



2026:AHC:55870

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 49587 of 2025

Rajendra Prasad Sharma

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Mohd. Asim Zulfiquar
Counsel for Opposite Party(s)	:	G.A.

Court No. - 73

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 impugned order date 09.05.2024 passed by the Additional Chief Judicial Magistrate, Court No.2, Agra as well as entire proceeding of complaint case no. 523/2019 "Smt. Asha Devi vs Rajendra Prasad Sharma" u/s 138 N.I. Act, P.S. Hari Parvat, District Agra.

3. Learned counsel for the applicant submits that Opposite Party No. 2, by way of the present complaint under Section 138 of the Negotiable Instruments Act, has alleged that the applicant issued a cheque for an amount of Rs.3,00,000. Upon presentation of the said cheque in the bank, it was dishonoured with the remark "insufficient funds." Thereafter, a statutory notice was issued to the applicant, and subsequently, the complaint was filed. It is further submitted that the applicant appeared before the trial court and filed objections on two grounds. Firstly, that the legal notice was sent on 11.06.2019 and was received by the applicant on 13.06.2019. The statutory period of one month from the date of receipt of notice expired on 14.07.2019; however, the complainant filed the complaint on 10.07.2019, i.e., prior to the expiry of the prescribed period. Therefore, the complaint is premature and not maintainable in the eyes of law. Secondly, that the cheque in question is dated 20/01/2019, though there appears to be an alteration in the month. As per the said date, the validity period of three months expired on 20/04/2019; however, the cheque was presented on 04/05/2019, beyond the prescribed period,

rendering it invalid for enforcement. It is further submitted that the complainant incorrectly mentioned the cheque date in the notice, thereby creating inconsistency. On merits, it is argued that the cheque was issued conditionally towards consideration for a plot, with an understanding that it would be encashed only after execution of the sale deed. The complainant allegedly failed to execute the sale deed and prematurely presented the cheque without notice to the applicant. Learned Magistrate without considering the objection of the applicant, in ordinary manner rejected the objection of the applicant on the ground that in view of **Adalat Prasad vs. Roop Lal Jindal and others, 2004 (II) Supreme Court Cases (Cr.) 1927=2005** passed by Hon'ble Apex Court with observation that after summoning under Section 204 Cr.P.C., the Court/magistrate has no power to recall the same. He also observed that after considering the judgement of High Court Allahabad in the case of **Amit Singh vs. State of Uttar Pradesh and Others, 2013 (1) J.I.C. 2017 Allahabad** that discharge under Sections 249, 258, 262, 265 Cr.P.C. is not maintainable. Learned counsel for the applicant lastly submitted that without going into merit of the case and considering the facts, rejected the objection filed by the applicant. Learned counsel for the applicant placed reliance on the judgement of Honble Apex Court in **Bhushan Kumar and Another vs. State (NCT of Delhi) and Another, AIR 2012 Supreme Court 1747** and the relevant paragraph No.17 is quoted as under:

"17) It is inherent in [Section 251](#) of the Code that when an accused appears before the trial Court pursuant to summons issued under [Section 204](#) of the Code in a summons trial case, it is the bounden duty of the trial Court to carefully go through the allegations made in the charge sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per [Section 239](#) of the Code."

5. Learned counsel for the applicant further place reliance on the judgement of Delhi High Court in **Arvind Kejriwal and other vs. Amit Sibal and Another, (2014) 1 High Court Cases (Del) 719** and relevant

