

Court No. - 75

Case :- APPLICATION U/S 528 BNSS No. - 26328 of 2025

Applicant :- Dinesh Lavaniyan

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

Counsel for Applicant :- Mohd. Parvez, Sanjeev Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Vikas Budhwar, J.

1. Heard Sri Sunil Yadav (AoR No. A/S 0791/2016) holding brief of Sri Deepak Yadav, learned counsel for the applicant as well as Sri J.B. Singh, learned AGA for the State/opposite party no.1.

2. This application under Section 528 BNSS has been filed by the applicant to quash order dated 02.07.2025 passed by Additional Civil Judge (J.D.)/Judicial Magistrate, Khurja, Distt. Bulandshahar as well as entire criminal proceedings of Complaint Case No. 378/2017, Under Section 138 Negotiable Instrument Act, Ram Niwas Sharma Vs. Dinesh Lavaniya, P.S. Araniya, Distt. Bulandshahar, pending in the Court of Additional Civil Judge (J.D.)/Judicial Magistrate, Khurja, District- Bulandshahar.

3. The applicant herein had earlier preferred an Application U/S 482 No. 7821 of 2023 which came to be dismissed on 01.03.2023, the following was observed as under:

"Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

This application under Section 482 Cr.P.C. has been filed by the applicant for quashing the impugned summoning order dated 11.06.2018 as well as the entire proceedings of Complaint Case No. 378 of 2017, under Section 138 of N.I. Act, P.S. Khurja City, District Bulandshahr, pending in the court of Judicial Magistrate/Additional Civil Judge (J.D.), Khurja Bulandshahar. As per the allegations made in the complaint, it is alleged that the applicant had issued a Cheque No. 339436 amounting to Rs.8,00,000/- dated 23.05.2017 in favour of Opposite Party No.2, however, on presentation, the

said cheque was dishonoured by the bank. After dishonour of the cheque, a notice was sent to the applicant to make good the payment however, despite being noticed the due amount was not paid as such, the present complaint u/s 138 of N.I. Act was filed.

On the basis of the said complaint, learned Magistrate has recorded the statements of the witnesses and after making the requisite enquiry under Sections 200 and 202 CrPC has summoned the applicant to face trial under Section 138 of Negotiable Instrument Act.

Learned counsel for the applicant has submitted that no due debt or liability exists, therefore, proceedings u/s 138 of N.I. Act cannot be drawn against the applicant.

Per contra; learned A.G.A. has submitted that disputed question of due debt or liability cannot be considered at this stage and the learned Magistrate after requisite enquiry and considering the allegations made in the complaint, has rightly summoned the applicant to face trial and there is no illegality or infirmity in the impugned order.

Having considered the rival submissions made by the counsel for the parties and keeping in view the fact that disputed question of due debt or liability cannot be considered at this stage when the evidence is yet to come, the impugned order is just, proper and legal and do not call for any interference.

The present application u/s 482 being devoid of merit is accordingly dismissed."

4. Thereafter another application U/S 482 No. 15260 of 2023 in which on 12.03.2024, the following orders were passed:

"1. Heard learned counsel for the applicant and Sri Arbind Kumar, learned AGA for the State.

2. Present application under Section 482 Cr.P.C. has been filed to modify the bail order dated 02.02.2022 passed by Judicial Magistrate/ Additional Civil Judge (J.D.) Khurja, Bulandshahar in Complaint No.378 of 2017 (Ramniwas Sharma vs Dinesh Lavaniya) under Section 138 N.I. Act, Police Station Araniya, District Bulandshahar to the extent that the second condition imposed by the court below may be deleted.

3. Sole contention of learned counsel for the applicant is that while granting the bail vide order dated 02.02.2022, the Judicial Magistrate/ Additional Civil Judge (J.D.) Khurja, Bulandshahar imposed condition to deposit 20% of the cheque amount i.e. Rs.1,60,000/- and same is against the law laid down by the Apex Court in the case of Kailash vs State of Uttar Pradesh passed in Special Leave to Appeal (Crl.) No(s). 6604-6606/2021 dated 12.01.2023 and in the case of Bimla Tiwari vs State of Bihar and others in SLP (Criminal) No.41188 of 2022 dated 16.01.2023.

4. In the judgements relied upon by the counsel for the applicant, the Hon'ble Apex Court observed that deposit of money as condition of bail should not be imposed. As recovery of money is essentially within the realm of civil proceeding. Para 9 and 11 of the judgement of Bimal Tiwari (supra) are being

quoted herein below;

"9. We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings but what has been noticed in the present case carries the peculiarities of its own.

11. We would further emphasize that, ordinarily, there is no justification in adopting such a course that for the purpose of being given the concession of pre-arrest bail, the person apprehending arrest ought to make payment. Recovery of money is essentially within the realm of civil proceedings."

