

# Sheshnath Sharma vs State Of U.P. And Another on 1 May, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:69499

Court No. - 73

Case :- APPLICATION U/S 528 BNSS No. - 4927 of 2025

Applicant :- Sheshnath Sharma

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

Counsel for Applicant :- Prakhar Saran Srivastava, Shashi Bhushan Kunwar

Counsel for Opposite Party :- G.A.

Hon'ble Vikas Budhwar, J.

1. Heard Sri Prakhar Saran Srivastava, learned counsel for the applicant as well as Sri Vikas Sharma, learned State Law Officer for the State/opposite party no.1.

2. This application under Section 528 of the BNSS has been filed by the applicant to quash the entire proceedings of Case No.852 of 2022 (Pradeep Kumar Vs. Sheshnath), under Section 138 of the N.I. Act, pending before the Court of Civil Judge (S.D.)/F.T.C., Ballia along with summoning order dated 25.11.2022 passed by the Civil Judge (Senior Division)/F.T.C., Ballia.

3. Learned Counsel for the applicant has submitted that a complaint was lodged by the opposite party No. 2 on 18.8.2022 against the applicant under Section 138/142 of the N.I. Act, 1881 with an allegation that the complainant is an agent of BACL India Ltd. and the applicant is a Rank Leader and Senior Officer of the said company. On the insistence of the applicant, the opposite party invested a huge amount of Rs.1crore, however, the relationship stood bittered, thus the opposite party No. 2 demanded his money back, so the applicant herein had drawn a cheque of an amount Rs.1 crore bearing number 037434 dated 3.6.2022 in favour of the applicant which on presentation

to the bank was dishonoured on 7.7.2022 on account of payment stopped by the drawer remark, a demand notice came to be issued on 19.7.2022 and post issuance of the notice, the payments were not made, so the complaint stood lodged on 18.8.2022, thereafter, the court of Civil Judge, Senior Division/FTC, Ballia proceeded to summon the applicant under section 138 of the N.I. Act by virtue of order dated 25.11.2022 in Case No. 852 of 2022, Pradeep vs. Sheshnath.

4. Questioning the said order, the present application has been filed.

5. Learned counsel for the applicant has submitted that the summoning order cannot be sustained for a single moment. Elaborating the said submission, it is being submitted that firstly, dishonouring of a cheque on account of stop payment does not attract the offences under Section 138 of the N.I. Act, secondly, the cheque stood misplaced and in this regard, the applicant had already made a complaint on 5.12.2015, a copy whereof is Annexure 6 at page 34 of the paper book addressed to the Station House Officer, Police Station, Sikandarpur, District Ballia, reference whereof has been made in paragraph 17 and thirdly the applicant has not received his statutory notice particularly when the address which has been shown in the complaint is different from the address of the applicant. The argument is that once the cheques stood lost then it is prone to be misused and the same does not come within the offences earmarked under Section 138 of the N.I. Act.

6. Reliance has been placed upon the judgment in Rajkumar Khurana v. State of U.P. (NCT of Delhi) and others (2009) 6 SCC 72 so as to contend that once a cheque stands reported as lost then the same cannot inflict criminality while invocation of Section 138 of the N.I. Act. Force has been driven from an interim order passed in Application U/S 482 No. 12910 of 2022, Naveen Singh and others v. State of U.P. dated 11.8.2022.

7. Learned AGA on the other hand submits that the issues which the applicant is seeking to raise are not tenable in the eyes of law particularly when making of stop payments of a cheque amounts to dishonour and further the issue as to whether the cheque was misutilized while being lost is a question which is to be seen in the trial and so much so there is nothing on record to substantiate that the applicant was not served with the statutory notice.

8. I have heard the submissions so made across the bar and perused the record carefully. The first and the foremost question which arises for determination is whether an advice given by a drawer of the cheque to the bank for stop payment resulting to dishonour of a cheque would attract provisions of Section 138 of the N.I. Act or not. The issue is no more res integra as the Hon'ble Apex Court in the case of M/s Laxmi Dychem vs State Of Gujarat & Ors 2012 (13) SCC 375 in paragraph number 17 has observed as under:-

17. In the case at hand, the High Court relied upon a decision of this Court in Vinod Tanna's case in support of its view. We have carefully gone through the said decision which relies upon the decision of this Court in Electronics Trade & Technology Development Corporation Ltd. The view expressed by this Court in Electronics Trade & Technology Development Corporation Ltd. that a dishonour of the cheque by the

drawer after issue of a notice to the holder asking him not to present a cheque would not attract Section 138 has been specifically overruled in Modi Cements Ltd. case. The net effect is that dishonour on the ground that the payment has been stopped, regardless whether such stoppage is with or without notice to the drawer, and regardless whether the stoppage of payment is on the ground that the amount lying in the account was not sufficient to meet the requirement of the cheque, would attract the provisions of Section 138.

9. Here in the present case as apparent from the memo of the bank the cheques stood dishonoured on account of stop payment, the issue as to whether there was a justifiable reason for stopping the payment is an issue which is separate. As regards the submissions made by learned counsel for the applicant that already a complaint had been made to the police about subject cheque being lost on 5.12.2015, thus, presentation of the said cheque and dishonouring of the same would not attract the provisions of the Section 138 of the N.I. Act is concerned the same does not appear to be conceivable particularly when it is a matter of trial as to whether the cheque stood lost or not and what were the evidences led by the parties in this regard. The judgement so relied upon by the learned counsel for the applicant in the case of Rajkumar Khurana (supra) and for interim order in Application U/S 482 No.12910 of 2022, Naveen Singh and another vs. State of U.P. and another, is not applicable to the case of applicant.

10. As regards the contention that incorrect address was mentioned in the complaint and the applicant never resided at that place which was mentioned in the complaint being permanent resident Village Mahthapar Kajipur, Police Station, Sikandarpur District, Ballia and temporary address Mohalla Savitri Nagar ,Garhwal Road, Thana Kotwali District, Ballia or resident of Prem Chak@ Umarganj Ballia City, Ballia is a matter which is to be thrashed in the trial.

11. Though reference has been made to the Aadhar Card, in order to contend that the applicant is a resident of the said place however, whether he was residing or not is a matter of trial stage whereof has not arisen. Evidences in this regard would be required to prove the facts which are not liable to be considered at this stage. Moreover, there is another facet of the matter that presumption under section 139 of the N.I. Act is always in favour of the holder, thus, it cannot be said that the trial court had committed an error in summoning the applicant as in the opinion of the trial court, there was materials to summon the applicant. Nonetheless, in absence of pointing out of any judicial infirmity, this court is not required to throttle the investigation at this stage.

12. Accordingly, the application is rejected.

Order Date :- 1.5.2025 piyush