

# **Smt. Shabana Khandelwal vs State Of U.P. And 3 Others on 28 February, 2025**

**Author: Saurabh Srivastava**

**Bench: Saurabh Srivastava**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:29037

Court No. - 79

Case :- MATTERS UNDER ARTICLE 227 No. - 518 of 2025

Petitioner :- Smt. Shabana Khandelwal

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Rajesh Yadav

Counsel for Respondent :- G.A.

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Rajesh Yadav, learned counsel appearing on behalf of petitioner and learned AGA for the State.

2. Present petition has been preferred with the following prayers:-

"1. Issue a direction to set aside the impugned revisional order dated 16.10.2024 (annexure no. 1 to the instant petition) passed by Additional District & Special Judge/Special Judge (POCSO Act), Court no. 30, Agra in Criminal Revision Case no. 598 of 2024 (Smt. Shabana Khandelwal vs. State of U.P. & others) under Section 138

of N.I. Act, Police Station Lohamandi, District Agra, and impugned order dated 16.7.2024 (Annexure no. 2 to the instant petition) passed by Presiding Officer, Special Court, N.I. Act, Agra in Complaint Case no. 5110 of 2017 (Smt. Shabana Khandelwal vs. Anupam Omarion Infra Pvt. Ltd. & others) under Section 138 N.I. Act, Police Station Lohamandi, District Agra.

2. Issue a direction directing the court below to summon the respondent no. 2 i.e. Company namely Anupam Omarion Infrastructure Private Limited in the complaint case no. 5110 of 2017 (Smt. Shabana Khandelwal vs. Anupam Omarion Infra Private Limited & others) under section 138 N.I. Act, in accordance with the provision of Section 319 Cr.P.C."

3. The legal arguments has been raised for challenging the order dated 02.05.2017 and 16.07.2024 passed by learned court of Additional Chief Judicial Magistrate, Court no. 11, Agra and Special Court, 138 N.I. Act, Agra, through which only the respondent nos. 3 and 4 have been summoned and application under Section 319 Cr.P.C. has been rejected by learned concerned court respectively.

4. Being aggrieved with the order dated 16.07.2024, petitioner preferred Criminal Revision no. 598 of 2024 (Smt. Shaban Khandelwal vs. State of U.P. and others) but the same was also dismissed vide order dated 16.10.2024.

5. Learned counsel for the petitioner submitted that the instrument executed in favour of the petitioner was on behalf of respondent no. 2 by the authorised signatory, although after preferring Complaint Case no. 5110 of 2017, respondent nos. 3 and 4 have been summoned but at the same time, respondent no. 2 was left to be summoned without any plausible and cogent reasons, whereas the law held by Hon'ble Apex Court in case of Aneeta Hada vs M/S Godfather Travels & Tours Pvt.Ltd decided, AIR 2012 SC(Criminal) 892 and Sukhpal Singh Khaira vs The State Of Punjab, 2022 SCC OnLine SC 1679 wherein it is crystal clearly mentioned that in case the instrument put for honor is executed in favour of drawee, in case of failure of payment the company/firm will be the mandatory party and as such learned court concerned was mandated under the law to issue summoning orders against respondent no. 2 also.

6. Learned counsel for the petitioner further submitted that regarding the discrepancy arising while passing the order dated 02.05.2017, the same has been brought to the notice before learned concerned court by way of filing a specific application under Section 319 of Cr.P.C. but the same was rejected in gross violation of the settled principles of law as enunciated by Hon'ble Apex Court.

7. While challenging the dismissal order passed over application under Section 319 Cr.P.C. dated 17.05.2024, before learned revisional court the same grounds were raised but no credence has been given by the revisional court which impugned the present petition.

8. Learned AGA vehemently opposed the prayer as made in the petition and submitted that on the basis of the proceedings which has been culminated into recording statement under Section 251 and 313 Cr.P.C. and as such the application preferred at the behest of petitioner at highly belated stage

has been rightly rejected by learned concerned court.

9. Since, learned counsel for petitioner argued the matter only on the legal issues and as such process of issuing notice to respondent nos. 2 to 4 is hereby dispensed with.

10. After hearing the rival submissions extended by learned counsel for the parties and while examining the findings returned with learned revisional court it transpires that learned revisional court admitted the arguments raised by learned counsel for the petitioner and showed his agreement over the same that the company is the mandatory party who has to be summoned, if the instrument has to be executed on behalf of the company/firm but the same fact has been brought at highly belated stage into the notice of the learned concerned court and as such the denial of the same is having no infirmity which culminated into order dated 16.10.2024.

11. The role of the complainant is to seeking prayer for ensuring payment in respect of the instrument executed by respondents by way of filing specific application under Section 138 N.I. Act, so far as procedural part is concerned, the same has to be ensured by learned concerned court specifically in shape of at the stage of summoning and under which circumstances, the company was left to summon that has to be carefully considered by learned concerned court, if the same has left at the time of issuing summoning orders against respondent nos. 3 and 4 and the same has been brought to the notice of learned concerned court by the complainant there was no reasons to not rectify the legal error which is apparent from the face of record but the rejection of the application only on the ground that the matter has already been proceeded up to the stage of recording statement under Section 313 Cr.P.C, the same cannot be given any excuse for mistake available at law and once the Hon'ble Apex Court has held in several judgments which has been considered by learned revisional court at the time of preferring revision at the behest of petitioner and admitted the law along with the arguments raised by learned counsel appearing for petitioner, denial of the same amounts to perpetuation of the illegality which has been made by learned concerned court.

12. The scope of revisional court although very limited but at the same time, the revisional court must record proper reasoning if the order is having perversity and illegality if involved which is put for revision before learned revisional court, once it has been mentioned in the order itself that there is an illegality involved while passing the order by learned concerned court, it is highly surprising that under which circumstances the same has not been indicated by learned revisional court in shape of direction by way of only reconsidering the summoning orders which was left to be issued against the respondent no. 2. There was also no occasion to set aside the summoning order already issued against respondent nos. 3 and 4 and as such the finding returned by learned revisional court is highly illegal and the same is not sustainable in the eye of law.

13. In view of the aforementioned discussions and in the light of the judgment of Aneeta Hada and Sukhpal Singh Khaira (supra) rendered by Hon'ble Apex Court, order dated 16.07.2024 passed by learned Presiding Officer, Special Court, N.I. Act, Agra in Complaint Case no. 5110 of 2017 and order dated 16.10.2024 passed by learned Additional District & Special Judge/Special Judge (POCSO Act), Court no. 30, Agra in Criminal Revision no. 598 of 2024 are hereby set aside. Matter is remitted back to learned Presiding Officer, Special Court, N.I. Act, Agra/concerned court for issuing fresh

summoning orders in the light of the judgment rendered by Hon'ble Apex Court in case of Aneeta Hada and Sukhpal Singh Khaira (supra).

14. The instant petition stands allowed accordingly.

Order Date :- 28.2.2025 Shaswat