

# Sumit Kumar vs State Of U.P. Thru. Civil Secrtt. Home ... on 1 April, 2025

**Author: Alok Mathur**

**Bench: Alok Mathur**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:18058

Court No. - 12

Case :- APPLICATION U/S 482 No. - 2745 of 2025

Applicant :- Sumit Kumar

Opposite Party :- State Of U.P. Thru. Civil Secrtt. Home Deptt. Lko. U.P. And Another

Counsel for Applicant :- Pradeep Kumar Srivastava, Prem Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Alok Mathur, J.

1. Heard Sri Pradeep Kumar Srivastava, learned counsel for the petitioner as well as AGA on behalf of the State-respondents.
2. In light of the proposed order, notice to private respondent no.2 is dispensed with.
3. By means of the present petition under Section 482 Cr.P.C. (Now 528 BNSS), the petitioner has challenged the revisional order dated 04.02.2025 passed by learned Sessions Judge, Raebareli, where rejecting the revision preferred by the petitioner against the summoning order dated 06.11.2023 passed by the Civil Judge (Junior Division)/ FTC-II, Raebareli.

4. The brief facts of the case as stated in the petition are that the complaint was lodged by the opposite party no.2 in the court of 10 Civil Judge (Junior Division), Raebareli alleging that the complainant had said that 7 years prior he had given an amount of Rs.2,50,000/- for the purposes of the wedding of his sister in cash and he has assured the complainant that he would repay the entire amount within a period of one year. When the amount was not paid, the complainant pursued the matter and the petitioner repeatedly assured him that he would repay the entire amount and despite the aforesaid repaid Rs.30,000/- and for the remaining amount, despite the repeated pressure build up by the complainant, the petitioner did not repay. On 02.06.2023, the complainant had again contacted the petitioner and threatened him a legal action and it is on the said date, the petitioner had given a cheque of Rs.2,20,000/- to the complainant bearing Cheque No.864712 from the account of 32551752922 drawn on State Bank of India. The complainant presented the said cheque for encashment on 05.06.2023. On deposit the said amount on 05.06.2023, the said cheque was returned and dishonored on the ground that no such account exists. A notice was sent by the complaint to the petitioner on 19.06.2023 and after waiting for the statutory period had filed a complaint. On which the trial court had issued summons to the petitioner for appearance. It is only when non-bailable warrants were issued against the petitioner, he appeared before the trial court. On which their warrants were recalled and he had assailed the summoning order before the Sessions Court in Raebareli. Before the Sessions Court, it was stated that in 2017, two cheques were lost and he had duly intimated the police. He had further admitted the fact that the signatures appearing on the cheque were made by him but the remaining amount of details in the cheque are not in his hand writing and also stated that bank account maintained by the petitioner had already been closed on 21.02.2017 and therefore, there was no existing bank account at the date when the cheque was drawn and consequently, the ingredients of Section 138 of the Negotiable Instruments Act were not fulfilled and consequently, prayed for setting aside the summons as well as entire proceedings against the petitioner.

5. The revisional court duly considered the arguments of the petitioner and noticed that in his complaint made to the police station, only vague intimation was given regarding loss of cheques but neither was a detailed of the cheque number or detailed of bank given in the said complaint. The revisional court duly considered the judgement cited by the petitioner and did not find any merit in the same and consequently, rejected the same. Before this Court, the petitioner has reiterated his arguments raised before the revisional court. It has been stated that once the cheques have been lost and this fact was duly intimated to the police and therefore, on the basis of said stolen cheques, proceedings under Section 138 of Negotiable Instruments Act could not be maintained at the behest of the complainant. Apart from the above, it was stated that the account had already stood closed prior to issuing of a cheque and hence, the revisional court has misdirected itself and accordingly prayed for quashing of the order of the trial court issuing summons to the petitioner as well as the order passed by the revisional court rejecting the revision.

6. Learned AGA, on the other hand, has submitted that there is no infirmity in either the order issuing summons to the petitioner or the revisional order inasmuch as the petitioner has not given any specific cheque number which has been lost and intimation given was general in nature and could not acted upon. Apart from the above, the petitioner himself is signatory to the cheques and in all likelihood had himself fraudulently given the cheques after closing of the said account which in

fact makes out a serious offence then merely under Section 138 of the Negotiable Instruments Act and consequently, prayed for dismissal of the writ petition.

7. I have heard the rival parties and perused the record.

8. The challenge is being made by the petitioner to the proceedings initiated against him under Section 138 of the Negotiable Instruments Act. The first ground raised by the petitioner is that he had duly intimated the police with regard to the cheques having been lost. A perusal of his application to the police on 21.02.2017 indicates that on mere blank piece of paper, it was intimated to the police on which the stamp of the concerned Thana is available. In the complaint, it is stated that on 16.02.2017 when the petitioner was on the way, his Aadhar Card, Pan Card, Passbook and cheque book in which there are two signed cheques have been lost. Neither any details of the cheques are indicated nor the Bank is indicated from which it can be ascertained that the cheques belong to a particular bank. Apart from the above, we don't find that the said fact was intimated to the bank or any stop order was issued to the Bank with regard to the two cheques.

9. Judgement relied upon by the petitioner in the case of Jugesh Sehgal versus Shamsheer Singh Gogi reported in 2009(14) SCC 683, the Supreme Court had interfered in the matter where it found that the cheques have been issued on an account which do not belong to the accused. The Supreme Court was of the view that the ingredients under Section 138 of the Negotiable Instruments Act require that the cheques should be drawn by a person on an account maintained by him and considering that the cheques were issued which belong to another person, the ingredients of 138 of NI Act are non-fulfilled. The facts in the present case are totally different than which were before the Supreme Court in the case of Jugal Shahgal (supra), the petitioner does not dispute that the cheque was drawn on account no. 32551752922, which was maintained by the petitioner, still it was closed. In the aforesaid, circumstances, the judgement relied upon by the petitioner is clearly distinguishable. Apart from the above, we find that the petitioner has himself admitted that the cheques were, in fact, signed by him and merely because a written complaint was given to the police station that certain cheques were lost without giving any further particular and details would not be sufficient itself at this stage to return a finding in favour of the petitioner. The petitioner would have to adduce sufficient evidence during trial with regard to the fact that alleged cheque which was issued in favour of the complainant was the same cheque for which the complaint had been made by him to the police station. No conclusive evidence is forthcoming apart from the letter adduced by him which in the concern opinion of this Court is not sufficient in itself at this stage to interfere in the matter and record a finding in favour of the petitioner. Apart from the above, we find that the trial court as well as revisional court has duly considered the facts of the case and material on record existing at that stage for issuing summons to the petitioner.

10. Accordingly, I do not find any ground for interference. Accordingly, the petition being bereft of merit and is dismissed. However, it shall be open for the petitioner to adduce evidence in his favour before the trial court with regard to the grounds raised by him.

[Alok Mathur,J.] Order Date :- 1.4.2025 KR