



2026:AHC-LKO:6537

AFR

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/s 482 No. - 692 of 2023

Ankur Asthana

.....Applicant(s)

Versus

State of U.P. Thru. Addl. Chief Secy. Home Deptt. and another

.....Opposite Party(s)

Counsel for Applicant(s)	: Anand Mani Tripathi, Anurag Tripathi
Counsel for Opposite Party(s)	: G.A., Anil Kumar Pandey, Ramakar Shukla

Along with :

Application U/s 482 No. 1829 of 2022:

1. Ankur Asthana

Versus

State of UP Thru. Addl. Chief Secy. Home Lko and another

**Reserved on 21.01.2026
Pronounced on 29.01.2026
Uploaded on 29.01.2026**

Court No. - 16

HON'BLE BRIJ RAJ SINGH, J.

Since the common question of facts and law are involved in both the applications, therefore, with the consent of the parties, they are being heard and decided by a common judgement.

In **APPLICATION U/s 482 No. 692 of 2023**, the applicant has sought following main relief(s) :-

“to quash the orders dated 04.01.2023 and 17.08.2022 passed by learned Additional Civil Judge Junior Division C-No.26/ Additional Judicial Magistrate - Sultanpur, in the interest of justice and the

Hon'ble Court further be pleased to restrain the lower Court 23 below from proceeding any further in pursuance of aforesaid Criminal Case No. 13 of 2022, Under Section 138 N.I. Act, Police Station-Kotwali Nagar, District-Sultanpur and also quash the entire proceeding of the above said case, in the interest of justice."

In **APPLICATION U/s 482 No. 1829 of 2022**, the applicant has sought following main relief(s) :-

"to quash the order dated 09.02.2022 in Criminal Case No. 390/2022 "M/s Kashish Enterprises Vs. Ankur Asthana" Under Section-138 N.I. Act, Police Station- Kotwali Nagar, District Sultanpur passed by the learned Court below i.e. Additional Civil Judge (Lower Division) Avar Khand/Judicial Magistrate Room No. 31 District Sultanpur and further proceedings of the case passed in pursuance thereof.

It is further prayed that this Hon'ble Court may kindly be pleased to quash the entire proceeding of Criminal Complaint No. 390/2022 "M/s Kashish Enterprises Vs. Ankur Asthana" Under Section-138 N.I. Act, Police Station- Kotwali Nagar, District Sultanpur, in the interest of justice."

Before proceeding, it would be apt to indicate that the applicant had challenged the order dated 09.02.2022 in **APPLICATION U/s 482 No. 1829 of 2022** whereby the complaint was directed to be registered and notice was issued to the applicant and during the pendency of the said application, the applicant has also filed second **APPLICATION U/s 482 No. 692 of 2023**.

Facts of the case, as stated by learned counsel for the applicant, are that the the opposite party no.2 preferred Criminal Complaint No. 390 of 2022 (M/s Kashish Enterprises Vs Ankur Asthana), under Section-138/142 of Negotiable Instruments Act, 1881 (in short "NI Act"), dated 03.02.2022. From a perusal of the above noted complaint, it transpires that the cheque was dishonoured due to insufficient fund and the said information was given by the complainant to the applicant through registered post on 11.09.2020. In the aforesaid complaint, an order dated 06.10.2020 has been passed by the trial Court directing for appearance of the applicant against which the applicant has filed revision

before the learned District and Session Judge, Sultanpur (in short “revisional Court”) and the said criminal revision was allowed vide order dated 18.11.2021. Against the order of revision dated 18.11.2021 passed by the revisional Court quashing the order dated 06.10.2020, the Opposite Party No. 2 had filed a petition under Section 482 Cr.P.C. before this Court registered as **APPLICATION U/S 482 No. 82 of 2022** and this Court passed an order dated 25.01.2022 modifying the order dated 18.11.2021 passed in Criminal Revision No. 11 of 2021 passed by Additional District and Session Judge Court No. 1 Sultanpur to the extent that the petitioner (opposite party no.2 herein) was permitted to file a fresh petition before the learned trial Court within a period of one month and the same shall be decided strictly in accordance with law.

It is also stated that the opposite party no. 2 again filed the complaint on 09.02.2022 in which the learned trial Court issued notice to the applicant without considering the relevant provisions and requirement under law as well as mandatory provision of NI Act. The opposite party no. 2 filed complaint before learned trial Court without fulfilling the mandatory provisions of Section 138 of NI Act as the fresh notice and its service is required before filing complaint, but learned trial Court without considering the legal requirement issued summon vide order dated 09.02.2022 in a most illegal and arbitrary manner. The trial Court again proceeded into the matter during pendency of **APPLICATION U/s 482 No. 1829 of 2022** filed by the applicant before this Court without considering the relevant fact and circumstances of the case with respect to the time period providing under the Act with respect to new complaint and passed the impugned orders thereby condoning the delay in filing the application/complaint and summoned the applicant without considering the whole aspect of the matter in detail which are not sustainable in the eyes of law in any manner.

