IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

127 **CRM-M-31126-2025 (O&M)**
Date of decision: 08.07.2025

Gurdiyal Singh **...Petitioner**

Versus

Kotak Mahindra Bank Limited **...Respondent**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Manu Sachdeva, Advocate
for the petitioner.

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MANISHA BATRA, J. *(Oral)*

1. The instant petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 *(which is pari materia with Section 482 of Cr.P.C.)* seeking quashing of Criminal Complaint bearing NACT No. 774 of 2023 titled as ***'Kotak Mahindra Bank vs. Gurdiyal Singh'***, filed under Section 138 of Negotiable Instruments Act, 1881 *(for short 'NI Act')* which is pending before the Court of Judicial Magistrate First Class, Chandigarh.

2. Brief facts of the case relevant for the purpose of disposal of present petition are that the aforementioned complaint has been filed by the respondent, which is a bank, on the allegations that the petitioner had obtained a loan from it for purchasing a vehicle. The petitioner had executed an agreement with the respondent accepting its terms and conditions regarding advancement of loan. The petitioner was to repay the loan in

installments but he made defaults in payment of installments. Subsequently, in order to discharge his legal liability towards the said loan, the petitioner issued a cheque for a sum of Rs. 10,50,328/- in favour of the respondent-Bank but on presentation, the same dishonoured with the remarks 'funds insufficient'. The petitioner failed to pay the amount of cheque in question, thereby compelling the respondent to file the aforementioned complaint.

3. It is argued by learned counsel for the petitioner that the impugned complaint is liable to be set aside as while passing the summoning order, the learned Magistrate ignored the fact that there was no material to show that he had obtained any loan from the respondent. He had given the cheque in question as a security for repayment of the loan taken by him. In fact, the petitioner was arrested on 03.10.2022 and was in custody in connection with DRI Case bearing No. 11 of 2022, under Sections 8, 20, 25, 27-A and 29 of the NDPS Act got registered by DRI, Gomti Nagar, Lucknow, Uttar Pradesh. The cheque in dispute is stated to have been issued by him on 07.12.2022, which is clearly not possible as he was in custody at that time. With these broad submissions, it is urged that the petition deserves to be allowed and the impugned complaint is liable to be set aside.

4. I have heard learned counsel for the petitioner at considerable length and have also gone through the material placed on record.

5. At the outset, it is to be considered as to whether, the prayer made by the petitioner for quashing of complaint can be considered by this Court in a petition filed under Section 528 of BNSS *(corresponding to Section 482 of Cr.P.C.)*. The Hon'ble Supreme Court has laid down certain

conditions whereby the complaint can be quashed by invoking the powers under the above mentioned Section in a case reported as ***Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalzi and others (1976) 3 SCC 736*** which are as follows:-

> (1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same, taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;
> (2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;
> (3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and
> (4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

6. Further, the question as to whether the order passed by the Magistrate of issuing summons, can be interfered with, in exercise of powers under Section 482 of Cr.P.C. had also been considered by Hon'ble Supreme Court in ***Bhushan Kumar and another Vs. State (NCT of Delhi) and another (2012) 5 SCC 424*** and in ***M/s Pepsi Food Ltd's case (supra)*** wherein it was observed that a petition filed under Section 482 of Cr,P,C, for quashing an order summoning the accused is maintainable.

7. Similarly, in a recent judgment dated 22.02.2024 titled as ***'Vikas***

Chandra Vs. State of Uttar Pradesh and another 2024 INSC 261', the Hon'ble Supreme Court reiterated the position that the order of issuance of summons could be interfered with by the High Court in exercise of powers under Section 482 of Cr.P.C.

8. In view of the above discussed proposition of law, it is explicit that a complaint can be quashed by this Court by invoking powers under Section 528 of BNSS, however at the same time, it is also to be kept in mind that the inherent jurisdiction under Section 528 of BNSS is to be exercised sparingly and with caution only when such exercise is justified by the test specifically laid down in the section itself. It is well settled proposition of law that an appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of this power and the inherent powers so vested do not confer any arbitrary jurisdiction upon the High Court to act according to whims and caprices.

9. On applying the above mentioned proposition of law to the facts of the present case, it is to be seen as to whether the complaint as lodged by the respondent is liable to be quashed or not? The main thrust of the arguments address by learned counsel for the petitioner is that the cheque in question was issued by him as a security cheque against the loan obtained by him and the same was not issued on 07.12.2022 as he was in custody at that time. However, on going through the record, this Court is of the considered opinion that the contention as raised by learned counsel for the petitioner has no substance in view of the fact that at this stage, he has neither denied his signatures on the cheque in question nor the factum of issuance thereof. His

It is not his claim that as on the date of issuance of cheque in question, the liability to make payment of the amount as mentioned therein did not subsist. So far as the factum of petitioner's being in custody at the relevant time is concerned, the disputed question of facts cannot be decided in a petition filed under Section 528 of BNSS. It is well settled proposition of law that if on the date of issuance of cheque, liability of debt exists or the amount mentioned therein has become legally recoverable, Section 138 of the N. I. Act is attracted since issuance of cheque itself represents the outstanding liability. Reliance in this context can be placed upon the authority cited as ***Sripati Singh (since deceased) Through his Son Gaurav Singh vs. The State of Jharkhand & another : Livelaw 2021 SC 606***, wherein the cheque in question was issued as security. The loan amount had matured and it had fallen due. It was observed by Hon'ble Supreme Court that a cheque if issued as a security to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It was observed that if it is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound, such cheque matures for presentation and its drawee is entitled to present the same. On its presentation, if the same is dishonoured, the consequences contemplated under Section 138 of the N. I. Act and the other provisions of N.I. Act would follow. Hon'ble Supreme Court had also observed that when a cheque is issued even though as 'security', the consequences flowing therefrom are also known to the drawer of the cheque and if such cheque is presented and dishonoured, the holder of the cheque would have the option of initiating the civil proceedings for recovery or the criminal proceedings.

10. Since in this case, the claim of the petitioner himself is that the cheque in question was issued by way of security, therefore, the contention that it should be held as security even after the amount had become due and payable cannot be considered to be sustainable. The security cheque is integral part of commercial process entered into between the accused and the complainant. It is not only a deterrent for the drawer against dishonouring his financial commitment but can also be legally and validly utilized towards the discharging of the liability of the drawer, as observed by Hon'ble Supreme Court in ***Shalini Enterprises vs. Inida Bulls Financial Service : 2013 (2) CCC 835.***

11. It is also relevant to mention that the petitioner has not laid any challenge to the summoning order. In view of the discussion as made above, no ground has been made out to quash the impugned complaint. Accordingly, finding no merit, the petition is dismissed.

[MANISHA BATRA]
JUDGE

08.07.2025
Waseem Ansari

1. Whether speaking/ reasoned : Yes/No
2. Whether reportable : Yes/No