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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.39041 of 2024 (O&M)

Date of Decision: 02.08.2025

Reserved on: 07.07.2025

Jagminder Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Rajesh Punj, Advocate and
Mr. Sahaj Punj, Advocate,
for the petitioner.

Mr. Vivek Sharma, AAG, Punjab,
for respondent No.1-State.

Mr. Mandeep Nagpal, Advocate,
for respondent No.2.

MANISHA BATRA, J.

1. The instant petition has been filed by the petitioner under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (For short “BNSS”) (which is pari materia with Section 482 of Cr.P.C.) seeking quashing of FIR No.93 dated 18.05.2022 registered under Section 420 of IPC at Police Station Samrala, District Khanna, challan report under Section 173 Cr.P.C. and order dated 12.02.2024 thereby framing charge under Section 420 of IPC as against the petitioner and all the other proceedings having emanated therefrom.

2. Brief facts relevant for the purpose of disposal of this

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petition are that the aforementioned FIR was registered on the basis of a complaint submitted by the respondent No.2-complainant Sunil Khullar alleging therein that his father Shiv Charan Dass was sole proprietor of a firm Sat Parkash and Company. Since he was ill, hence the complainant was looking after the business of the firm. The petitioner who runs a firm under the name of Sucha Singh and brothers, had been purchasing iron material from the firm of the complainant. Bills were issued against those purchases from time to time. As per books of account of the complainant, a sum of Rs.13,75,654/- was due against the firm of the petitioner. To discharge this liability, the petitioner on behalf of his firm had issued two cheques for sums of Rs.6,00,000/- and Rs.7,70,000/- respectively in favour of the firm of the complainant. Both these cheques were dishonoured. The cheque bearing No.397609 dated 17.11.2021 was dishonoured with the remarks “account closed” whereas the second cheque was dishonoured due to insufficiency of funds. The complainant alleged that since the petitioner had issued the cheque No.397609 despite knowing that the account stood closed as on 17.03.2020 itself, therefore, he had cheated the complainant with a dishonest intention to not to pay the amount due against his firm. As such, he prayed for taking action in the matter.

3. After registration of FIR, investigation proceedings were initiated. The petitioner was arrested and was subsequently released on bail. Challan has since been presented in the Court and the petitioner is facing trial for commission of offence punishable under Section 420 of IPC.

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4. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. Infact he had been paying all the dues of the firm of the complainant regularly. He had given the cheque in question to the complainant in the year 2019 by way of security cheque. He had been requesting the complainant to reconcile the account statements since some dispute was arising with regard to the same and business transactions were continuously going on between them. His business has collapsed due to recession and he was compelled to close his bank account on 17.03.2020. Thereafter there was outbreak of pandemic of Covid 19. During the course of settling the account with the respondent-complainant, the latter had utilized two cheques taken by way of security way back in the year 2019. The respondent-complainant has already filed a complaint under Section 138 of Negotiable Instruments Act, 1881 (For short “**NI Act**”) read with Sections 406 and 420 of IPC against him which is pending. Thereafter he has lodged FIR of this case.

5. It is further argued that the ingredients for commission of offence of cheating have not been attracted against him at all since at the time of issuance of the cheques in question, he had no dishonest intention. Moreover, cheque was issued by way of security cheque only and was undated. The respondent-complainant has himself put a date on the same. The FIR has been lodged to abuse the process of the law. There are no chances of his conviction. Moreso, once complaint under Section 138 of NI Act has been filed against him, no offence under Section 420 of IPC is made

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out and there is no occasion for prosecuting him under Section 420 of IPC. With these broad submissions, it is urged that the petition deserves to be accepted and the impugned FIR, challan report, order framing charge and other consequential proceedings having emanated therefrom are liable to be quashed. To fortify his argument, learned counsel for the petitioner has placed reliance upon authorities cited as **Ammy Anand and another v. State of Punjab and another**, 2020(4) RCR Criminal 23; **M/s S.K. Rai Engineers and Contractors Jaildar Market and another v. M/s S.C. Jain Construction Company Pvt. Ltd.**, 2023(1) RCR Criminal 56; **Harinderpal Singh v. State of Punjab**, 2007(4) RCR Criminal 534; **Kolla Veera Raghav Rao v. Gorantla Venkateswara Rao and another**, AIR 2011 Supreme Court 641 and **G. Sagar Suri v. State of U.P.**, 2000 (1) RCR Criminal 707.

