



2025:AHC:175636

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 29688 of 2025

Gita Niranjana

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Mamta Sen, Rakesh Prasad, Sangharsh
Counsel for Opposite Party(s) : G.A.

Court No. - 75

HON'BLE VIKAS BUDHWAR, J.

1. Vakalatnama filed by Sri Harshit Gupta, Advocate on behalf of the opposite party no.2, which is taken on record.
2. Sri Rakesh Prasad, learned counsel for the applicant, Sri S.P. Singh, learned State Law Officer for the State and Sri Harshit Gupta, learned counsel for the opposite party no.2.
3. Sri Harshit Gupta, learned counsel for the opposite party no.2 has made a statement at Bar that he does not propose to file any affidavit and the application be decided on the basis of the documents available on record. With the consent of the parties, the application is being decided at this stage.
4. The case of the applicant is that a complaint was lodged by the opposite party no.2 on 17th December, 2024 under Section 138 of the N. I. Act with an allegation that with respect to discharge of a liability, the applicant herein drawn two cheques bearing no.017217 of Rs.10,00,000/- dated 30th September, 2024 another cheque of Rs.9,00,000/- bearing no.017407, which on presentation in the bank on 25th October, 2024 came to be dishonoured and on 28th October, 2024 followed by a statutory demand notice dated 20th November, 2024 and a complaint on 17th December, 2024. Thereafter, the applicant came to be summoned under Section 138 of the N.I. Act on 23rd January, 2025.
5. Learned counsel for the applicant has submitted that the summoning order cannot be sustained for more than one reason. Firstly, there has been non-compliance of the provisions contained under Ist proviso to sub-section 1 of

Section 223 B.N.S.S., as the applicant was not put to notice at pre cognizance stage and secondly, the applicant has already submitted a reply to the demand notice dated 11th December, 2024 by virtue of the registered notice dated 14th December, 2024 and while inviting attention towards page 55, it is contended that on 16th December, 2024 the same was received and served upon the opposite party no.2 but the complaint came to be preferred on 17th December, 2024. Thus, there has been concealment about the reply to the statutory demand notice and reliance has been placed upon the recent judgment of the Hon'ble Apex Court in the case of ***Rekha Sharad Ushir vs. Saptashrunji Mahila Nagari Sahkari Patsansta Ltd., 2025 SCC OnLine SC 641.***

6. Sri Harshit Gupta, learned counsel for the opposite party no.2 submits that in view of judgment of the Hon'ble Apex Court in the case of ***Sanjabi Tari vs. Kishore S. Borcar & Anr. passed in Criminal Appeal No.1755 of 2010 decided on 25th September, 2025***, now it has been mandated by the Hon'ble Apex Court that there is no requirement to put to notice the accused at a pre cognizance stage in terms of Ist proviso to sub-section 1 of Section 223 B.N.S.S. in 138 N.I. Act proceedings and further, he submits that whatever might be the contentions with the applicant seeks to raise are to be taken in trial.

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

8. Apparently, the complaint should lodge on 17th December, 2024 with respect to dishonour of the two cheques. Though, the complaint stood lodged post enforcement of B.N.S.S. but the Hon'ble Apex Court in the case of ***Sanjabi Tari (supra)*** had the occasion to consider the said aspect and following was observed, which is as under:-

"E. Recently, the High Court of Karnataka in Ashok Vs. Fayaz Aahmad, 2025 SCC OnLine Kar 490 has taken the view that since NI Act is a special enactment, there is no need for the Magistrate to issue summons to the accused before taking cognizance (under Section 223 of BNSS) of complaints filed under Section 138 of NI Act. This Court is in agreement with the view taken by the High Court of Karnataka. Consequently, this Court directs that there shall be no requirement to issue summons to the accused in terms of Section 223 of BNSS i.e., at the pre-cognizance stage."