5. Similarly para 6 of the judgement of Kailash (supra) is being quoted as under;

"6. In our considered view, the pre-condition of deposit of Rs.9,00,000/- (Rupees nine lakhs), imposed on the petitioner by the High Court, for his release on regular bail, is totally unwarranted and uncalled for in the peculiar facts and circumstances of this case. The said condition is, accordingly, set aside. As a result, the petitioner is directed to be released on bail forthwith subject to his furnishing bail bonds to the satisfaction of the Trial Court."

6. In view of above legal positions, the second condition imposed in the bail order dated 02.02.2022 passed by the Judicial Magistrate/ Additional Civil Judge (J.D.) Khurja, Bulandshahar in Complaint No. 378 of 2017, under section 138 N.I. Act, is hereby set aside and the applicant shall be released on bail subject to fulfill the other conditions mentioned in the bail order dated 02.02.2022.

7. With the aforesaid observation, the application is disposed of."

5. The applicant thereafter preferred an application U/S 528 No. 18448 of 2025, in which on 22.05.2025, the following orders were passed:

"1. Heard Sri Sanjeev Kumar Pandey, learned counsel for the applicant as well as Sri J.B. Singh, learned AGA for the State.

2. This application u/s 528 of BNSS has been preferred to quash entire criminal proceedings of Complaint Case No. 378/2017, Under Section 138 Negotiable Instrument Act, Ram Niwas Sharma Vs. Dinesh Lavaniya, P.S.-Araniya, District-Bulandshahar, pending in the Court of Additional Civil Judge (J.D.)/Judicial Magistrate, Khurja, District-Bulandshahar.

3. Earlier, the applicant had preferred Application u/s 482 no. 7821 of 2023 in which on 01.03.2023 the following order was passed.-

"Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

This application under Section 482 Cr.P.C. has been filed by the applicant for quashing the impugned summoning order dated 11.06.2018 as well as the entire proceedings of Complaint Case No. 378 of 2017, under Section 138 of N.I. Act, P.S. Khurja City, District Bulandshahr, pending in the court of Judicial Magistrate/Additional Civil Judge (J.D.), Khurja Bulandshahar.

As per the allegations made in the complaint, it is alleged that the applicant had issued a Cheque No. 339436 amounting to Rs.8,00,000/- dated 23.05.2017 in favour of Opposite Party No.2, however, on presentation, the said cheque was dishonoured by the bank. After dishonour of the cheque, a notice was sent to the applicant to make good the payment however, despite being noticed the due amount was not paid as such, the present complaint u/s 138 of N.I. Act was filed.

On the basis of the said complaint, learned Magistrate has recorded the statements of the witnesses and after making the requisite enquiry under Sections 200 and 202 CrPC has summoned the applicant to face trial under Section 138 of Negotiable Instrument Act.

Learned counsel for the applicant has submitted that no due debt or liability exists, therefore, proceedings u/s 138 of N.I. Act cannot be drawn against the applicant.

Per contra; learned A.G.A. has submitted that disputed question of due debt or liability cannot be considered at this stage and the learned Magistrate after requisite enquiry and considering the allegations made in the complaint, has rightly summoned the applicant to face trial and there is no illegality or infirmity in the impugned order.

Having considered the rival submissions made by the counsel for the parties and keeping in view the fact that disputed question of due debt or liability cannot be considered at this stage when the evidence is yet to come, the impugned order is just, proper and legal and do not call for any interference.

The present application u/s 482 being devoid of merit is accordingly dismissed."

4. Thereafter, another Application u/s 482 no. 15260 of 2023 was preferred in which on 12.03.2024 the following orders have been passed.-

"1. Heard learned counsel for the applicant and Sri Arbind Kumar, learned AGA for the State.

2. Present application under Section 482 Cr.P.C. has been filed to modify the bail order dated 02.02.2022 passed by Judicial Magistrate/ Additional Civil Judge (J.D.) Khurja, Bulandshahar in Complaint No.378 of 2017 (Ramniwas Sharma vs Dinesh Lavaniya) under Section 138 N.I. Act, Police Station Araniya, District Bulandshahar to the extent that the second condition imposed by the court below may be deleted.

3. Sole contention of learned counsel for the applicant is that while granting the bail vide order dated 02.02.2022, the Judicial Magistrate Additional Civil Judge (J.D.) Khurja, Bulandshahar imposed condition to deposit 20% of the

cheque amount Le. Rs.1,60,000/- and same is against the law laid down by the Apex Court in the case of Kailash vs State of Uttar Pradesh passed in Special Leave to Appeal (Crl.) No(s). 6604-6606/2021 dated 12.01.2023 and in the case of Bimla Tiwari vs State of Bihar and others in SLP (Criminal) No.41188 of 2022 dated 16.01.2023.

4. In the judgements relied upon by the counsel for the applicant, the Hon'ble Apex Court observed that deposit of money as condition of bail should not be imposed. As recovery of money is essentially within the realm of civil proceeding. Para 9 and 11 of the judgement of Binal Tiwari (supra) are being quoted herein below;

"9. We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings but what has been noticed in the present case carries the peculiarities of its own

11. We would further emphasize that, ordinarily, there is no justification in adopting such a course that for the purpose of being given the concession of pre-arrest bail, the person apprehending arrest ought to make payment. Recovery of money is essentially within the realm of civil proceedings."

