

# **Naveen Kumar Sharma vs State Of U.P. And Another on 16 April, 2025**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:55970

Court No. - 73

Case :- APPLICATION U/S 482 No. - 42561 of 2024

Applicant :- Naveen Kumar Sharma

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Hemant Sharma, Saurabh Kumar

Counsel for Opposite Party :- Ardhendu Shekhar Sharma, G.A., Ram Babu Sharma

Hon'ble Vikas Budhwar, J.

1. Heard Shri Santosh Kumar Rai, advocate holding brief of Shri Hemant Sharma, learned counsel for the applicant and Sri S.P. Singh, learned State Law Officer for the State as well as Shri Ram Babu Sharma, counsel for opposite party no. 2.
2. The counsel for the rival parties have made a joint statement that they do not propose to file any further affidavits, thus, with the consent of the parties, the application is being decided at the fresh stage.
3. This application under Section 482 Cr.P.C. has been filed by the applicant to quash the entire proceedings of Complaint Case No.964 of 2023 under Section 143A of N.I. Act, passed by Additional Civil Judge/ Additional Chief Judicial Magistrate, (Shashi Sharma v. Naveen Sharma).
4. Learned counsel for the applicant submits that there happens to be a firm by the name of M/s

Naveen Auto which is a partnership firm in which the opposite party no. 2 has 30% share, 30% share is the wife of opposite party no. 2 as well as the applicant has 20% share and 20 % share in the name of Uma Sharma. Learned counsel for the applicant submits that negotiations stood initiated between the parties and a settlement was also made to the extent that the opposite party no. 2 would relinquish its claim and for the said purpose, a total amount of Rs. 3,00,00,000/- were to be paid to the opposite party no. 2 and for the same, a cheque of Rs. 90,00,000/- was drawn on 15.06.2022 in favour of the opposite party no. 2 of Canara Bank. However, the same was dishonoured and returned on 20.07.2022 with an endorsement (account block). A statutory demand notice was issued on 25.07.2022 which is stated to have been received by the applicant on 28.07.2022 and a reply was submitted on 02.01.2024. Thereafter the applicant was summoned on 13.10.2022 by the Court of Additional Civil Judge (Junior Division)/ Judicial Magistrate, Court no. 9, Bulandshahr in Criminal Complaint Case No. 796 of 2023 (Smt. Shashi Sharma v. M/s Naveen Auto and others) and thereafter a revision was preferred by the applicant herein which came to be rejected on 13.12.2022. Learned counsel for the applicant submits that the cheque which was drawn by the applicant, was as a partner of the firm, thus, the applicant cannot be solely and only held responsible for the dishonouring of the cheque and further it was on account of the activity so sought to be committed by the opposite party no. 2, the accounts stood blocked wherefrom the cheques stood dishonoured. He further submits that questioning the summoning order and the revisional order, the applicant had preferred petition being Matters Under Article 227 No. 271 of 2023 (Naveen Kumar Sharma and another v. State of U.P. and another) which came to be dismissed on 06.04.2023 but the said order will not in any manner come in the way of the applicant to question the order dated 01.10.2024 passed in Criminal Complaint Case No. 964 of 2023 whereby on an application being preferred by the opposite party no. 2 under Section 143A of the N.I. Act, 10% of the total amount of Rs. 90,00,000/- is being directed to be paid being Rs. 9,00,000/- as interim compensation.

5. Submission is that merely on asking interim compensation cannot be accorded, as the Court has to prima facie evaluate the merits of the matter and also look into the defence of the accused and the contentions so sought to be raised by the complainant and, in case, the court below comes to the conclusion that interim compensation is to be accorded then what is to be seen is the nature of the transaction as well as the financial condition of the accused. Reliance has been placed upon the judgment in the case of Rakesh Ranjan Srivastava v. State of Jharkand and another; (2024) 3 S.C.R. 438. Lastly, it has been argued that a criminal complaint also stood lodged by the applicant being Complaint Case No. 11245 of 2022 (Naveen Kumar Sharma v. Shashi Sharma), in which summoning order has been passed and thereafter a criminal revision stood preferred which was also dismissed with respect to offences under Sections 417, 406, 420, 504, 506 IPC. Further submission is that the applicant is not entitled to the interim compensation as sought as he has no prima facie case in his favour.

