



2026:AHC:55792

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 51044 of 2025

Manish Yadav

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Anand Kumar Singh, Harish Kumar
Srivastava, Sr. Advocate

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

Court No. - 73

HON'BLE DEEPAK VERMA, J.

1. Supplementary affidavit, filed today, is taken on record.

2. Heard Sri Imranullah, learned Senior Advocate assisted by Sri H.K. Srivastava, learned counsel for applicant; learned AGA for the State and perused the record.

3. The present application has been filed to quash the summoning order dated 07.10.2023 as well as entire proceedings of Complaint Case No. 01 of 2023, Under Section 138 N.I. Act, Police Station Machhali Shahar, District Jaunpur, pending in the Court of Learned Additional Civil Judge (Junior Division), New Court-III/Judicial Magistrate, Jaunpur.

4. It is alleged in the complaint that applicant and opposite party no.2 had friendly relation and to pay the old liability, the applicant issued a cheque No.829064 of Rs.9 lakh dated 03.10.2022, from saving account of SBI, Machlishahr. When the opposite party no.2 presented the cheque in bank, the same was returned by the applicant's bank with report that customer has not confirmed you. Again on submission/persuasion of complainant presented in bank, the same was dishonoured with report that 'fund insufficient', then the present application under Section 138 N.I. Act has been lodged against the applicant. The learned Magistrate after taking cognizance issued summons on 07.10.2023.

5. Counsel for the applicant submitted that no offence under the alleged section is made out against the applicant. There is no evidence, prima facie to implicate the applicant in the present case. The opposite party no. 2 earlier, lodged a complaint against the wife of the applicant as Complaint No.452 of 2022 which was dismissed by the learned Magistrate vide order dated 28.06.2025. Thereafter the opposite party no. 2 has lodged present complaint against the applicant. Counsel for the applicant further submitted that it is admitted fact which is apparent from the complaint that applicant is residing in Lucknow and as per provisions provided under Section 202 (1) Cr.P.C. read with Section 145 N.I. Act mandatory inquiry is necessary before issuing summons. Counsel for the applicant has placed reliance over the judgment of Apex Court **In Re:Expeditious Trial of Cases Under**

Section 138 of N.I. Act 1881 (Suo Motu Writ Petition (Crl.) No. 02 of 2020) decided on 16.04.2021 wherein the Hon. Apex Court in para-10,11 and 12 has held thus:

"10. Section 202 of the Code confers jurisdiction on the Magistrate to conduct an inquiry for the purpose of deciding whether sufficient grounds justifying the issue of process are made out. The amendment to Section 202 of the Code with effect from 23.06.2006, vide Act 25 of 2005, made it mandatory for the Magistrate to conduct an inquiry before issue of process, in a case where the accused resides beyond the areas of jurisdiction of the court. See: *Vijay Dhanuka & Ors. v. Najima Mamta & Ors.*, *Abhijit Pawar v. Hemant Madhukar Nimbalkar and Anr.* and *Birla Corporation Limited v. Adventz Investments and Holdings Limited & Ors.*". There has been a divergence of opinion amongst the High Courts relating to the applicability of Section 202 in respect of complaints filed under Section 138 of the Act. Certain cases under Section 138 have been decided by the High Courts upholding the view that it is mandatory for the Magistrate to conduct an inquiry, as provided in Section 202 of the Code, before issuance of process in complaints filed under Section 138. Contrary views have been expressed in some other cases. It has been held that merely because the accused is residing outside the jurisdiction of the court, it is not necessary for the Magistrate to postpone the issuance of process in each and every case. Further, it has also been held that not conducting inquiry under Section 202 of the Code would not vitiate the issuance of process, if requisite satisfaction can be obtained from materials available on record.

11. The learned Amici Curiae referred to a judgment of this Court in *K.S. Joseph v. Philips Carbon Black Ltd & Anr.* where there was a discussion about the requirement of inquiry under Section 202 of the Code in relation to complaints filed under Section 138 but the question of law was left open. In view of the judgments of this Court in *Vijay Dhanuka* (supra) *Abhijit Pawar* (supra) and *Birla Corporation* (supra), the inquiry to be held by the Magistrate before issuance of summons to the accused residing outside the jurisdiction of the court cannot be dispensed with. The learned Amici Curiae recommended that the Magistrate should come to a conclusion after holding an inquiry that there are sufficient grounds to proceed against the accused. We are in agreement with the learned Amici

12. Another point that has been brought to our notice relates to the interpretation of Section 202 (2) which stipulates that the Magistrate shall take evidence of the witness on oath in an inquiry conducted under Section 202 (1) for the purpose of issuance of process. Section 145 of the Act provides that the evidence of the complainant may be given by him on affidavit, which shall be read in evidence in any inquiry, trial or other proceeding, notwithstanding anything contained in the Code. Section 145 (2) of the Act enables the court to summon and examine any person giving evidence on affidavit as to the facts contained therein, on an application of the prosecution or the accused. It is contended by the learned Amici Curiae that though there is no specific provision permitting the examination of witnesses on affidavit, Section 145 permits the complainant to be examined by way of an affidavit for the purpose of inquiry under Section 202. He suggested that Section 202 (2) should be read along with Section 145 and in respect of complaints under Section 138, the examination of witnesses also should be permitted on affidavit. Only in exceptional cases, the Magistrate may examine the witnesses personally. Section 145 of the Act is an exception to Section 202 in respect of examination of the complainant by way of an affidavit. There is no specific provision in relation to examination of the witnesses also on affidavit in Section 145. It becomes clear that Section 145 had been inserted in the Act, with effect from the year 2003, with the laudable object of speeding up trials in complaints filed under Section 138. If the evidence of the complainant may be given by him on affidavit, there is no reason for insisting on the evidence of the witnesses to be taken on oath. On a holistic reading of Section 145 along with Section 202, we hold that Section 202 (2) of the Code is inapplicable to complaints under Section 138 in respect of examination of witnesses on oath. The evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses. In suitable cases, the Magistrate can examine documents for satisfaction as to the sufficiency of grounds for proceeding under Section 202."

6. In view of Apex Court judgment, an inquiry is must and necessary before issuance of summons. On perusal of summoning order, it is apparent that learned Magistrate without inquiry provided under Section 202(1) Cr.P.C. issued summons against the applicant which is liable to be set aside.

7. Learned A.G.A. vehemently opposed the submission raised by the counsel for the applicant and submitted that on perusal of summoning order, it is apparent that learned Magistrate after perusing the complaint, affidavit, notice issued to the applicant, photocopy of the cheque and other material evidence and examining the complainant by way of affidavit, prima facie found evidence against the applicant under the aforesaid section and summoned the applicant. The learned A.G.A. has pointed out the paragraph 24 of the **In Re:Expeditious Trial of Cases** (supra). The Hon. Apex Court in para-24 (1) has observed that the High Court requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial. Para-24 (2) says that inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused. Amendment has incorporated in the Act only for the purposes for Magistrate, before acts on the complaint by issuing process against the person named as an accused therein, he shall satisfy himself about the existence of sufficient ground for proceedings against him, particularly where he is residing outside his jurisdiction. The amended provision is aimed to prevent innocent persons residing at far places from harassment by unscrupulous person, filing unfounded and false complaints.

8. In the present case, the learned Magistrate has issued notice after adjudicating complaints; notice issued to applicant's cheque and examined the complainant on affidavit. The summoning order dated 07.10.2023 by the learned Magistrate cannot be said to have been issued without conducting inquiry. No interference is warranted.

9. The application is, accordingly, rejected.

(Deepak Verma,J.)

March 18, 2026

Meenu Singh