

Court No. - 75

Case :- APPLICATION U/S 528 BNSS No. - 24244 of 2025

Applicant :- Bashir Kurashi And Another

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

Counsel for Applicant :- Akhilesh Srivastava, Saksham Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Vikas Budhwar, J.

1. Heard Sri Saksham Srivastava, learned counsel for the applicants, who are two in number, and Sri Indrajeet Singh Yadav, learned A.G.A.

2. This is an application under Section 528 of BNSS preferred by the applicant for quashing the order dated 11.02.2021 passed by Chief Judicial Magistrate, Rampur in Complaint Case No. 1673 of 2019 (Fahim Akhtar Vs. Bashir Kurashi and another) under Section 138/142 of Negotiable Instrument Act, Police Station Civil Lines, District Rampur, pending in the Court of Chief Judicial Magistrate, Rampur .

3. The case set out in the application is that on 27.05.2019, the O.P. No.2 preferred a complaint under Sections 138/142 of N.I. Act with the allegation that the applicant no.1 happens to be the father and the applicant no.2 is the son and with respect to the supply of the byproduct of buffalo certain amount became due and payable by the applicant to the O.P. No.2 and the applicant no.1, Bashir Kurashi had drawn a cheque bearing number "000232" dated 25.02.2019 of an amount of Rs.25,57,797/-, which on presentation in the bank on 03.04.2019 was dishonoured with the remark "insufficient funds". Thereafter, a statutory demand notice was issued on 30.04.2019 and on 11.02.2021, the applicants have been summoned under Section 138 N.I. Act.

4. Questioning the summoning order, the applicants have filed the present application.

5. Learned counsel for the applicant has submitted that the summoning order cannot be sustained for the simple reason that as per the perusal of the complaint, the Cheque bearing number

"000232" dated 25.02.2019 of an amount of Rs.25,57,797/-was drawn by the applicant no.1 Bashir Kurashi, a copy of the same is at page-35 of the paper-book and as per the recital contained in the complaint, the said cheque was deposited in the bank account of applicant no.1, then the same came to be dishonoured. However, applicant no.2 who happens to be Jahangir Kurashi s/o Bashir Kurashi has been summoned. He seeks to rely upon the judgment in ***Aparna A. Shah vs. M/s Sheth Developers, (2013) 8 SCC 71*** so as to contend that even a non-signatory to a cheque would not be liable to any offence under Section 138 of the N.I. Act. As regards the applicant no.1, learned counsel for the applicants submits that the said cheque was by way of a security, which was handed over to the O.P. No.2 and the O.P. No.2 misutilized the same and got it deposited, pursuant whereunto it was dishonoured. He submits that the security cheque does not answer the description of debt or liability under Section 138 of the N.I. Act. Further submission is that even otherwise, assuming without admitting, if the liability is upon the applicant no.1, then too at the relevant point of time, when the said transaction was made and the amount became due and payable the country was facing Covid pandemic, thus no offences can be made

6. Learned A.G.A. on the other hand submits that once the cheque stood drawn and the same came to be dishonoured, then presumption under Section 139 of N.I. Act would be there in favour of holder of the cheque. He further points out that from the perusal of the cheque which is at page-35 and the allegations in the complaint under Section 138 of N.I. Act, the signatory of the said cheque is Bashir Kurashi and not applicant no.2 Mohd. Jahangir Kurashi. Thus no offence can be said to have been made against applicant no.2 Mohd. Jahangir Kurashi merely that he happens to be the son of the drawer of the cheque.

