



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

123

CRM-M-43801-2025 (O&M)

Date of decision: 03.09.2025

Chhinder Kaur @ Sinder Kaur**...Petitioner****Versus****Balwinder Singh and another****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Ramneek Vasudeva, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) seeking quashing of complaint bearing NACT No. 176 of 2021 (Annexure P-4), titled as ***Balwinder Singh vs. Chhinder Kaur and another***, filed under Section 138 of Negotiable Instruments Act, 1881 (*for short 'NI Act'*) which is pending before the Court of Judicial Magistrate First Class, Kharar and the order dated 10.11.2021 (Annexure P-5), whereby the present petitioner had been ordered to be summoned as an accused and had been called upon to appear and to face trial for commission of aforementioned offence.

2. Brief facts of the case relevant for the purpose of disposal of present petition are that respondent No. 1-Balwinder Singh has filed the aforementioned complaint against the petitioner on the allegations that the petitioner and respondent No. 2-Kamalpreet Singh, who were having family relations with him, had borrowed a sum of Rs. 4,17,000/- from him in the



presence of two witnesses. Respondent No. 2, who is real nephew of the petitioner, executed a pronote and receipt in favour of respondent No. 1/complainant on 01.02.2018 to ensure repayment of the borrowed amount. The petitioner and respondent No. 2 had also agreed to pay interest @ 2% per month to respondent No. 1 and had also undertaken to return the money along with interest to respondent No. 1 on his demand. In lieu of interest that had accrued in favour of respondent No. 1, respondent No. 2, who was power of attorney holder of his father, had handed over possession of 19 Kanals of land, owned by his father, to respondent No. 1 for the purpose of cultivating the same on contract basis. This arrangement was to continue till return of the entire borrowed amount along with interest. Respondent No.1 alleged that respondent No. 2 had also executed an agreement on 01.02.2018 for sale of the same land. The petitioner and respondent No. 2 failed to return the amount payable by them, despite requests made by respondent No. 1. Subsequently, respondent No. 1 had agreed to take only a sum of Rs.3,50,000/- in lump sum from the petitioner and respondent No. 2. To discharge her legally enforceable liability for repayment of the borrowed amount, the petitioner issued a cheque for a sum of Rs.3,50,000/- in favour of respondent No. 1 and at that time, the original pronote, receipt and agreement executed in favour of respondent No. 1 had been taken back by them. The said cheque was presented before the bank by respondent No.1. However, the same was returned with the remarks 'payment stopped by drawer'. Respondent No. 1 served a legal notice upon the accused. However, despite lapse of statutory period, his money was not returned, thereby



compelling him to file the aforementioned complaint.

3. On considering the preliminary evidence produced by the respondent No.1, the learned trial Magistrate, vide impugned order dated 10.11.2021, summoned the petitioner, who was the signatory of the cheque in dispute, and respondent No. 2 to face trial for commission of offence punishable under Section 138 of the N. I. Act. As revealed from the record, the petitioner appeared before the learned trial Court and moved an application for discharge, which had been dismissed, vide order dated 03.07.2025. Aggrieved from the same, the petitioner has filed the present petition seeking quashing of the complaint as well as the summoning order.

4. It is argued by learned counsel for the petitioner that the cheque in question was not issued by her to discharge any legally enforceable debt or liability. In fact, she had given the said cheque to respondent No. 2 in pursuance of a compromise, which was effected between respondent No. 2 and herself but on the asking of respondent No. 2 and in good faith, this cheque was issued in favour of respondent No.1. She had neither obtained any loan from respondent No. 1 nor she had any connection with him. The cheque in question was got issued from her by respondent No. 2 in lieu of some loan obtained from respondent No. 1. She had asked respondent No. 1 to return the cheque but on his refusal, she had got the payment stopped. It is further submitted that it was respondent No. 2, who had executed the pronote and receipt in favour of respondent No.1 and it was him, who had to discharge his legal liability qua for making payment of any amount to respondent No. 1. With these broad submissions, it is urged that the petition



deserves to be allowed and the impugned complaint as well as the summoning order are liable to be set aside. To fortify his argument, learned counsel for the petitioner has relied upon the judgment rendered by the High Court of Karnataka in ***Shri Ishwar vs. Shri Manjunath, 2023 NCKHC-D 12856.***

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

6. 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 (*which is pari materia with Section 482 of the Code of Criminal Procedure, for short 'Code'*). 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.

7. 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 the Code 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 the Code for quashing an order summoning the accused is maintainable.

8. 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 the Code.

9. In view of the above discussed proposition of law, it is explicit that a complaint can be quashed and an order of issuance of summons can be interfered with 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.

10. 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 respondent No. 1 and the impugned order are liable to be quashed or not? The main thrust of the arguments addressed by learned counsel for the petitioner is that the cheque in question was got issued from the petitioner by respondent No. 2 in lieu of some loan obtained from respondent No. 1 and there was no legally enforceable liability on her towards respondent No. 1 and as such the complaint could not be filed against her. 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, she has neither denied her signatures on the cheque in question nor the factum of issuance thereof. Her claim that the cheque in question was got issued from her by respondent No. 2 qua some loan obtained by him from respondent No. 1 needs minute scrutiny of the evidence to be led by both the parties, which obviously cannot be done in the present petition. It is not the claim of the petitioner 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. 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. Then, as per provisions of Section 139 of the N. I. Act, if signatures on a cheque are admitted, the presumption lies that such cheque is issued in order to discharge legally enforceable debt since the well settled proposition of law is that once issuance of cheque and signature thereof are admitted, presumption of a legally enforceable debt in favour of the holder of the cheque arises. It is for the accused to rebut the said presumption, though he need not adduce his own evidence and can rely upon the material submitted by the complainant. Reference in this regard can be had to the observations made by Hon'ble Supreme Court in ***Rangappa vs. Sri Mohan : 2010 (3) RCR (Criminal) 164*** and ***Goaplast (P) Ltd. vs. Chico Ursula D'Souza : 2003 (2) RCR (Criminal) 131***.

11. It is worth mentioning that the learned Magistrate, after considering the evidence produced on record and by forming opinion under Section 227 of BNSS (*which is pari materia with Section 204 of Cr.P.C.*) observed that there are sufficient grounds for proceeding and issued summons for procuring the attendance of the petitioner as an accused. The Magistrate was not required to examine the merits and de-merits of the case as the test to be applied at this stage is as to whether the allegations in the complaint as they stand without adding or detracting the complaint *prima facie* established the ingredients of the offence alleged. It is well settled that the Court at the stage of issuing process cannot test the veracity of



allegations nor for that matter can it proceed in the manner that a judge conducting a trial would, on the basis of the evidence collected during the course of the trial. As such, the contention as raised by the petitioner cannot be accepted. The authority cited by the petitioner is not applicable to the peculiar facts of the present case.

12. In view of the above discussion, it is apparent that the cheque as well as the signatures on the same have been accepted by the petitioner as such, the presumption under Section 139 of the N. I. Act would automatically operate. The burden lies upon the petitioner to disprove the cheque or existence of any legally recoverable debt or liability, which she can do by leading evidence before the learned trial Court. As such, finding no merit in the present petition, the same is dismissed.

[MANISHA BATRA]
JUDGE

03.09.2025
Waseem Ansari

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