5. Similarly para 6 of the judgement of Kailash (supra) is being quoted as under;

"In our considered view, the pre-condition of deposit of Rs.9,00,000/-(Rupees nine lakhs), imposed on the petitioner by the High Court, for his release on regular bail, is totally unwarranted and uncalled for in the peculiar facts and circumstances of this case. The said condition is, accordingly, set aside. As a result, the petitioner is directed to be released on bail forthwith subject to his furnishing bail bonds to the satisfaction of the Trial Court."

6. In view of above legal positions, the second condition imposed in the bail order dated 02.02.2022 passed by the Judicial Magistrate Additional Civil Judge (J.D.) Khurja, Bulandshahar in Complaint No. 378 of 2017, under section 138 N.I. Act, is hereby set aside and the applicant shall be released on bail subject to fulfill the other conditions mentioned in the bail order dated 02.02.2022.

7. With the aforesaid observation, the application is disposed of."

5. Learned counsel for the applicant has invited attention towards Annexure-9 at page 44 of the paper book reference whereof has been made in paragraph 24 of the application so as to contend that on 27.03.2025, an objection has been preferred by the applicant regarding the maintainability of the proceedings on the premise that the statutory demand notice was not issued within 30 days as according to him in view of the provisions contained under Section 138 of the NI Act it should be within 30 days, he submits that the said application is pending. Learned counsel for the applicant confines his relief for disposal of the said application.

6. Learned AGA submits that virtually the second application on the said cause of action.

7. Having heard the submission so made across the bar, this Court is not inclined to interfere at this stage, however, it goes without saying that once an objection which is maintainable and permissible under law is made that the Court has no reasons to disbelieve that the same shall be decided strictly in accordance with law.

8. With the said observation, the application is consigned to record."

6. Learned counsel for the applicant submits that the application was preferred by the applicant on 27.03.2025 titled to be an objection has now been rejected by the by the Additional Civil Judge (J.D.)/Judicial Magistrate, Khurja, District- Bulandshahar on 02.07.2025.

7. Questioning the same, the applicant has been filed the present application.

8. Learned counsel for the applicant has submitted that the court below has committed a manifest error of law in failing to consider the crucial aspect that the complaint itself so lodged by the opposite party No. 2 on 17.08.2017 under Section 138 of the N.I. Act itself was not maintainable, particularly, when the allegation is that the cheque bearing No. 339436 dated 23.05.2017 for an amount of Rs. 8,00,000/- is stated to have been drawn by the applicant which came to be dishonored on 07.06.2017 being the return memo, however, in the complaint itself just in order to tide the hurdle with regard to a delay, the same has been shown to be on 27.06.2017 and a statutory demand notice issued on 26.07.2017 and a complaint under Section 138 of the Act on 17.08.2017. Submission is that once dishonor memo was dated 07.06.2017 then the statutory demand notice ought to have been issued within a period of 30 days i.e. by 06.07.2017 but the statutory demand notice came to be issued on 26.07.2017 which is beyond the permissible period. Submission is that the said crucial aspect of the matter which goes to the root has not been considered and without

considering the said aspect, the objection preferred by the applicant has been brushed aside and set aside

9. Learned AGA on the other hand submits that whatever arguments, are being raised, are subject matter of trial and presumption under Section 139 of the N.I. Act would be there.

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

11. Apparently, with respect to dishonour of cheque bearing No. 339436 dated 23.05.2017 by virtue of a return memo dated 27.06.2017 depicting the funds insufficient, the opposite party no. 2 preferred a statutory demand notice on 26.07.2017 followed by a complaint dated 17.08.2017. As a matter of fact though as per the learned counsel for the applicant (page 20 of the paper book) shows the dishonour memo dated 07.06.2017 but what has been recited in the complaint is the receipt of the dishonored memo on 27.06.2017, the question as to whether the dishonour of memo dated 07.06.2017 was served on 07.06.2017 or 27.06.2017 is a subject matter of trial. Further at the stage of summoning, no conclusive finding can be recorded regarding the service of the statutory demand notice. These are the questions on fact which needs evidence and they need to be thrashed out in the proceedings itself. Additionally, also the challenge to the summoning order and the entire proceedings also came to be negated by this Court in Application U/S 482 No. 7821 of 2024 on 01.03.2023 and further this Court in Application U/S 528 BNSS No. 18448 of 2025 had not directed the Court to decide the said objection ignoring the embargo was with regard to the maintainability of the said application/ objection. Moreover, it is for the applicant to contest the trial while taking all the said grounds.

12. Accordingly, the interference is declined, the application stands **disposed of**.

13. Leaving it open to the applicant to raise legal and factual grounds while contesting the trial.

Order Date :- 8.8.2025

A. Prajapati