6. Shri Ram Babu Sharma who appears for opposite party no. 2 while countering the submission so sought to be made by the learned counsel for the applicant submits that none of the contentions so sought to be raised by the applicant has any legs to stand for the simple reason that same old story is being sought to be repeated again and again regarding non-attraction of the liability under Section 138 of N.I. Act on the premise that the account was being blocked and the cheque was tendered as security as against the summoning order and the revisional order, the applicant herein had

approached this Court while filing petition Matters Under Article 227 No. 271 of 2023 (Naveen Kumar Sharma and another v. State of U.P. and another) which came to be dismissed on 06.04.2023 and, thus, it is not open for the applicant to raise the same issues, particularly, while going into the merits of the matter when the order summoning the applicant and the order questioning the same is the revision has not being interfered with and the parties were directed to adduce evidence and appear and to get recorded their statements in that regard. He submits that one of the natural consequences would be that on an application preferred under Section 143A of the N.I. Act for grant of interim compensation, the court has to apply his mind and the court below while allowing the said application by virtue of the order dated 01.10.2024 had also put to notice the applicant herein and after hearing the contentions so sought to be raised, has passed an the order which is perfectly valid in accordance with law and as per Section 143A of the N.I. Act, the Court has only accorded 10% of interim compensation, looking into the facts that the applicant had not pleaded anything regarding financial distress.

7. Learned State Law Officer has supported the arguments of counsel for the opposite party no. 2.

8. I have heard learned counsel for the parties and gone through the records carefully.

9. The sole question which arises for determination in the present proceedings is to the extent of judicial intervention. The Court is mindful of the fact that the applicant had challenged the summoning order as well as the revisional order by way of filing petition Matters Under Article 227 No. 271 of 2023 (Naveen Kumar Sharma and another v. State of U.P. and another) in which the following orders were passed on 06.04.2023:

"1. Instant petition under Article 227 of the Constitution of India has been filed with following prayer:-

(i) Issue an order or direction of suitable nature setting aside the entire proceedings of Criminal Complaint Case No. 496 of 2022 (Smt. Shashi Sharma Vs. M/s Naveen Autos & Another, under Section 138 N.I. Negotiable Instruments Act, P.S. Kotwali Nagar District Bulandshahar, pending before the Court of Ld. Additional Civil Judge, (J.D.)/Judicial Magistrate, Court No. 9, Bulandshahar as well as the impugned summoning order dated 13.10.2022 passed by the Court of Ld. Additional Civil Judge (Junior Division)/Judicial Magistrate, Court No. 9, Bulandshahar in Crl. Complaint Case No. 496 of 2022 (Smt. Shashi Sharma Vs. M/s Naveen Auto and Another) under Section 138 of N.I. Act, P.S. Kotwali Nagar, District Bulandshahar (Annexure No. 6 to this petition) and impugned judgment and order dated 13.12.2022 passed by Court of Ld. Additional Sessions Judge/Fast Track Court, Court No. 2, Bulandshahar in Crl. Revision No. 361 of 2022.

(ii) Issue any other order or direction in the like nature, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

2. I have heard learned counsel for the petitioner, learned counsel for the respondent no. 2 and learned A.G.A. for the State and perused the record.

3. Factual matrix of the case in brief are that respondent no. 2 filed a complaint which is registered as Case No. 496 of 2022 (Smt. Shashi Sharma Vs. M/s Naveen Auto and Another), under Section 138 of N.I. Act, P.S. Kotwali Nagar, District Bulandshahar with averment that complainant and respondent no. 2 are working in a partnership firm in the name of M/s Naveen Auto at Raje Babu road, Bulandshahar. Complainant and respondent no. 2, both are partners in the firm. This firm deals in business of TVS bike spare parts and repairing etc. In the profits of firm, share of complainant is 30%, share of wife of respondent no. 2 is 30%, share of respondent no. 2 is 20% and share of Uma Sharma is 20 %.. The respondent no. 2 has been directed to transact the business on behalf of the firm, however, for last three years no profit was given to the complainant and she was avoided by respondent no. 2 in respect of affairs of the firm. When she negotiated with respondent no. 2, he asked her to terminate her relations with the firm and this was agreed between the complainant and partners of the firm that Rs. 3,00,000, 00/- will be given to the complainant in lieu of her 30% share and profits. This was also agreed between partners that until Rs. 3,00,000,00/- is paid to the complainant, she would keep on receiving the profits and on that count a cheque of Rs. 90,00,000/- was issued by the firm in favour of the complainant dated 15.6.2022 which was signed by respondent no. 2 as authorized signatory of the firm. This cheque was drawn on Canara Bank account of the firm. The complainant presented the cheque on same day at his Bank PNB, Yamunaparm Branch Bulandshahar on her bank account, however, the same was dishonoured and returned on 20.7.2022 with endorsement "account blocked", thus consequently the cheque got bounced. When she asked about this to respondent no. 2, he could not give any satisfactory answer and misbehaved with her. She sent a demand notice on 25.7.2022 at his address which was received by him on 28.7.2022, however, its wrong reply was sent by them on 2.8.2022, therefore, complainant had no option but to file present complaint for prosecution of the firm and respondent no. 2 for charge under Section 138 of N.I. Act.

