



2025:AHC:174671

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 37976 of 2025

Lalta Yadav

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Gulab Chandra Tiwari, Sipahi Lal Shukla

Counsel for Opposite Party(s) : G.A.

Court No. - 75

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri G.C. Tiwari, learned counsel for the applicant as well as Sri Moti Lal, learned A.G.A. for the State.

2. This is an application under Section 528 of BNSS preferred by the applicant for quashing the proceedings including summoning order dated 8.9.2021, under section 138 of Negotiable Instruments Act, 1881, in Complaint Case No.99/2021 pending before Additional Civil Judge, (J.D.) First/Judicial Magistrate Jaunpur.

3. The case of the applicant is that a complaint stood lodged on 27.01.2021 by the O.P. No.2 under Section 138 of N.I. Act against the applicant with an allegation that with respect to discharge of a liability, the applicant herein had drawn two cheques bearing number "207714" for an amount of Rs.1,40,000/- and "207706" for an amount of Rs.2,00,000/-, which on presentation in the bank came to be dishonoured on 22.12.2020 followed by a statutory demand notice dated 04.01.2021 and a complaint on 27.01.2021 and thereafter the applicant came to be summoned on 08.09.2021 under Section 138 of the N.I. Act. Learned counsel for the applicant has submitted that the summoning order cannot be sustained for the simple reason that though in para-16, it has been asserted that a statutory demand notice came to be issued, but there is no date, as to when the same has been served. Thus, there has been a clear cut infraction of provisions contained under Section 138/142 of the N.I. Act and further there is no amount due and payable so as to invoke the provisions contained under Section 138 of the N.I. Act.

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

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

6. Apparently, with respect to dishonouring of the cheques, a statutory demand notice came to be issued on 04.01.2021, however, the objection of learned counsel for the applicant is that there is no date mentioned when it was served. Thus, offence under Section 138 of N.I. Act is not made out. The issue in this regard is no more res-integra, as what would be required is the clear recital in the complaint about issuance of the statutory demand notice, whether it has been served or not is a subject matter of trial. The Hon'ble Apex Court in the case of **Ajeet Seeds Ltd. Vs. K. Gopala Krishnaiah, (2014) 12 SCC 685**, in paragraph-10 and 11 has held 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, this Court did not deviate from the view taken in Vinod Shivappa, 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 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. 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.)