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

8. Apparently, a cheque bearing number "000232" dated 25.02.2019 came to be drawn by applicant no.1/ Bashir Kurashi for an amount of Rs.25,57,797/- which on presentation in the bank stood dishonoured on 30.04.2019 followed by statutory demand notice dated 30.04.2019. The CJM Rampur by virtue of the order

dated 11.02.2021 had summoned both the applicants, namely Bashir Kurashi and Mohd. Jahangir Kurashi. A conjoint reading of the complaint and the instrument, which has been dishonoured, would go to show that the cheque has been drawn by applicant no.1 Bashir Kurashi and once the same stood dishonoured, when presented in the bank account of the applicant no.1, then by no stretch of imagination, applicant no.2 Mohd. Jahangir Kurashi can be said to have committed any offence under Section 138 of N.I. Act. In ***Alpana A. Shah vs. Sheth Developers (supra)***, the Hon'ble Apex Court has observed as under: -

"28. We also hold that under Section 138 of the N.I. Act, in case of issuance of cheque from joint accounts, a joint account holder cannot be prosecuted unless the cheque has been signed by each and every person who is a joint account holder. The said principle is an exception to Section 141 of the N.I. Act which would have no application in the case on hand. The proceedings filed under Section 138 cannot be used as an arm twisting tactics to recover the amount allegedly due from the appellant. It cannot be said that the complainant has no remedy against the appellant but certainly not under Section 138. The culpability attached to dishonour of a cheque can, in no case "except in case of Section 141 of the N.I. Act" be extended to those on whose behalf the cheque is issued. This Court reiterates that it is only the drawer of the cheque who can be made an accused in any proceeding under Section 138 of the Act. Even the High Court has specifically recorded the stand of the appellant that she was not the signatory of the cheque but rejected the contention that the amount was not due and payable by her solely on the ground that the trial is in progress. It is to be noted that only after issuance of process, a person can approach the High Court seeking quashing of the same on various grounds available to him. Accordingly, the High Court was clearly wrong in holding that the prayer of the appellant cannot even be considered. Further, the High Court itself has directed the Magistrate to carry out the process of admission/denial of documents. In such circumstances, it cannot be concluded that the trial is in advanced stage."

9. As regards the applicant no.1 being Bashir Kurashi is concerned, he happens to be a signatory of the cheque and once the cheque stood signed by him and the same was dishonoured, then offences are made out. Nothing has been brought on record to show that there has been any fraction under Section 138 read with Section 142 of N.I. Act with regard to applicant no.1. With respect to the submissions so raised by learned counsel for the applicants that the said cheque was by way of a security, thus it does not answer the description of debt and liabilities under Section 138 of the N.I. Act

is concerned, the same is not convincing, as the said issue is no more res integra as the Hon'ble Apex Court In ***M/s Womb Laboratories Private Limited Vs. Vijay Ahuja & another, (2022) 18 SCC 631***, had the occasion to consider the issue as to whether the determination can be done at the stage of summoning when the allegation that the cheque was a security cheque is concerned. The Hon'ble Apex Court has observed as under: -

"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."

10. The aforesaid law has been followed subsequently in ***Sunil Toddi and others vs. State of Gujarat, (2022) 16 SCC 762***.

11. Cumulatively analyzing the case from the four-corners of law, no case is made out for interference in favour of the applicant no.1 Bashir Kurashi. However, with respect to applicant no.2 Mohd. Jahangir Kurashi, since he is only the son of the applicant no.1 and is not the signatory of the cheque, thus the proceedings cannot be allowed to be continued against applicant no.2 Mohd. Jahangir Kurashi. Accordingly the applicant stands disposed of in the following terms:

(a) The application in so far as it relates to the applicant no.2 Mohd Jahangir Kurashi son of Bashir Kurashi is **allowed**.

(b) The summoning order 11.02.2021 passed by Chief Judicial Magistrate, Rampur in Complaint Case No. 1673 of 2019 in so far as it summons the applicant no.2, Mohd. Jahangir Kurashi is set aside.

(c) As regards the applicant no.1 Bashir Kurashi the summoning order 11.02.2021 is upheld.

(d) It is left open for the applicant no.1 to contest the trial by taking all legal and factual grounds.

12. At this stage learned counsel for the applicants submits that N.B.W. is issued against the applicants and he may be permitted to approach the court below to file a recall application.

13. Considering the submissions raised at the Bar and the statements so sought to be made by them, the application stands **disposed of** while observing that in case appropriate proceeding in the form of recall application is preferred before the court below, then the same shall be decided with most expedition strictly in accordance with the law of the land.

Order Date :- 11.7.2025

N.S.Rathour

(Vikas Budhwar, J)