4. Learned Magistrate recorded statement of complainant under Section 200 Cr.P.C. and her witnesses under Section 202 Cr.P.C. and passed impugned summoning order whereby the present petitioners were summoned to face trial for charge under Section 138 of N.I. Act.

5. Feeling aggrieved by the impugned summoning order dated 13.10.2022 passed by learned Additional Civil Judge, (Junior Division), Court No. 9, Bulandshahar, the present petitioners/accused in the case filed a Criminal Revision No. 361 of 2022, Naveen Kumar Sharma and Another Vs. Shashi Sharma and another, before Court of Session Judge, Bulandshahar, however, the said revision was dismissed by learned Additional Session Judge/FTC, Court No. 2, Bulandshahar vide order dated 13.12.2022. The impugned order passed by learned magistrate was affirmed therein. The ground taken in said revision was that the share of partners was decided by firm which is shown in the complaint which is admitted and accordingly Smt. Shashi Sharma, complainant was allotted 30% share in the firm, whereas accused Naveen and his wife was allotted 20%, 30% share respectively and Uma Sharma was allotted 20% share in the firm. The disputed Cheque No. 149610 for amount of Rs. 90,00,000/- was given to the complainant as it was agreed between the partners that she will complete all the formalities of disassociating from the firm herself

and till completion of the formalities and accounting, she will keep the cheque safely with her. As per balance sheet of the firm Rs. 1,53, 34,470/- was outstanding against Shashi Sharma to the firm. After receiving the said cheque complainant Shashi Sharma with mala fide intention wrote a letter to bank officers on 10.11.2021 to block and seize the Account No. 2154261011432 of the firm and she also wrote to regional office of the bank that as there was conflict among partners of the firm, therefore, the said account of the firm be seized and blocked and on account of the said letter dated 30.11.2021 of the complainant, account of the firm was blocked since 1.12.2021.

6. Learned counsel for the petitioners submitted that specific grounds were taken by the revisionist/accused persons in criminal revision before the court of session that said cheque was given to the complainant/respondent no. 2 as security in pursuance of an understanding reached between the partners and she had to keep the cheque safely but she presented the same immediately to embarrass and coerce the petitioners. This fact also brought to the notice of the revisional court that the said cheque was not dishonoured on the ground of insufficiency of funds or amount not arranged for, which are enumerated as ground for prosecution under Section 138 of N.I. Act but on ground that account was blocked and this ground is not covered under Section 138 of N.I. Act, therefore, in view of dishonour of cheque on the ground that account was blocked, the petitioners cannot be prosecuted for charge under Section 138 of N.I. Act, inasmuch as the account was blocked at the instance of complainant herself by issuing letters to the concerned bank to block and seize the account of firm due to conflict between partners of the firm, therefore, both the orders of court below are not sustainable and are liable to be set aside and proceedings drawn against the petitioners before the trial court deserve to be quashed otherwise the petitioners will face irreparable loss without any legal basis.

7. Per contra, learned counsel for the respondent no. 2 submitted that there is no illegality, irregularity or any proprietary in the impugned order passed by court below. The complaint filed by the respondent no. 2 under Section 138 of N.I. Act is based on just a legal grounds and grounds taken by the petitioners in present petition under Article 227 of the Constitution of India were considered by learned revisional court and after passing a detailed order or considering the points involved in the matter. Learned Additional Sessions Judge dismissed criminal revision filed by the petitioners against summoning order dated 13.10.2022 passed by learned magistrate.

8. Learned counsel for the respondent cited a judgment of Hon'ble Apex Court in Womb Laboratories Pvt. Ltd. Vs. Vijay Ahuja and Ors., 2019 Legal Eagle (SC) 1447, wherein Hon'ble Apex Court in paragraph nos. 5 and 6 has held as follows:-

"5. In our opinion, the High Court has muddled the entire issue. The averment in the complaint does indicate that the signed cheques were handed over by the accused to the complainant. The cheques were given by way of security, is a matter of defence. Further, it was not for the discharge of any debt or any liability is also a matter of defence. The relevant facts to countenance the defence will have to be proved - that such security could not be treated as debt or other liability of the accused. That would be a triable issue. We say so because, handing over of the cheques by way of security per se would not extricate the accused from the discharge of liability arising from

such cheques.