Shri Anand Mani Tripathi, learned Senior Advocate has specifically pointed out that in the present matter, fresh legal notice is to be given and unless the cause of action is mentioned, the complaint is not maintainable. He has submitted that entire procedure of giving notice

and other provision in conformity with Section 138 of NI Act, period prescribed therein for procedure before filing of the complaint is to be followed. But the opposite party no.2 has not adopted such recourse, therefore, the entire complaint is liable to be set-side.

He has placed reliance on paragraph nos.36 to 40 of the judgment passed by Hon'ble Supreme Court in **Yogendra Pratap Singh v. Savitri Pandey**, reported in **AIR 2015 SC 157, 2014 AIR SCW 5751**.

On the other hand, Shri Ramakar Shukla, learned counsel for opposite party no.2 has invited attention of the Court towards the revisional court order dated 18.11.2021 in Criminal Revision No. 11 of 2021 by which Additional District and Session Judge, Court No.1, Sultanpur has observed that impugned order dated 06.10.2020 is illegal for the reason that complaint was filed and registered on 23.09.2020 and the Bank Report denotes the dishonor of the check is dated 03.09.2020 and it appears that the complaint was filed within fifteen days. Therefore, the impudent order was not sustainable. The revisional court treated that the complaint is premature and directed to file another complaint before the competent court. The revisional order was challenged by the opposite party no.2 by way of **APPLICATION U/S 482 No. 82 of 2022** and the Court modified the revisional order dated 18.11.2022 on 25.01.2022 with observation that the applicant (opposite party no.2 herein) is permitted to file a fresh petition before the learned trial Court within a period of one month and the same shall be decided strictly in accordance with law.

He has further submitted that in case, fresh complaint is to be filed then certainly this Court would have to consider period of at least forty-five days, which is the statutory period envisaged under proviso (b) and (c) of Section 138 of NI Act whereas in the present case, this Court has specifically said that the petitioner (opposite

party no.2 herein) has to file complaint within one month. The application for condonation of delay filed by opposite party no.2 was allowed and thereafter, the summon has been issued.

He has placed reliance on the judgment passed in **Yogendra Pratap Singh (Supra)** and has submitted in paragraph-42 of the judgment, Hon'ble Supreme Court has observed that fresh complaint may be filed within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the NI Act.

I have heard Sri A.M. Tripathi, learned Senior Advocate, assisted by Sri Anurag Tripathi, for the applicant as also Sri Ramakar Shukla, Advocate, for opposite party No. 2 and Sri Rao Narendra Singh, learned A.G.A. for the State and have perused the records.

Relevant paragraphs relied by learned counsel for the parties, for the sake of convenience, are extracted herein-below:-

“36. Can an offence under Section 138 of the NI Act be said to have been committed when the period provided in clause (c) of the proviso has not expired? Section 2(d) of the Code defines “complaint”. According to this definition, complaint means any allegation made orally or in writing to a Magistrate with a view to taking his action against a person who has committed an offence. Commission of an offence is a sine qua non for filing a complaint and for taking cognizance of such offence. A bare reading of the provision contained in clause (c) of the proviso makes it clear that no complaint can be filed for an offence under Section 138 of the NI Act unless the period of 15 days has elapsed. Any complaint filed before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint at all in the eye of the law. It is not the question of prematurity of the complaint where it is filed before the expiry of 15 days from the date on which notice has been served on him, it is no complaint at all under law. As a matter of fact, Section 142 of the NI Act, inter alia, creates a legal bar on the court from taking cognizance of an offence under Section 138 except upon a written complaint. Since a complaint filed under Section 138 of the NI Act before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint in the eye of the law, obviously, no cognizance of an offence can be taken on the basis of such complaint. Merely because at the time of taking cognizance by the

court, the period of 15 days has expired from the date on which notice has been served on the drawer/accused, the court is not clothed with the jurisdiction to take cognizance of an offence under Section 138 on a complaint filed before the expiry of 15 days from the date of receipt of notice by the drawer of the cheque.

