Judgment Reserved on: 11.08.2025
Judgment Delivered on: 07.10.2025

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc . Application No. 1679 of 2019

Praveen Kumar Goel ...Applicant

Versus

Mrs. Bina Kumari Parihar ...Respondent

With

Criminal Misc. Application No. 1829 of 2019

Praveen Kumar Goel ...Applicant

Versus

Mrs. Bina Kumari Parihar ...Respondent

Criminal Misc. Application No. 1852 of 2019

Praveen Kumar Goel ....Applicant

Versus

Mrs. Bina Kumari Parihar ...Respondent

Criminal Misc. Application No. 1044 of 2017

Praveen Kumar Goel ...Applicant

Versus

Mrs. Bina Kumari Parihar ...Respondent

Criminal Misc. Application No. 1098 of 2017

Praveen Kumar Goel ...Applicant

Versus

Mrs. Bina Kumari Parihar ...Respondents

Criminal Misc. Application No. 1855 of 2019

Praveen Kumar Goel ...Applicant

Versus

Mrs. Bina Kumari Parihar ...Respondent

Presence: Mr.Bhupesh Kandpal, learned counsel for the Applicant.
Mr. Prem Kaushal, learned counsel for the Respondent

Hon'ble Ashish Naithani, J.

1. These applications arise out of separate complaint cases instituted by Smt. Bina Kumari Parihar against the applicant, Shri Praveen Kumar Goel, under Section 138 of the Negotiable Instruments Act, 1881. The corresponding complaint case numbers are as follows:

   C-482 No. 1044 of 2017 — Complaint Case No. 1995 of 2015;
   C-482 No. 1098 of 2017 — Complaint Case No. 3977 of 2015;
   C-482 No. 1679 of 2019 — Complaint Case No. 1698 of 2017 (OldNo. 262 of 2015);
   C-482 No. 1829 of 2019 — Complaint Case No. 3433 of 2016;
   C-482 No. 1852 of 2019 — Complaint Case No. 2310 of 2015; and
   C-482 No. 1855 of 2019 — Complaint Case No. 3006 of 2015.

2. In each of these proceedings, the summoning orders passed by the learned trial court at Dehradun and the consequent criminal complaints are under challenge on identical grounds. Interim protection had been granted by coordinate Benches in the respective matters vide orders dated 11.08.2017, 18.08.2017, 27.08.2019, 05.09.2019, 13.09.2019 and 13.09.2019, which have continued from time to time.

3. Praveen Kumar Goel (Applicant/petitioner) filed a Criminal Miscellaneous Application under Section 482 Cr.P.C. before the Uttarakhand High Court seeking to quash the summoning order dated 06.04.2019 passed in Criminal Complaint No. 1698 of 2017 (Old No. 262 of 2015) under Section 138 of the Negotiable Instruments Act. The complaint was filed by Mrs. Bina Kumari Parihar (Respondent/complainant) in the Court of the Additional Chief Judicial Magistrate, Dehradun. Since all these applications involves similar issues, therefore, all these applications are clubbed together and are being decided by a common judgment. Criminal Misc. Application (C482) No.1679 of 2019 shall be the leading petition.

4. According to the complaint, Mrs. Bina Kumari Parihar entered into an agreement with Praveen Kumar Goel to purchase two shops in Great India Palace Shopping Mall, Dehradun, developed by MNT Buildcon Pvt. Ltd., for approximately ₹97 lakhs. It is alleged that the accused (Praveen Kumar Goel) assured her he had paid the full amount to the developer and also promised returns on the investment. Later, when discrepancies surfaced, he allegedly issued a cheque of ₹5 lakhs which was dishonoured with the remark “stop payment.” A legal notice was served but no payment was made, leading to the filing of the complaint.

5. The Applicant moved the High Court stating that the complaint and the summoning order are not maintainable and sought stay of the proceedings. Interim relief has been granted earlier.

6. Heard learned counsel for the parties and perused the records.

7. Counsel for the Applicant contends that the summoning order is unsustainable because no offence under Section 138 of the NI Act is made out. The Applicant was merely an employee or mediator in a real estate transaction involving MNT Buildcon Pvt. Ltd. and not the owner or developer. He had no legal obligation to pay the Respondent.

8. It is argued that the cheques in question were given as security, not meant for presentation, and thus cannot attract Section 138 liability. The Respondent has failed to implead the actual owner/developer (MNT Buildcon Pvt. Ltd.) as a party, making the complaint defective. Further, no enforceable debt or liability is proved by the Respondent, and the alleged agreement or promised returns were not supported by documentary evidence.

