



2026:AHC:64698

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 49710 of 2025

Devesh Real Estate

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Diwan Saifullah Khan,
Shama Parveen

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

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 25.11.2021 as well as entire proceedings of complaint case no. 28708 of 2021 (Lalita Prasad Yadav Vs. Devesh Real Estate) under section 138 N.I. Act, Police Station Lalpur/Pandeypur, District Varanasi, pending in the court of Additional Chief Judicial Magistrate Court no. 3, Varanasi, by means of which the applicant has been summoned to face the trial under Section 138 of Negotiable Instrument Act, 1881.

3. It is submitted by learned counsel for applicant that there is money dispute between the parties and opposite party no.2 has filed a complaint under Section 138 of N.I. Act against the applicant. It is further submitted that since there is some dispute regarding payment of money and as such there is a good chance of amicable settlement of dispute through compromise.

4. 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."

5. 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.

6. 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.

7. 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.

8. 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.

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

March 28, 2026

Nitin Verma

(Deepak Verma,J.)