



2025:AHC:174657

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 37902 of 2025

Nusrat Ali

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Mukul Yadav, Rajesh Yadav
Counsel for Opposite Party(s)	:	G.A.

Court No. - 75

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Rajesh Yadav, learned counsel for the applicant as well as Sri K.K. Vishwakarma, learned A.G.A. for the State.

2. This is an application under Section 528 of BNSS preferred by the applicant for quashing the entire proceeding of Complaint No. 9453 of 2021, CNR No. UPMO040142322021 (Khalikur Rahman Versus Nusrat Ali), Under Section 138 of N.I. Act Police Station Katghar, District Moradabad pending in the Court of 138 N.I. Act, Moradabad as well as order dated 12.08.2025 and 21.12.2021 passed by Presiding Officer, Additional Court, 138 N.I. Act, Moradabad.

3. The case of the applicant is that on 22.07.2021, a complaint stood lodged by O.P. no.2 against the applicant under section 138 of N.I. Act with an allegation that the applicant with respect to discharge of liability had earlier drawn a cheque bearing number "000153" dated 31.12.2019 of Rs.2,00,000/- which on presentation in the bank came to be dishonoured on 16.01.2020 and thereafter another cheque came to be drawn bearing number "000156" dated 29.05.2021, which on presentation in the bank came to be dishonoured on 01.06.2021 with the remark "funds insufficient" followed by statutory demand notice dated 17.06.2021, which is stated to have been served upon the applicant on 22.06.2021 and on 09.07.2021, a reply came to be submitted by the O.P. no.2, to which the applicant submitted further reply on 15.07.2021, which was received by the O.P. No.2 on 16.07.2021 and thereafter onn 22.07.2021 the complaint stood preferred and the applicant was summoned on 21.12.2021. Against the summoning order, the applicant also preferred a discharge application, which was rejected on 12.08.2025.

4. Questioning the same, the present application has been preferred.

5. Learned counsel for the applicant has submitted that the summoning order cannot be sustained for the simple reason that the applicant has made the entire payments as in this regard the applicant invites the attention of the Court towards the bank statement, which is page-36 of the paper-book and further according to him, according to him, once entire payment has been made but the subject cheque which came to be dishonoured was not returned, so an Original Suit no.375 of 2021, Nusrat Ali Vs. Khali @ Rahman came to be preferred, wherein relief was for issuance of injunction for declaration that no amount is due and the cheque bearing number "000156" be held to be non-effective. Learned counsel for the applicant submits that there is no legal debt or liability so as to invoke the provisions contained under Section 138 of the N.I. Act.

6. Learned A.G.A. on the other hand submits that once the cheque stood drawn and it has been dishonoured the presumption under Section 139 of the N.I. Act would be there.

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

8. Apparently, with respect to dishonour of a cheque, a statutory demand notice came to be issued and thereafter complaint came to be preferred, whereby the applicant came to be summoned. The sole question would arise at this stage would be extent of judicial intervention. In the present case in hand, on a pointed query being raised, the learned counsel for the applicant where there is any procedural infirmity with regard to the provisions contained under Section 138 /142 N.I. Act, the answer is in negative. However, the submission of the learned counsel for the applicant is that the entire payment stood made and nothing was due as he seeks to rely upon certain bank statements, however, this Court at this juncture is not required to delve into factual issues and to record a definite finding that the said payments were attributable and relatable to said transaction or not, as they would need leading of evidence. Furthermore, with regard to the pendency of the suit is concerned, they are the matter of defences, consideration whereof would be required during the course of trial. Moreover, presumption under Section 139 of the N.I. Act would be there.

9. Accordingly, interference is declined. The application is **disposed of**

leaving it open to the applicant to contest the trial before the court below while taking all the legal and factual grounds and this Court has no reason to disbelieve that the court below shall consider the same in correct perspective.

September 26, 2025

N.S.Rathour

(Vikas Budhwar,J.)