



2026:AHC:129508

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 23619 of 2026

Chairman Samrat Builders And Property Through
Vinod Sagar

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Girijesh Kumar Gupta, Shiv Shankar
Pd Gupta

Counsel for Opposite Party(s) : G.A.

Court No. - 73

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri G.K. Gupta, learned counsel for the applicant and learned AGA for the State.

2. This is an application under Section 528 BNSS seeking quashing the entire criminal proceeding in pursuance of impugned summoning order dated 26-11-2024 passed by Civil Judge (Sr. Div) F.T.C. (Fast Track Court)/A.C.J.M. Hapur in Complaint Case no 2302/2024, under section 138 Negotiable Instruments Act 1881, (N.I. Act), Police Station- Hapur Nagar, District Hapur, *Pravesh Kumar Vs Samrat Bilder and Property*, pending before the court of learned Civil Judge (Sr. Div) F.T.C. (Fast Track Court)/A.C.J.M. Hapur.

3. Learned counsel for the applicant has submitted that a complaint stood lodged by the opposite party no. 2 / complainant against the applicant under Section 138 of the NI Act on 28.08.2024 with an allegation that the applicant herein had taken a loan of Rs. 10 lacs, and thereafter, a cheque bearing No. 004417 dated 15.05.2024 came to be drawn which on presentation in the bank came to be dishonoured with the remark "funds insufficient". On 30.05.2024, again the said cheque was presented before the bank, which was dishonoured on 16.07.2024 and a registered notice came to be issued on 29.07.2024 which was received on 31.07.2024 and on 28.08.2024, the complaint came to be lodged and on 26.11.2024, the applicant came to be summoned under Section 138 of the NI Act.

4. Questioning the summoning order dated 28.11.2024, the present

application has been filed.

5. Learned counsel for the applicant has submitted that no offences under Section 138 of the NI Act are made out, particularly when according to the applicant, the applicant in connection with another criminal case by virtue of the order of the court dated 20.05.2024 was confined in jail and on 16.09.2025, he was enlarged on bail.

6. Submission is that the recital contained in the complaint as well as in the summoning order that notice came to be served post-dishonor of the cheque is incorrect and false. Further submission is that once the applicant was in jail, then there was no question of service of legal notice and further, according to the applicant, the recital contained in the complaint that again the cheque was presented on 16.07.2024 is nothing but an act to overcome the hurdle of delay. Submission is that none of the offences under Section 138 of the NI Act are made out.

7. Learned A.G.A. on the other hand submits whatever might be the issues which the applicant seeks to raise are the matter of defense, consideration whereof would be necessitated only when the trial commences.

8. I have heard the submissions so made across the Bar and perused the records carefully.

9. Apparently, a cheque came to be drawn which was dishonoured on 30.05.2024. Again the cheque was presented, which was dishonoured and a notice came to be issued. The question whether the applicant was in jail or not and whether the notice has been served or not is a question of trial which cannot be gone into at this stage. Moreover, presumption under Section 139 of the NI Act is already there. Nonetheless, it is for the applicant to contest the proceedings and to take all legal and factual submissions and in case he has not applied for bail, then to may seek bail.

10. As regards the arguments so raised by the counsel for the applicant that the cheque had been drawn by the applicant being Vinod Kumar Sagar is concerned, for Samrat Builders and Properties, but, the complaint came to be filed while impleading Samrat Builders and Properties is concerned.

11. In the opinion of the Court, as apparent from page58, which is Form GST REG-06, Samrat Builders and Associate is a proprietorship firm, and once the firm in question is a proprietorship firm then, whether the

proprietorship firm or the proprietor is made a party, the same would make no difference as the concept of a company would not apply in view of the law laid down by the Hon'ble Supreme Court in the case of ***Dhanasingh Prabhu vs. Chandrashekhar, SLP (Crl) No.5706 of 2024*** decided on 14.07.2025.

12. Accordingly, interference is declined. The application stands **disposed off**, leaving it open for the applicant to contest the trial while taking all legal and factual submissions.

June 29, 2026

N.S.Rathour

(Vikas Budhwar,J.)