6. Suffice it to observe, the impugned judgment of the High Court cannot stand the test of judicial scrutiny. The same is, therefore, set aside."

9. Provisions of Section 138 of N.I. Act are reproduced as under:-

"138 Dishonour of cheque for insufficiency, etc., of funds in the account. --Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for 1 [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless--

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, 20[within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

10. Learned counsel for the petitioner placed reliance on a judgment of Delhi High Court in M/s Ceasefire Industries Ltd. Vs. State & Ors. On 1 May, 2017, wherein petitioner had instituted two complaint under Section 138 of N.I. Act against the respondent accused in question of dishonor of two cheques issued by the respondent with Okhla Industries area, New Delhi, however, the said cheques were returned by the bank with memo indicating reasons for returned to be "account blocked". The complainant after return of the said cheques unpaid by the bank issued legal demand notice calling upon the respondents to pay and upon default in payment on their part a complaint was instituted. Learned magistrate summoned the 2nd to fourth respondents after holding enquiry under Section 200 and 202 Cr.P.C., however, learned magistrate after conducting trial acquitted the respondent of charge under Section 138 of N.I. Act. Delhi High Court while affirming the verdict of acquittal of respondent passed by learned magistrate observed that bank, which has returned cheques unpaid which had made it clear that account has been blocked. It is clear that complainant

itself was aware that account has been frozen in terms of directions of some statutory authority. In these circumstances the reason for return of the cheques unpaid being not what is envisaged in Section 138 of the N.I. Act, these petitions are devoid of merit and are dismissed.

11. In another judgment cited by learned counsel for the petitioner in Rajesh Meena Vs. State of Haryana and Others, High Court held that in given facts, this Court has no hesitation in holding that on the date when cheques were presented by the complainant to the drawee bank, the account holder was not maintaining the said account. Resultantly, in the absence of this material condition, it cannot be said that offence punishable under Section 138 of the N.I. Act would be made out.

12. From perusal of record it appears that petitioner Naveen Kumar had also filed a complaint against respondent no. 2 before the court of Additional Civil judge (Junior Division)/Judicial Magistrate, Court No. 9, Bulandshahar, with allegation of misuse of a security cheque worth Rs. 90,00,000/- given to her by the victim as security and writing to the bank where account of firm was being maintained to block the same and on her instance, the said account was blocked. In that complaint, learned magistrate summoned the respondent no. 2 Smt. Shashi Sharma and her husband for charge under Section 417, 406, 420, 504, 506 IPC vide order dated 17.11.2022, however, the said opposite parties in said complaint Naveen Kumar Sharma and Smt. Shashi Sharma filed a petition under Section 482 Cr.P.C. No. 40041 of 2022 before this Court for quashing the proceedings of said complaint case in which this Court vide order dated 5.12.2022 stayed proceedings of said complaint case for a period of six weeks.

13. From perusal of record it appears that two complaint under Section 138 of N.I. Act are filed, one by present respondent no. 2 and one by her husband for dishonor of cheque issued by the firm amount to Rs. 90,00,000/- and Rs. 12,50,000/- respectively.

14. The information has been given by Canara Bank by public Information Officer/Divisional Manager, Canara Bank, on application of present petitioner under Right to Information Act on 12.10.2022 wherein it is stated that Account No. 2154261011432 of M/s Naveen Auto Raje Babu, Bulandshahar, is lying with concerned branch of Canara Bank, however, its operation has been blocked on 1.12.2021 as per information received from Bulandshahar branch. Its operation was suo moto stopped due to expiry of O.D. time limit and in addition to this, on document for renewal of said O.D. limit, one partner Smt. Shashi Sharma has not signed the document and had also requested for blocking of all sort of withdrawal from the bank due to mutual dispute with other partner.

15. Learned counsel for the respondent submitted that the petitioner had deliberately drawn a cheque on account which was blocked. He did not intend to pay the amount gathered in the cheque which was got dishonoured by the bank. The petitioner himself took the case that said cheque was given as security in his reply to demand notice given by the respondent after dishonour of said cheque. All the issues have been addressed by revisional court while dismissing the revision petition filed by the present petitioner and no interference is warranted in impugned orders passed by learned court below in present petition under Article 227 of the Constitution of India which is an extraordinary remedy.