paragraph No.8 is quoted as under:-

"8. It is no doubt true that Apex Court in Adalat Prasad Vs. Rooplal Jindal and Ors. (2004) 7 SCC 338 has ruled that there cannot be recalling of summoning order, but seen in the backdrop of decisions of Apex Court in Bhushan Kumar and Krishan Kumar (supra), aforesaid decision cannot be misconstrued to mean that once summoning order has been issued, then trial must follow. If it was to be so, then what is the purpose of hearing accused at the stage of framing Notice under Section 251 of Cr.P.C. In the considered opinion of this Court. Apex Court's decision in Adalat Prasad (supra) cannot possibly be misread to mean that proceedings in a summons complaint case cannot be dropped against an accused at the stage of framing of Notice under Section 251 of Cr.P.C. even if a prima facie case is not made out. In the aforesaid view, this petition and the application are disposed of without commenting upon the merits of this case and with liberty to petitioner to urge the pleas taken herein before the trial court. Needless to say, the pleas raised by petitioner at the hearing on the point of Notice under Section 251 pleas raised by petitioner at the hearing on the point of Notice under Section 251 of Cr.P.C. shall be dealt with by the trial court by passing a reasoned order so that petitioner may avail of the remedies available in law, if need be. Since the plea pertaining to Section 305 of Cr.P.C. goes to the root of this matter, therefore, till the hearing on the point of Notice under Section 251 of Cr.P.C. is concluded by the trial court, personal appearance of petitioner before the trial court is dispensed with provided petitioner is duly represented by counsel, who does not seek adjournment."

6. Learned counsel for the applicant placed reliance on the judgement Hon'ble Supreme Court in the case of **Kaveri Plastics vs. Mahdoom Bawa Bahrudeen Noorul**, 2025 INSC 1133 and relevant paragraph No.8.1 is quoted as under:-

"8.1 A failure in above regard, namely when the cheque amount is not mentioned in the Proviso (b) notice or the amount different than the actual cheque amount is mentioned, in the notice, such notice would stand invalid in eye of law. The notice in terms of Proviso (b) being a provision

in penal statute and a condition for the offence, it has to be precise while mentioning of the amount of the cheque which is dishonoured. Even if the cheque details are mentioned in the notice but corresponding amount of cheque is not correctly mentioned, it would not bring in law the validity for such notice. Here the principle of reading of notice as a whole is inapplicable and irrelevant. Any elasticity cannot be adopted in the interpretation. It has to be given technical interpretation."

7. Learned counsel for the applicant lastly submitted that complaint was lodged in regard to cheque issued for amount of Rs.3 lacs whereas demand notice was issued from the applicant for amount of Rs.20 lacs. In view of the judgement of Hon'ble Apex Court in paragraph No.8.1, complaint is not maintainable and is liable to be set aside.

5. Learned A.G.A. has 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. Heard learned counsel for the parties and considered the arguments advanced by learned counsel for the applicant. The present application has been filed against the order dated 09.05.2024, whereby the objections filed by the applicant before the trial court on two grounds, namely, (i) that the date mentioned on the cheque is interpolated and shown as 20.01.2019, with validity up to 20.04.2019, and (ii) that the present complaint is premature, having been filed before completion of the prescribed statutory period, were rejected. It is noteworthy that the applicant did not raise any objection before the trial court to the effect that the cheque was issued for Rs.3,00,000, whereas the demand notice was issued for Rs.20,00,000. The learned Magistrate, after considering the objections, has categorically recorded a finding that the objection with regard to interpolation in the cheque cannot be examined at this stage, as it requires evidence. The court has further observed that, in view of the judgment in *Adalat Prasad vs. Roop Lal Jindal and Others* (supra), the Magistrate has no power to recall the summoning order. Since the applicant had the opportunity to raise all objections before the trial court but failed to raise the objection regarding the alleged excess demand in the notice, and has now raised the same for the first time in the present application under Section 528 BNS, such a plea cannot be entertained at

this stage. From the record, it is also apparent that summons had been issued against the accused/applicant by order dated 2.9.2019, the applicant did not appear before trial court till 9.8.2023. Since, 2.9.2019 to 9.8.2023, applicant avoided trial proceedings and delayed the present proceeding, trial court issued bailable warrants and non bailable warrants. Thereafter, also started proceedings under Section 82 and 83 Cr.P.C. The applicant on 19.8.2023 surrendered. The act of the applicant cannot be appreciated, which shows malice intention only to delay the proceeding. The argument raised by counsel for the applicant are mostly in regard to disputed questions of facts. Applicant and complainant have right to produce evidence that will be evaluated by the trial court. The order passed by the learned Magistrate is just and proper and does not suffer from any illegality or infirmity. Accordingly, no interference is required.

7. In view of aforesaid, no interference is warranted by this Court. The present application is, accordingly, **dismissed**.

(Deepak Verma,J.)

March 18, 2026

KJ