6. Reply has been filed by respondent No.2-complainant. Learned Assistant Advocate General, Punjab assisted by learned counsel for the complainant has argued that though the complainant had filed a complaint under Section 138 of NI Act read with Sections 406 and 420 of IPC but by making statement Annexure R-2, he had withdrawn his claim for summoning the petitioner under Sections 406 and 420 of IPC. Even otherwise, the concerned Court has summoned him under Section 138 of NI Act only. Sufficient material had been collected during the course of investigation to prove that the petitioner had issued the cheque in question while fully knowing that he had got closed his bank account qua which this

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cheque had been issued and he had done so with a dishonest intention to cheat the complainant. It is argued that the complicity of the petitioner in the commission of aforementioned offences stands fully established and it is, therefore, urged that no ground has been made out for allowing the petition.

7. I have heard learned counsel for the parties at considerable length and have gone through the material placed on record carefully.

8. The Hon'ble Apex Court has culled out the following principles governing the law on quashing of an FIR under Section 482 of the Cr.P.C. after analyzing and examining several judicial precedents, in the case reported as **M/s Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and others**, 2021 SCC OnLine SC 315:-

“57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;
- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report, the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused

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with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases, where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be

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permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of **R.P. Kapur v. State of Punjab**, AIR 1960 Supreme Court 866 and **State of Haryana vs. Bhajan Lal**, 1992 SUPP (1) SCC 335, has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

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9. In **CBI v. Aryan Singh**, 2023 SCC OnLine SC 379, the Hon'ble Apex Court observed that while exercising powers under Section 482 of Cr.P.C., the Courts have a very limited jurisdiction and are only required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”. In **Kaptan Singh vs. State of U.P. and others**, 2021 SCC Online SC 580 and **Dhruvaram Murlidhar Sonar vs. State of Maharashtra**, (2020) 3 SCC (Criminal) 672, it was observed that the appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 of Cr.P.C. as this power is an exception and not a rule. Inherent jurisdiction under Section 482 of Cr.P.C. though wide is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is also well settled proposition of law that the Court is not required to go into the merits of the allegations and/or entering into the merits of the case as if it is exercising the appellate jurisdiction and/or conducting the trial, at the stage of exercising powers under Section 482 of Cr.P.C. In order to examine as to whether the factual contents of the FIR disclose any cognizable offence or not, the High Court cannot act like investigating agency nor can exercise the powers like an appellate court. The said question is required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring any proof.

10. In view of the established position of law as discussed above,

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this Court is of the considered opinion that there is no bar for considering prayer for quashing of an FIR by filing petition under Section 528 of BNSS. However, the main question that falls for consideration before this Court is that as to whether the prosecution of the petitioner under Section 420 of IPC is sustainable when a complaint under Section 138 of NI Act has been filed and process has been issued against him in such complaint. The allegations against the petitioner are that with a dishonest intention to cheat and cause wrongful loss to the respondent No.2-complainant, he had issued a cheque bearing No.397609 drawn at Punjab National Bank, Samrala Branch in favour of the respondent No.2 while fully knowing that the concerned bank account had been closed. The defence taken by the petitioner is that the aforementioned cheque was infact an undated security cheque that had been misused by the respondent No.2.

11. Let us firstly discuss the ingredients required for commission of offences under Sections 138 of NI Act and Section 420 of IPC. The offence under Section 138 of NI Act, is committed when a cheque is dishonoured by the bank for any specific reason and thereafter, even on making demand by issuing notice, the person concerned fails to pay the amount covered by the cheque to the aggrieved person and not on the date of issuing the cheque. Whereas the ingredients of Section 420 of IPC are quite distinct and different, since in a prosecution under Section 420 of IPC, mens rea is the most important ingredient to be established. If a person fraudulently or dishonestly induces another person to deliver any property or to do or omit

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to do anything which he did not do or omit if he were not so deceived or such act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, commits an offence of cheating and such a person commits offence punishable under Section 420 of IPC. It is clear that question of inducement to other person to part with any property or to do or omit to do anything, does not arise at all for a decision in a prosecution under Section 138 of NI Act. Since both these offences are distinct and separate offences, therefore, the same cannot be construed as arising out of same facts. So far as the question that whether prosecution can be launched against an accused both under Section 138 of NI Act as well as under Section 420 of IPC is concerned, the Hon'ble Supreme Court in **Sangeetaben Mahendrabhai Patel v. State of Gujarat and another**, 2012 (7) SCC 621, had observed that a prosecution can be launched against the accused under both these provisions and it is not double jeopardy as ingredients of both the offences are not the same. Similar observations were made by High Court of Chhattisgarh in **Jitendra Kumar Surana v. State of Chhattisgarh and others**, 2024 NCCGHC 2535 and High Court of Uttarakhand in **Pawan Kumar Badoni v. State of Uttarakhand and another**, Law Finder Doc Id # 2267651, wherein it was observed that the bar under Section 300 of Cr.P.C. would not apply unless there is prior conviction or acquittal in either of the cases as the proceedings under Section 138 of NI Act and criminal proceedings under Sections 406, 420, 504 and 506 of IPC are distinct and independent of each other. Learned

