



2026:AHC:59339

## HIGH COURT OF JUDICATURE AT ALLAHABAD

### APPLICATION U/S 528 BNSS No. - 11285 of 2026

Vinod Kumar

.....Applicant(s)

Versus

State Of U.P. Thru. Principal Secretary Home And  
Another

.....Opposite  
Party(s)

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| Counsel for Applicant(s)      | : | Amit Kumar Yadav |
| Counsel for Opposite Party(s) | : | G.A.             |

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**Court No. - 74**

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

1. Heard learned counsel for the applicant; learned A.G.A for the State as also perused the record.
2. Instant application has been filed to quash the Summoning Order dated 04.04.2023 as well as entire proceedings of Complainant Case No. 7521 of 2022, under section 138 of N.I. Act, Police Station Nagar, District Basti.
3. It is alleged in the complaint that applicant and opposite party no.2 are relative and applicant issued a cheque in favour of opposite party no.2. When the cheque was presented before the bank, the same was dishonoured, hence the present complaint.
4. Counsel for the applicant submits that applicant and opposite party no. 2 are relative and he had not issued any cheque. The allegation alleged in the complaint is false and baseless. The summoning order passed by the learned Judicial Magistrate is without application of judicial mind.
5. Learned A.G.A. 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.
6. From perusal of the impugned order, it is apparent that the learned Magistrate has passed the said order after perusing the material evidence on record. The order impugned is just and proper and impugned order

does not suffer from any illegality and infirmity. It is apparent that trial proceedings are going on, witnesses are being examined and the proceedings are on the verge of conclusion. Moreover, the arguments raised by the counsel for the applicant are disputed question of facts which 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 23, 2026**  
Meenu Singh