



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

CRM-M-35895-2025 (O&M)

Date of decision: 14.07.2025

NARESH KUMAR AND ANOTHER

...PETITIONERS

V/S

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sahil Nain, Advocate
for the petitioners.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been preferred under Section 528 of BNSS, seeking quashing of criminal complaint bearing No.NACT/311/2023 dated 20.04.2023 filed under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as 'NI Act') (Annexure P-1) as well as the summoning order dated 05.06.2023 passed by learned Judicial Magistrate Ist Class, S.A.S. Nagar (Mohali), and all other subsequent proceedings arising therefrom.

2. Briefly, the facts, as alleged are that respondent No.2-complainant holds a wholesale liquor license. The petitioners-accused run a partnership firm in the name and style of 'R.M. Liquors' and, had purchased stock from respondent No.2. Over the years, approximately Rs. 89,41,947/- came to be owed by the petitioners. In partial discharge of their liability, a cheque bearing No. 001102 dated 14.02.2023 amounting to Rs.5,00,000/- drawn on HDFC bank was issued to respondent No.2. On presentation for encashment, the same was dishonoured vide memo dated 28.02.2023 with the



remarks- 'funds insufficient.' Since the requisite payment was not made in spite of serving a legal notice, complaint(supra) was registered.

3. Learned counsel for the petitioners, *inter alia*, contends that respondent No.2 took a number of security cheques from the firm of the petitioners. However, the quality of goods sold by respondent No.2 declined over time. When the petitioners raised a concern regarding the same, respondent No.2 began pressurizing them to make full payment and threatened to misuse the security cheques. He further contends that the summoning order dated 05.06.2023 (Annexure P-2) is not sustainable in the eyes of law as the learned trial Court has wrongly relied upon the judgment of this Court in ***Apex Health Care Private Limited and others vs. M/s. Alchemist Hospitals Limited 2012(5)R.C.R.(Criminal) 694***, to hold that conducting an inquiry under Section 202 Cr.P.C. in cases stemming from the NI Act is not mandatory. Further still, neither did the petitioners receive the alleged notice served by respondent No.2 nor is any *prima facie* offence made out against them.

4. Having heard learned counsel for the petitioners, the present petition is being decided *in limine*, without issuing notice to the respondent, in order to save judicial time and also the litigation costs borne by the respondent. A perusal of the record would indicate that the drill of Section 202 Cr.P.C.) (*now Section 225 BNSS*) was not followed before issuance of process. In fact, the following was observed by the learned trial Court in the summoning order dated 05.06.2023 :

“ *Heard on point of summoning. As the accused are residents of other City, as such, the mandate of section 202 Cr.P.C requires that before issuance process to such an accused who reside beyond jurisdiction of the court an inquiry/investigation is required is to be held and satisfaction to this effect as to be*



*recorded. However, the offence U/s 138 of N.I Act is purely technical in nature and governed by a Special Statute. In my opinion, an inquiry U/s 202 Cr.P.C is unwarranted in n offence U/s 138 of N.I Act as there is no scope of investigation of police in such offence. I am supported in my view by obiter dicta given in Criminal Miscellaneous Number M-14352/2009 in case titled as **Apex Health Care Pvt Ltd and Others VS M/s Alchemist Hospitals Ltd.** (Punjab & Haryana High Court). In the said judgment it has been held that:*

“The offence Us 138 of N.I Act is non-cognizable offence as per Section 2(1) Cr.P.C in which police office has got: authority to arrest without warrants. By necessary implication from the language used mean by amended Section 202 Cr.P.C, it apparent that the provisions of Section 202 Cr.P.C enabling Magistrate to hold an inquiry and postponed the issuance of process is not applicable to the proceeding under Us 138 of N.I Act”. As such, the inquiry U/s 202 Cr.P.C in the present case is dispensed with.”

5. Time and again, the constitutional courts have reiterated that the drill of Section 202 Cr.P.C. (now Section 225 BNSS) is mandatory in nature. A two Judge bench of Hon'ble Supreme Court in **Abhijit Pawar vs. Hemant Madhukar 2017(3) SCC 528**, speaking through Justice A.K. Sikri has held as follows:

“28. No doubt, the argument predicated on Section 202 of the Cr.P.C. was raised for the first time by A-1 before the High Court. Notwithstanding the same, being a pure legal issue which could be tested on the basis of admitted facts on record, the High Court could have considered this argument on merits. It is a settled proposition of law that a pure legal issue can be raised at any stage of proceedings, more so, when it goes to the jurisdiction of the matter (See : National Textile Corpn. Ltd. Vs. Nareshkumar Badrikumar Jagad; [(2011) 12 SCC 695].

29. We may like to record that though Mr. Bhatt had refuted the arguments founded on [Section 202](#) of Cr.P.C., even he had submitted that in case this Court is satisfied that mandatory requirement of Section 202 is not fulfilled by the learned Magistrate before issuing the process, this Court can direct the Magistrate to do so. Mr. Bhatt, for this purpose, referred to the judgment in the case of the National Bank of Oman.



