

Court No. - 73

Case :- APPLICATION U/S 528 BNSS No. - 13410 of 2025

Applicant :- Imrana

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

Counsel for Applicant :- Mohd. Zaid,Pratik J. Nagar

Counsel for Opposite Party :- G.A.

Hon'ble Vikas Budhwar,J.

1. Heard Sri Prateek J. Nagar, learned counsel for the applicant and Sri Indrajeet Singh Yadav, the learned A.G.A. for the State.

2. This is an application u/s 528 of BNSS preferred by the applicant for quashing of Complaint Case No. 2222 of 2024, *Sartaj Khan versus Imrana* under Section 138 of the Negotiable Instruments Act, Police Station Hassanpur, District Amroha pending in the Court of Judicial Magistrate, Hassanpur, Amroha.

3. Learned counsel for the applicant has submitted that a complaint was lodged by O.P. No.2 on 27.09.2024 under Section 138 of the N.I. Act with an allegation that with respect to certain business transactions, the applicant had drawn a cheque bearing number "000025" of HDFC Bank dated 17.08.2024 for an amount of Rs.50,00,000/- in favour of O.P. No.2. It is alleged in the said complaint that the said cheque stood dishonoured on 26.08.2024, communication whereof was made on 31.08.2024, a statutory notice was issued on 07.09.2024 and thereafter the complaint was lodged on 27.09.2024. Learned counsel for the applicant submits that the summoning order dated 05.10.2024 summoning the applicant cannot be sustained for more than one reason. Firstly, the cheque had been drawn for Aman Nursery, but Aman Nursery had not been arraigned as an accused in the complaint, thus the complaint itself was not maintainable. Less to say about

summoning of the applicant. He seeks to rely upon the judgment in the case of ***Aneeta Hada Vs. Godfather Travels & Tours (P) Ltd. (2012) 5 SCC 661*** so as to contend that in absence of making the firm or company as a party, the proceedings cannot go on. Secondly, it has been argued that as apparent from the complaint that on 07.09.2024, a statutory demand notice was issued. However, the complaint does not specify the date on which the same was served. Thus according to him, the applicant could not have been summoned. He seeks to rely upon the decision of this Court in ***Vijay Kumar Mishra vs. State of U.P., 2020 (7) AD 645***. Thirdly and lastly, it is submitted that the summoning order has been passed in mechanical manner without due application of mind, thus it is liable to be set aside.

4. Learned A.G.A. on the other hand has opposed the application while contending that the summoning order is perfectly valid and in accordance with law and no fault whatsoever can be attributed in this regard.

5. I have heard the submissions so made across the Bar and perused the record carefully.

6. Apparently, the complaint stood lodged by O.P. No.2 on 27.09.2024 against the applicant with respect to dishonouring of a cheque of Rs.50,00,000/-. The cheque is at page-24 of the paper-book and the same has been drawn for Aman Nursery. On a pointed query being raised to learned counsel for the applicant whether Aman Nursery is a sole proprietorship firm or a partnership firm, but Sri Nagar has made a statement at Bar that the same is a sole proprietorship firm. Once the firm in question is a sole proprietorship firm, then there is no question of making the sole proprietorship firm as a separate accused, as it would suffice if

the sole proprietor is made an accused. Indeed, there is a vast difference between sole proprietor and partnership firm and a company. Thus, the judgment in the case of **Anita Hada (supra)** would not be of any aid and assistance, as the same was the case of company. As a matter of fact, a sole proprietorship firm is not a legal entity separate and distinct from its proprietor. Now, the next question, which arises for determination is whether the proceedings can be quashed merely on the ground that the complaint does not disclose the date on which the statutory demand notice has been served upon the accused, the law is no more *res integra*, as the Hon'ble Apex Court in the case of **Ajeet Seeds Ltd. Vs. K Gopala Krishnaiah : (2014) 12 SCC 685**, in para-10 and 11 has observed as under:-

"10. It is thus clear that Section 114 of the Evidence Act enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. Section 27 of the GC Act gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. It is not necessary to aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business.

11. Applying the above conclusions to the facts of this case, it must be held that the High Court clearly erred in quashing the complaint on the ground that there was no recital in the complaint that the notice under Section 138 of the NI Act was served upon the accused. The High Court also erred in quashing the complaint on the ground that there was no proof either that the notice was served or it was returned unserved/unclaimed. That is a matter of evidence. We must mention that in C.C. Alavi Haji v. Palapetty Muhammed, (2007) 6 SCC 555, this Court did not deviate from the view taken in D. Vinod Shivappa v. Nanda Delliappa, (2006) 6 SCC 456, but reiterated the view expressed therein with certain clarification. We have already quoted the relevant paragraphs from Vinod Shivappa where this Court has held that service of notice is a matter of evidence and proof and it would be premature at the stage of issuance of process to move the High Court for quashing of the proceeding under Section 482 of the Cr.P.C. These observations are squarely attracted to the present case. The High Court's reliance on an order passed by a two-Judge Bench in Shakti Travel & Tours is misplaced. The order in Shakti

Travel & Tours v. State of Bihar, (2002) 9 SCC 415 does not give any idea about the factual matrix of that case. It does not advert to rival submissions. It cannot be said therefore that it lays down any law. In any case in C.C. Alavi Haji, to which we have made a reference, the three- Judge Bench has conclusively decided the issue. In our opinion, the judgment of the two-Judge Bench in Shakti Travel & Tours does not hold the field any more."

7. Here in the present case, the Court finds that there is a recital in para-7 of the complaint that on 07.09.2024, a registered statutory demand notice was issued, however, the payments were not made, which would be sufficient, as the issue regarding service or no service is a matter of trial.

8. There is another facet of the matter that the presumption under Section 139 of the N.I. Act would always be in favour of the holder and once the cheque stood drawn and the signatures are not disputed, then the complaint cannot be throttled at this stage.

9. Accordingly, no good ground is made out for interference at this stage and the same is declined.

10. The application is **rejected**.

Order Date :- 29.4.2025

N.S.Rathour

(Vikas Budhwar, J)