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counsel for the petitioner has placed reliance upon **G.Sagar Suri's case** (Supra) wherein prosecution under Sections 406 and 420 of IPC was launched. A criminal complaint under Section 138 of NI Act was already pending. It was observed by Hon'ble Apex Court that there was no occasion for the complainant to prosecute the accused under Sections 406/420 of IPC when a complaint was pending under Section 138 of NI Act as the accused would suffer the consequences if offence under Section 138 of NI Act was proved against them. He has also relied upon **Kolla Veera Raghav Rao's** case (Supra), wherein the accused had already been convicted under Section 138 of NI Act. Prosecution under Section 420 of IPC was also launched against him. It was held by Hon'ble Supreme Court that he could not be tried or punished again on the same facts under Section 420 of IPC as the prosecution was barred under Section 300(1) of Cr.P.C. The observations made in both these cases were discussed and distinguished by Hon'ble Supreme Court in **Sangeetaben Mahendrabhai Patel's** case (Supra), wherein it was observed that there might be overlapping of facts in cases instituted in complaint under Section 138 of NI Act and FIR lodged under Section 420 of IPC but if the ingredients of offences are different, the prosecution in the subsequent case is not barred by any of the statutory provisions. It was held that such prosecution could be launched as it was not double jeopardy as ingredients of both the offences were not the same. The Hon'ble Supreme Court had distinguished the ratio of law as laid down in **G.Sagar Suri's case** (Supra) and **Kolla Veera Raghav Rao's** case (Supra)

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by observing that since the issue as to whether the ingredients of offences under Section 138 of NI Act and Sections 406/420 of IPC were the same, had neither been raised nor decided in both these cases and, therefore, these judgments had no application to the facts of that peculiar case.

12. Learned counsel for the petitioner has relied upon **Ammy Anand and another's** case (Supra) and **Harinderpal Singh's** case (Supra) to buttress his argument that proceedings under Sections 406/420 of IPC and Section 138 of NI Act could not go altogether. However, in **Ammy Anand and another's** case (Supra), FIR was ordered to be quashed in view of the fact that the matter had been settled and complaint under Section 138 of NI Act had been withdrawn and in **Harinder Pal Singh's** case (Supra), the issue that the ingredients of offences under Section 138 of NI Act and Section 420 of IPC were same or not, had neither been raised nor decided. As such, this Court is of the opinion that the authorities so cited are not applicable to the peculiar facts of the present case. In this case, the complaint under Section 138 of NI Act has been filed by the respondent No.2 on the allegations that the petitioner had issued two cheques bearing Nos.261164 and 397609 respectively to discharge his legally enforceable liability and both these cheques had been dishonoured. Though the allegations that the petitioner had cheated the complainant and his prosecution was also sought under Sections 406 and 420 of IPC in that complaint, however, the subsequent prayer made for issuing process against the petitioner under Sections 406 and 420 of IPC in the abovesaid complaint has been withdrawn

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and even the trial Magistrate has issued process qua commission of offence punishable under Section 138 of NI Act as against the petitioner. Not only the ingredients of both the offences under Section 138 of NI Act and Section 420 of IPC are distinct but also the allegations as levelled in the FIR are that the cheque No.397609 for a sum of Rs.6 lakhs had been issued by the petitioner on 17.11.2021 while fully knowing that his concerned bank account had already been closed way back as on 17.03.2020 and as such the petitioner had issued the aforementioned cheque with a dishonest intention and to deceive the respondent-complainant. The allegations in the FIR prima facie make out a case that the petitioner had cheated the respondent No.2-complainant as the cheque in question had been issued with a dishonest intention while knowing that the concerned bank account already stood closed. The plea taken by the petitioner that this cheque was an undated security cheque that has been misused by the respondent cannot be taken into consideration by this Court and correctness or otherwise of this allegation has to be decided only during trial since it is for the trial Court to analyze the case after taking cognizance of the matter to find out whether the case would end in conviction or acquittal. In the considered opinion of this Court, obviously it is not open to stifle proceedings by entering into the merits of the contentions raised on behalf of the petitioner. The High Court in exercise of its inherent powers is expected to quash the proceedings in criminal cases in rarest of rare cases with extreme caution. There are specific allegations against the petitioner. The defence as taken by him is triable

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issue. The petitioner is before the trial Court and even charges have been framed against him. As such, this Court is not inclined to quash the proceedings. The petitioner will, however, be at liberty to raise all the contentions at the appropriate stage before the trial Court. In view thereof, the petition is dismissed along with the pending application, if any.

13. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

02.08.2025
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No