



2026:AHC:61883

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 51035 of 2025

Rohit Gupta

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Amarnath Tripathi
Counsel for Opposite Party(s)	:	Brij Bhushan Upadhyay, G.A.

Court No. - 74

HON'BLE DEEPAK VERMA, J.

1. Heard learned counsel for the applicant, learned counsel for opposite party no.2 and learned AGA for the State.
2. The present 528 BNSS application has been filed to quash the Summoning order dated 29.09.2025 passed by the court of Additional Chief Judicial Magistrate, Court no. 08, Varanasi in case no. 4342 of 2024 as well as the entire consequential proceeding of Case no. 4342 of 2024 (Amit Gupta vs. Rohit Gupta) under sections 138 N.I. Act registered in Police Station Sagra, District- Varanasi, pending in the court of Additional Chief Judicial Magistrate, Court no. 08, Varanasi.
3. Counsel for the applicant submits that it is alleged in the complaint that applicant and opposite party no.2 are real brothers. It is stated that applicant borrowed money from opposite party no.2 when the same was returned by way of cheque, the same got dishonored. Present complaint is not maintainable as there is no averment in regard to liability and applicant has not issued any cheque in favour of opposite party no.2. Allegation in the complaint is false and baseless and not supported by any material evidence. Summoning by learned Magistrate is without application of judicial mind. On perusal of contents of complaint and statement recorded U/s 223 BNSS, no offence under the alleged section is made out. Moreover, applicant has not filed objection in view of provision provided U/s 223 BNSS regarding issuance of summon. The cheque was not filled by the applicant but the same was stolen by the

opposite party no.2 from the possession of his father and filled the cheque and presented before the Bank. Applicant had never presented cheque to opposite party no.2 for withdraw. Further, he placed reliance over the judgment passed by co-ordinate Bench of this Court in Application U/s 482 No.10390 of 2024 (Prateek Agarwal Vs. State of U.P. through Addl. Chief Secy. Deptt. Home Lko. and another) in regard to 223 proceedings, is not acceptable as the same is passed in criminal proceeding U/s 302, 328 I.P.C.

4. *Per contra*, learned counsel for opposite party no.2 opposed the submission raised by applicant's counsel and submits that applicant and opposite party No.2 are real brother and on account of business deal applicant gave the disputed cheque to the opposite party no.2, which got dishonoured, as such, prima facie, offence is made out against the applicant. The proceeding U/s 138 and provision provided U/s 223 is not applicable.

5. Considering the argument advanced by applicant's counsel, it is evident from contents of complaint, prima facie, discloses offence against the applicant and opposite party no.2 and applicant are real brothers and they started business and both were partner in the business and in business transaction, applicant given disputed cheque to the opposite party No.2, which got dishonored, as such, prima facie, offence is made out against the applicant. Applicant's averment regarding he should be given opportunity as provided under the proviso 225 is not required. It is admitted that applicant's signature is over the disputed cheque which was given to opposite party No.2 and the same got dishonored, hence, no interference is warranted.

6. 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."

7. 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. The Hon. Apex Court in **Sanjabij Tari Vs. Kishore S. Borcar and another**, reported in 2025 SCC Online SC 2069, has considered following judgments:

"E. Recently, the High Court of Karnataka in Ashok Vs. Fayaz Aahmad, 2025 SCC OnLine Kar 490 has taken the view that since NI Act, is a special enactment, there is no need for the Magistrate to issue summons to the accused before taking cognizance (under Section 223 of BNSS) of complaints filed under Section 138 of NI Act. This Court is in agreement with the view taken by the High Court of Karnataka. Consequently, this

Court directs that there shall be no requirement to issue summons to the accused in terms of Section 223 of BNSS, i.e., at the pre-cognizance stage."

10. 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 25, 2026
Nitn Verma