*37. A complaint filed before the expiry of 15 days from the date on which notice has been served on drawer/accused cannot be said to disclose the cause of action in terms of clause (c) of the proviso to Section 138 and upon such complaint which does not disclose the cause of action the court is not competent to take cognizance. A conjoint reading of Section 138, which defines as to when and under what circumstances an offence can be said to have been committed, with Section 142(b) of the NI Act, that reiterates the position of the point of time when the cause of action has arisen, leaves no manner of doubt that no offence can be said to have been committed unless and until the period of 15 days, as prescribed under clause (c) of the proviso to Section 138, has, in fact, elapsed. Therefore, a court is barred in law from taking cognizance of such complaint. It is not open to the court to take cognizance of such a complaint merely because on the date of consideration or taking cognizance thereof a period of 15 days from the date on which the notice has been served on the drawer/accused has elapsed. We have no doubt that all the five essential features of Section 138 of the NI Act, as noted in the judgment of this Court in *Kusum Ingots & Alloys Ltd. [Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd., (2000) 2 SCC 745 : 2000 SCC (Cri) 546 : AIR 2000 SC 954]* and which we have approved, must be satisfied for a complaint to be filed under Section 138. If the period prescribed in clause (c) of the proviso to Section 138 has not expired, there is no commission of an offence nor accrual of cause of action for filing of complaint under Section 138 of the NI Act.*

*38. We, therefore, do not approve the view taken by this Court in *Narsingh Das Tapadia [Narsingh Das Tapadia v. Goverdhan Das Partani, (2000) 7 SCC 183 : 2000 SCC (Cri) 1326]* and so also the judgments of various High Courts following *Narsingh Das Tapadia [Narsingh Das Tapadia v. Goverdhan Das Partani, (2000) 7 SCC 183 : 2000 SCC (Cri) 1326]* that if the complaint under Section 138 is filed before the expiry of 15 days from the date on which notice has been served on the drawer/accused the same is premature and if on the date of taking cognizance a period of 15 days from the date of service of notice on the drawer/accused has expired, such complaint was legally maintainable and, hence, the same is overruled.*

*39. Rather, the view taken by this Court in *Sarav Investment & Financial Consultancy [Sarav Investment & Financial Consultancy (P) Ltd. v. Llyods Register of Shipping Indian Office Staff Provident Fund, (2007) 14 SCC 753 : (2009) 1 SCC (Cri) 935]* wherein this Court held that service of notice in terms of Section 138 proviso (b) of the NI Act was a part of the cause of action for lodging the complaint and*

communication to the accused about the fact of dishonouring of the cheque and calling upon to pay the amount within 15 days was imperative in character, commends itself to us. As noticed by us earlier, no complaint can be maintained against the drawer of the cheque before the expiry of 15 days from the date of receipt of notice because the drawer/accused cannot be said to have committed any offence until then. We approve the decision of this Court in Sarav Investment & Financial Consultancy [Sarav Investment & Financial Consultancy (P) Ltd. v. Llyods Register of Shipping Indian Office Staff Provident Fund, (2007) 14 SCC 753 : (2009) 1 SCC (Cri) 935] and also the judgments of the High Courts which have taken the view following this judgment that the complaint under Section 138 of the NI Act filed before the expiry of 15 days of service of notice could not be treated as a complaint in the eye of the law and criminal proceedings initiated on such complaint are liable to be quashed.

40. *Our answer to Question (i) is, therefore, in the negative.*

41. *The other question is that if the answer to Question (i) is in the negative, can the complainant be permitted to present the complaint again notwithstanding the fact that the period of one month stipulated under Section 142(b) for the filing of such a complaint has expired.*

42. *Section 142 of the NI Act prescribes the mode and so also the time within which a complaint for an offence under Section 138 of the NI Act can be filed. A complaint made under Section 138 by the payee or the holder in due course of the cheque has to be in writing and needs to be made within one month from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. The period of one month under Section 142(b) begins from the date on which the cause of action has arisen under clause (c) of the proviso to Section 138. However, if the complainant satisfies the court that he had sufficient cause for not making a complaint within the prescribed period of one month, a complaint may be taken by the court after the prescribed period. Now, since our answer to Question (i) is in the negative, we observe that the payee or the holder in due course of the cheque may file a fresh complaint within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the NI Act. This direction shall be deemed to be applicable to all such pending cases where the complaint does not proceed further in view of our answer to Question (i). As we have already held that a complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable, the complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso, satisfying the court of sufficient cause. Question (ii) is answered accordingly.”*

After going through the record and judgment of Hon'ble Supreme Court, paragraph-41 wherein it is provided that the payee or the holder in due course of the cheque may file a fresh complaint within one month from the date of decision in the criminal case and, in that event, delay in filing the complaint will be treated as having been condoned under the proviso to clause (b) of Section 142 of the NI Act.

Hon'ble Supreme Court has further observed that a complaint filed before the expiry of 15 days from the date of receipt of notice issued under clause (c) of the proviso to Section 138 is not maintainable, the complainant cannot be permitted to present the very same complaint at any later stage. His remedy is only to file a fresh complaint; and if the same could not be filed within the time prescribed under Section 142(b), his recourse is to seek the benefit of the proviso, satisfying the court of sufficient cause.

In the present case also, this Court in **Application U/s 482 No. 82 of 2022** has already given direction to the opposite party no.2 to file a fresh petition within a period of one month. The argument that fresh legal notice is required is misconceived.

Both the application(s) are **rejected**. No order as to costs.

(Brij Raj Singh,J.)

January 29, 2026

Mohit Singh/-