16. Karanataka High Court in Criminal Petition No. 2726 of 2014, M/S Go Go International Pvt.Ltd. vs M/S Lilliput Kidswear, considering the judgment of Delhi High Court in M/S. Ceasefire Industries Ltd. vs State & Ors. (supra) vide order dated 24.1.2019 held that when cheque is dishonoured for the reason account blocked, the same constitutes an offence under Section 138 of the N.I. Act, therefore there is divergence of opinion on this issue amongst High Courts.

17. In D.P. Gulati Manager Accounts M/s. Jetking Infotrain Ltd. vs. State of Uttar Pradesh & Anr., Hon'ble Apex Court in judgment dated 31.3.2015 in Crl. Appeal No. 1550 of 2014 set aside the order passed by High Court of Judicature at Allahabad in Crl. Misc. Application u/s 482 Cr.P.C. No. 6667 of 2014 filed under Sections 420, 467, 468 IPC by accused persons, whereby the said court disposed of the petition and declined to quash the proceedings of Criminal Complaint Case no. 1446 of 2013 and complaint under Section 138 of N.I. Act filed by appellants before Hon'ble Apex Court on the ground that it was a clear case of abuse of process of law on the part of respondent no. 2.

18. Whether the account of which the said cheque was drawn, was having sufficient balance to pay the amount gathered by said cheque worth Rs. 90,000,00/- drawn in favour of respondent, whether petitioner was having some other account apart from the account which was blocked as said above on which cheque would be drawn in favour of the respondents in discharge of certain debt and liability as claimed by her, whether the petitioner indeed intended to get the cheque encashed, all these questions are to be decided during trial and the grounds taken in present petition can be raised by the petitioner at the stage of leading defence. The petitioner has claimed that said cheque was issued in favour of the respondent no. 2 as security cheque, as huge amount was outstanding to the respondent no. 2 and for that reason after completing all formalities of disassociation from firm the cheque was to be encashed, is dispelled by the aforesaid proposition of law laid down by Hon'ble Apex Court in Om Laboratory Pvt. Ltd., wherein it was held that handing over of cheque by way of security per se, would not absolve the accused from discharge of liability arising from said cheque, therefore, in the light of foregoing discussion, this Court finds no good ground to interfere in impugned orders passed by court below which are under challenged in present petition. The impugned orders are in accordance with law and no illegality or irregularity is found therein. In that view of the matter, trial court is required to record evidence of the parties and arrive at an independent conclusion as to whether an offence is made out under Section 138 of N.I. Act or not.

18. In the result the petition stands dismissed. The summoning order passed by learned magistrate is affirmed. The trial court shall proceed to record the evidence of parties after appearance of the accused petitioner and recording therein statements on charge and decide the questions with reference to Section 138 of N.I. Act in accordance with law.

19. The interim order stands discharged."

10. It is not the case of the parties that the said order has been subject matter of challenge before the Higher Forum as the said order has attained finality. On the face of the facts that the order dated 06.04.2023 at the instance of the applicant has attained finality and the summoning order as well as the revisional orders have not been interfered then in the circumstances whatever arguments, the applicant seeks to raise is a matter of trial. What is to be seen at present in the present proceedings



is the validity of the order passed by the court below under Section 143A of the N.I. Act.

11. A bare look of the order dated 01.10.2024 of the court below would show that an application stood preferred by the opposite party no. 2 under Section 143A of N.I. Act to which an objection was preferred by the applicant.

12. On a pointed query being raised to the applicant as to whether there was any other ground taken by the applicant in its objection other than which has been noticed in the order, learned counsel for the applicant submits that the grounds which were taken are reflected in the stand of the applicant.

13. Looking into the objections so sought to be taken by the applicant, it is clear that the applicant had contested on the merits regarding absolving of its liability and non-attraction of the provisions under Section 138 of N.I. Act. Though in the proceedings under Section 143A of N.I. Act, the Magistrate is not obliged to go into the merits of the matter but it is to prima facie evaluate the merits with regard to the payment of compensation and also quantum of compensation looking into the nature of the relationship of the parties and financial distress. Once this Court in its order dated 06.04.2023 had not interfered in the summoning order as well as the revisional order then the natural consequences will follow and this Court at this juncture is not required to upset the prima facie findings recorded in the order dated 06.04.2023 by the co-ordinate Bench. Since there is nothing on record to substantiate that there was any financial distress faced by the applicant and no plea in that regard had been taken, thus, the Court was not supposed to presume and assume certain facts which were not even brought before it and, thus, this Court had on conservative basis as only accorded 10% of the compensation where the maximum limit is 20%.

14. In view of the said discussion, no case is made out. Accordingly, the application stands dismissed.

Order Date :- 16.4.2025 A. Prajapati