30. *For the aforesaid reasons, Criminal Appeal arising out of SLP (Crl) No. 9318 of 2012 is allowed thereby quashing the notice dated 24th November, 2009 in respect of A-1 with direction to the learned Magistrate to take up the matter afresh qua A-1 and pass necessary orders as are permissible in law, after following the procedure contained in Section 202, Cr.P.C.”*

Reliance in this regard can also be placed on the judgment rendered by the Hon’ble Supreme Court in ***National Bank of Oman vs. Barakara Abdul Aziz and another 2013(2) SCC 488*** and this Court in ***Dr. Jasminder Kaur vs. Raj Karan Singh Boparai CRM-M-20260-2008***.

6. This issue, in context of complaints under Section 138 NI Act, has been dealt with a Constitution bench of the Hon’ble Supreme Court ***In re: Expeditious Trial of Cases under Section 138 NI Act 1881 in Suo Moto Writ Petition (Crl.) No.2 of 2020***, wherein the following conclusion was drawn:

“10. Section 202 of the Code confers jurisdiction on the Magistrate to conduct an inquiry for the purpose of deciding whether sufficient grounds justifying the issue of process are made out. The amendment to Section 202 of the Code with effect from 23.06.2006, vide Act 25 of 2005, made it mandatory for the Magistrate to conduct an inquiry before issue of process, in a case where the accused resides beyond the area of jurisdiction of the court. (See: Vijay Dhanuka & Ors. v. Najima Mamtaj & Ors, Abhijit Pawar v. Hemant Madhukar Nimbalkar and Anr. and Birla Corporation Limited v. Adventz Investments and Holdings Limited & Ors.). There has been a divergence of opinion amongst the High Courts relating to the applicability of Section 202 in respect of complaints filed under Section 138 of the Act. Certain cases under Section 138 have been decided by the High Courts upholding the view that it is mandatory for the Magistrate to conduct an inquiry, as provided in Section 202 of the Code, before issuance of process in complaints filed under Section 138. Contrary views have been expressed in some other cases. It has been held that merely because the accused is residing outside the jurisdiction of the court, it is not necessary



for the Magistrate to postpone the issuance of process in each and every case. Further, it has also been held that not conducting inquiry under Section 202 of the Code would not vitiate the issuance of process, if requisite satisfaction can be obtained from materials available on record.

*11. The learned Amici Curiae referred to a judgment of this Court in K.S. Joseph v. Philips Carbon Black Ltd & Anr. where there was a discussion about the requirement of inquiry under Section 202 of the Code in relation to complaints filed under Section 138 but the question of law was left open. In view of the judgments of this Court in Vijay Dhanuka (supra), Abhijit Pawar (supra) and Birla Corporation (supra), **the inquiry to be held by the Magistrate before issuance of summons to the accused residing outside the jurisdiction of the court cannot be dispensed with. The learned Amici Curiae recommended that the Magistrate should come to a conclusion after holding an inquiry that there are sufficient grounds to proceed against the accused. We are in agreement with the learned Amici.**” (emphasis added)*

7. Furthermore, the following directions were issued in ***In re:***

Expeditious Trial of Cases under Section 138 NI Act 1881(supra):

“24. The upshot of the above discussion leads us to the following conclusions:

1) The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial.

2) Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.

3) For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.

4) We recommend that suitable amendments be made to the Act for provision of one trial against a person for multiple offences under Section 138 of the Act committed within a period of 12 months, notwithstanding the restriction in Section 219 of the



Code.

5) The High Courts are requested to issue practice directions to the Trial Courts to treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques issued as part of the said transaction.

6) Judgments of this Court in Adalat Prasad (supra) and Subramaniam Sethuraman (supra) have interpreted the law correctly and we reiterate that there is no inherent power of Trial Courts to review or recall the issue of summons. This does not affect the power of the Trial Court under Section 322 of the Code to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint.

7) Section 258 of the Code is not applicable to complaints under Section 138 of the Act and findings to the contrary in Meters and Instruments (supra) do not lay down correct law. To conclusively deal with this aspect, amendment to the Act empowering the Trial Courts to reconsider/recall summons in respect of complaints under Section 138 shall be considered by the Committee constituted by an order of this Court dated 10.03.2021.

8) All other points, which have been raised by the Amici Curiae in their preliminary report and written submissions and not considered herein, shall be the subject matter of deliberation by the aforementioned Committee. Any other issue relating to expeditious disposal of complaints under Section 138 of the Act shall also be considered by the Committee.”(emphasis added)

8. The intention behind Section 202 Cr.P.C. (now Section 225 BNSS) is to ensure that sufficient grounds exist in order to proceed against an accused in a private complaint. As such, it is pertinent that the concerned Court passes an order indicating substantial compliance of the aforementioned provision, in view of the directions issued in ***In re: Expeditious Trial of Cases under Section 138 NI Act 1881(supra)***.

9. In view of the discussion above, the present petition is allowed and summoning order dated 05.06.2023 passed by learned Judicial Magistrate



Ist Class, S.A.S. Nagar (Mohali), is set aside. The matter is remanded back to concerned Court to consider the matter afresh in accordance with law, by taking recourse to Section 202 Cr.P.C. (*now Section 225 BNSS*).

10. Pending miscellaneous application(s), if any, shall also stand disposed of.

July 14, 2025
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |