

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			C482 No. 1101 of 2022 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Kaushal Sah Jagati, Advocate, on behalf of Mr. P.C. Petshali, Advocate, for the applicant. Mr. Dheeraj Joshi, Advocate, on behalf of Mr. Abhishek Verma, Advocate, for the respondent. The respondent had filed a complaint proceeding under Section 138 of the Negotiable Instruments Act, on 11th February, 2021, contending thereof, that the present applicant had issued a cheque of Rs.4,50,000/-, and the same upon being presented for its encashment, has been dishonoured by the bank, and consequent to which a notice was issued for initiation of the proceedings under Section 138 of the N.I. Act. The notice, thus issued on 22nd March, 2020, it was sent by registered post by the counsel on 11th June, 2020. The same was served upon the accused, but no plausible reply was given. Consequent to which, the summoning order has been issued by the Court, observing thereof, that while exempting the period of limitation prescribed in a Suo Motu Writ Petition (Civil) No. (s) 3 of 2020 dated 23rd March, 2020, owing to the covid-19 situation, the complaint which has been registered for dishonour of the cheque no. 696309 dated 5th February, 2020, for an amount of Rs.4,50,000/-. The only reason and defence which has been taken as against the dishonour of the cheque was, that the cheque was lost and in relation thereto, he has claimed to have registered a complaint before the Police Authority, as back as on 20th June, 2019. There is nothing on record, nor it has been the case pleaded by the present applicant, that he had ever followed up the complaint which was filed by him before the Police Authority with regard to the factum of loss of cheque as referred to in the complaint which was registered by present applicant before the competent Police Authority. Apart from the said ground of defence, that the

			cheque was lost and a complaint was registered on 20th June, 2019, no other ground has been argued by the learned counsel for the applicant, which could substantiate as to how the summoning order as issued on 30th April, 2021, is vitiated in the eyes of law. There is nothing on record to show, that the summoning order as issued by the Court of Addl. Chief Judicial Magistrate, Udham Singh Nagar, suffers from any legal or procedural mistake apparent on the face of it, based on which, the summoning order could be said to have been vitiated. Since no argument qua the summoning has been extended by the learned counsel for the applicant about the defectiveness, the only argument extended by him with regard to the complaint, and that too, the factum of which remains unsubstantiated as to what has happened to the said complaint of 20th June, 2019, which was filed to the police officials. The issuance of the summoning order dated 13th April, 2021, was based on the complaint registered by the present applicant on 11th February, 2021, which in itself cannot be said to be faulted in any manner whatsoever because admittedly, the cheque was issued and the same stood dishonoured by the Bank on 18th March, 2020, observing thereof, that the fund which was available in the account against which the cheque was drawn, was found to be insufficient. There is no legal ground, which has been argued by the applicant, while putting a challenge to the summoning order dated 13th April, 2021, as it was issued in Complaint Case No. 323 of 2021, Sanjeev Kumar Vs. Sarvjeet Singh. Having heard the learned counsel for the parties, and being satisfied with the reason given in the summoning order, because of the fact that the applicant is unable to substantiate his argument, qua the defence taken by him based upon the complaint which was registered by him on 20th June, 2019, no other issues have been attempted to be argued. After conclusion of the judgment, the learned counsel for the applicant has argued the matter in
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			the context of the pleadings raised in para 10 of the C-482 Application from the view point, that only the amount would be due to be payable to the respondent subject to the condition, it was standing due to be paid on the date of the issuance of the cheque. If the summoning order itself is taken into consideration, and particularly, in the context of the pleadings raised in the complaint by the respondent, particularly as that pleaded in paras 4 and 8, there is a specific plea taken, that the cheque, which was issued was dishonoured and the presentation of the cheque and the liability payable by the applicant is not a fact, which could be at all deciphered from the pleadings raised by the applicant in the C-482 Application. Hence, the C-482 Application stands dismissed. All issues are open to be argued by the applicant at the stage when the proceedings under Section 138 of the N.I. Act, are taken up on merits. (Sharad Kumar Sharma, J.) Dated 28.08.2023 Shiv
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