AHC:67382

## HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 6443 of 2026

Shiv Kumar Solanki

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite  
Party(s)

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|-------------------------------|---|---------------------|
| Counsel for Applicant(s)      | : | Yogesh Kumar Tiwari |
| Counsel for Opposite Party(s) | : | G.A.                |

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**Court No. - 74**

**HON'BLE DEEPAK VERMA, J.**

1. Heard learned counsel for applicant, learned A.G.A. for the State and perused the record.
2. This application u/s 528 BNSS has been filed for quashing the summoning order dated 09.10.2025 passed by Special Judicial Magistrate-I, Banda in Complaint Case No.669/9/2025 (Ayodhya Prasad Singh Vs. Shiv Kumar Solanki) U/s 138 N.I. Act, Police Station-Kotwali Nagar, District-Banda.
3. It is submitted by learned counsel for applicant that vide order dated 09.10.2025 summon were issued thereafter date was fixed as 14.11.2025. On 14.11.2025, learned Magistrate issued bailable warrant and next date fixed as 08.12.2025. On 08.12.2025, learned Magistrate issued NBW against the applicant on non appearance. It is further submitted that NBW issued by learned Magistrate is non application of judicial mind.
4. Considering the argument raised by applicant's counsel, it is evident that warrant issued against the applicant is without application of judicial mind, as vide order date 09.10.2025 notice was issued and date was fixed for 14.11.2025 and on

14.11.2025 bailable warrant has been issued and date was fixed for 08.12.2025 and on next date, i.e., on 08.12.2025 NBW issued against the applicant. The procedure adopted by learned Magistrate is arbitrary and illegal and the same is hereby set aside, whereas, applicant had no knowledge regarding pendency of the proceedings and also got knowledge when summon has been issued. The summon issued by learned Magistrate is just and proper.

5. Applicant's counsel submits that applicant is ready to settle the matter.

6. Learned counsel for applicant has placed reliance on a judgment of Hon'ble Apex Court in the case of **Damodar S. Prabhu Vs. Sayed Babalal H.**, reported in 2010 (5) SCC 663. The relevant paragraphs no.17, 18 & 19 are quoted herein below:-

*"17. In a recently published commentary, the following observations have been made with regard to the offence punishable under Section 138 of the Act [Cited from: Arun Mohan, Some thoughts towards law reforms on the topic of Section 138, Negotiable Instruments Act-Tackling an avalanche of cases (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2009) at p. 5] :*

*"... Unlike that for other forms of crime, the punishment here (in so far as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque.*

*If we were to examine the number of complaints filed which were 'compromised' or 'settled' before the final judgment on one side and the cases which proceeded to judgment and*

*conviction on the other, we will find that the bulk was settled and only a miniscule number continued."*

*18. It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect. There is also some support for the apprehensions raised by the learned Attorney General that a majority of cheque bounce cases are indeed being compromised or settled by way of compounding, albeit during the later stages of litigation thereby contributing to undue delay in justice delivery. The problem herein is with the tendency of litigants to belatedly choose compounding as a means to resolve their dispute. ....*

*19. As mentioned earlier, the learned Attorney General's submission is that in the absence of statutory guidance, parties are choosing compounding as a method of last resort instead of opting for it as soon as the Magistrates take cognizance of the complaints. One explanation for such behaviour could be that the accused persons are willing to take the chance of progressing through the various stages of litigation and then choose the route of settlement only when no other route remains. While such behaviour may be viewed as rational from the viewpoint of litigants, the hard facts are that the undue delay in opting for compounding contributes to the arrears pending before the courts at various levels. If the accused is willing to settle or compromise by way of compounding of the offence at a later stage of litigation, it is generally indicative of some merit in the complainant's case. In such cases it would be desirable if parties choose compounding during the earlier stages of litigation. If however, the accused has a valid defence such as a mistake, forgery or coercion among other grounds, then the matter can be litigated through the specified forums."*

*7. As requested by the counsel, it is directed that the accused may appear before the court below within a period of one month from today through the representing counsel and move*

an application seeking compounding of offence through compromise and deposit 10% of cheque amount. On such application being moved the concerned court may take adequate steps in accordance with law in this regard and shall provide further opportunity to the accused which shall not exceed a maximum period of four months from today to make an endeavour in this direction. Thereafter, the court shall pass necessary orders specifically keeping in view the law laid down by the Apex Court in the case of Damodar S. Prabhu (supra) within a period of five months from today.

8. If the applicant does not appear before the trial court for compounding of offence through compromise, then he is required to appear and face the trial and the court shall be at liberty to proceed in accordance with law against the accused and take all necessary steps and measures to procure his attendance as the law permits.

9. In the aforesaid period of five months or till the decision given in the light of the application, whichever is earlier, no coercive measures shall be adopted against the accused.

10. It is further clarified that this order has been passed only with regard to the accused on behalf of whom this application u/s 528 BNSS has been moved in this Court.

11. With the aforesaid observations this application is **disposed off**.

**March 31, 2026**

Nitin Verma

**(Deepak Verma,J.)**