9. As regards to the second submission that there is no recital in the complaint with respect to the statutory demand notice, suffice it to quote the relevant extract of the reply dated 11th December, 2024:-

"जवाब नोटिस मिनजानिव में० "प्रदुम्न प्रताप ट्रेडिंग कम्पनी" स्थित कस्बा कोंच जरिये प्रोप्राइटर गीता निरंजन पत्नी चेताराम निरंजन नि० कस्बा कोंच (स्टेट बैंक ऑफ इण्डिया के सामने) नदीगाँव रोड कस्बा व थाना कोंच जनपद जालौन द्वारा अधिवक्ता बृजेश कुमार मिश्रा एडवोकेट मु० गाँधीनगर कॉच, जिला जालौन।

बनाम

धीरेन्द्र सिंह गुर्जर पुत्र श्री वीरबहादुर सिंह गुर्जर नि० ग्राम कुसमरा थाना जालौन जिला जालौन।

महानुभाव,

आपको, आपके द्वारा प्रेषित नोटिस दिनांक 20.11.2024 के संदर्भ में मेरे पक्षकार द्वारा जवाब नोटिस प्रेषित बजरिये किया जा रहा है-

1. यह कि आपके द्वारा अपने अधिवक्ता से भिजवाया गया नोटिस 1. दि० 20.11.2024 निराधार, फर्जी तथा कूटरचित एवं कपट पर आधारित है।
 2. यह कि आप द्वारा मेरी पक्षकारियों को व्यापारिक साझेदारी में धोखा दिया गया, क्योंकि आप मेरी पक्षकारिया की फर्म से व्यावहारिक रूप से साझेदार थे व संयुक्त रूप से एक साथ बैठकर मैथा की खरीद-फरोख्त करते थे। यह कथन नोटिस के आपने मैथा मेरी पक्षकारिया की फर्म को बेचा उसके रूपों की चैक है कतई गलत कथन है।
 3. यह कि यह उक्त बैंक जिन्हें आपके हाथों में आई वह चैक वही कोरी बिना हस्ताक्षर बिना भरे व्यापारिक बक्से में रखी रहती थी जो आपके हाथ लग गई और आपने इन कथित कोरी चैकों का दुरुपयोग किया व स्वयं भरकर व फर्जी हस्ताक्षर (दस्तखत) श्रीमती गीता देवी निरंजन के बनाकर फर्म के विरुद्ध दुरुपयोग किया है।
 4. यह कि जिन तिथियों में आपने खरीद-फरोख्त मैथा का आयल का वर्णन किया है उन तिथियों में फर्म के द्वारा कोई जिन्स का क्रय विक्रय नहीं किया गया। इस कालखण्ड में जिन्स को खरीद-फरोख्त सम्भव भी नहीं थी, क्योंकि मण्डी समिति का लाइसेन्स ही रिन्यु नहीं था इसलिये फर्म के द्वारा कोई मैथा किसी से खरीदना सम्भव ही नहीं था इसलिए आपके समस्त आरोप कि आपको मेरी पक्षकारिया ने कथित दोनों चैके निर्गत की, कतई गलत व झूठ है।
 5. यह कि यह सत्य है कि आपने मेरी पक्षकारिया को व उसकी फर्म को विश्वासघात धोखा दिया है और वदनियती से दोनों चैके फर्म के बस्ते से निकाल कर दुरुपयोग किया है।
 6. यह कि आपके द्वारा भिजवाया गया नोटिस गैर कानूनी व अधूरा है जिसमें कई आवश्यक तथ्य छिपाये गये हैं। मेरी पक्षकारिया गीता के पति का नाम गलत, खरीद-फरोख्त की तिथि गायब, चैक कब लगाई कब वापस आयी यह समस्त तथ्य उसी कपट पूर्ण भावना से छिपाकर मेरी पक्षकारिया को गैर कानूनी एवं फर्जी चैकें तैयार कर यह नोटिस दिया गया है जो कानूनी गलत है। मेरी पक्षकारिया के साथ धोखा है।
- अतः आपसे नोटिस का जवाब उक्त आधारों पर भेजकर आगाह किया जाता है कि आप कथित फर्जी चैकों को आधार बनाकर मेरी पक्षकारियों को किसी प्रकार उत्पीडित न करें।

दिनांक 11.12.2024"

10. In the opinion of the Court, whatever grounds have been raised in reply to the statutory demand notice, they are subject matter of trial, as consideration whereof would be required only when the trial commences and not at this stage. At the stage of summoning, this Court is not required to delve into the reply submitted by the applicant to the statutory demand notice, as it would be prejudging an issue, which is to be thrashed out in

trial, might be there is no recital about the reply to the statutory demand notice but each and every case is to be dependent upon its own facts and hard and fast rule cannot be assigned to it. Accordingly, no case is made out for interference.

11. The application stands disposed of.

12. Leaving it open for the applicant to take legal and factual submissions, while contesting the trial and this Court has no reasons to disbelieve that the same shall be considered strictly in accordance with law.

September 26, 2025
Zafar

(Vikas Budhwar,J.)