9. It is also urged that the complaint under Section 138 is a counterblast to a complaint and civil suit earlier filed by the Applicant against the Respondent. The magistrate issued the summoning order without applying judicial mind and directly proceeded to issue non-bailable warrants, violating procedural safeguards. Reliance is placed on Supreme Court precedents emphasising judicial scrutiny before issuing process. The Applicant claims he will suffer irreparable loss unless the proceedings are quashed.

10. Counsel for the Respondent submits that the complaint discloses a clear case under Section 138 of the NI Act. The Respondent paid substantial sums towards the purchase of two shops

based on the Applicant's assurances. The Applicant issued a cheque of ₹5 lakhs to return part of the money or pay returns promised, which was dishonoured with the remark "stop payment."

11. The Respondent sent a legal notice within the statutory period, but the Applicant failed to make payment. This establishes a prima facie case of liability and dishonour under Section 138 NI Act. The complaint was filed within the limitation period and is maintainable in the court's jurisdiction.

12. It is further submitted that questions regarding whether the Applicant was an employee, mediator, or owner and whether the cheque was for security or repayment are matters of trial, not for quashing under Section 482 Cr.P.C. The High Court should not interfere at the stage of summoning unless there is a patent abuse of process, which is not demonstrated here. The Respondent asserts that the Applicant is trying to delay and obstruct the criminal proceedings through this application.

13. This Court has carefully considered the rival submissions advanced by the learned counsel for the Applicant and the learned counsel for the Respondent. The pleadings, annexures and the orders impugned have also been minutely examined. The limited question before this Court is whether the summoning order dated 06.04.2019 and subsequent proceedings in Criminal Complaint No.1698 of 2017 (Old No.262 of 2015), under Section 138 of the Negotiable Instruments Act, 1881, are liable to be quashed in exercise of the inherent powers conferred by Section 482 of the Code of Criminal Procedure.

14. It is by now well settled that the jurisdiction under Section 482 Cr.P.C. is of an extraordinary and residuary nature. It is meant to prevent abuse of the process of law or to secure the ends of justice, but it is not a substitute for trial or appeal. The Supreme Court in a catena of decisions has held that at the stage of issuance of process under Section 138 NI Act, the Magistrate is only required to be satisfied that the complaint discloses a prima facie case constituting the offence; the Court under Section 482 Cr.P.C. is not to embark upon appreciation of evidence or adjudication of disputed facts at this preliminary stage.

15. On examining the complaint, it is evident that the Respondent has specifically alleged (i) the issuance of a cheque dated 30.12.2014 for ₹5,00,000 by the Applicant; (ii) dishonour of the said cheque with the remark “stop payment” on 31.12.2014; (iii) service of a statutory notice dated 14.01.2015 sent within the prescribed period; and (iv) failure of the Applicant to make payment within fifteen days of the notice. The Respondent has also annexed the original cheque, the bank return memo and the postal documents. The learned Magistrate, after perusing the documents and recording the statement under Section 200 Cr.P.C., has issued the impugned summoning order.

16. The principal defences urged by the Applicant, that he was merely an employee or mediator and not the owner or developer; that all payments were made to MNT Buildcon Pvt. Ltd.; that the cheque was a security cheque; that no legally enforceable debt existed; and that the developer has not been impleaded, are all matters which go

to the root of the transaction and will have to be tested by evidence during the trial.

17. Whether a cheque was issued towards a legally enforceable debt or merely as a security instrument is essentially a mixed question of fact and law. Similarly, the effect of non-joinder of the developer, and the precise nature of the contractual arrangement between the parties, cannot be conclusively determined at the stage of quashing, especially when the complaint itself discloses the basic ingredients of the offence.

18. This Court also finds no merit in the contention that the summoning order is “mechanical.” The order-sheet reveals that the learned Magistrate took note of the complaint, the affidavit and supporting documents before issuing process.

19. The absence of a detailed speaking order at the stage of summoning does not by itself vitiate the order, so long as the Magistrate has applied his mind to the material placed before him. Section 204 Cr.P.C. does not mandate elaborate reasoning at the point of issuance of process.

20. The Applicant’s argument that the dispute is essentially civil also does not hold good at this stage. It is true that a parallel civil suit has been filed by the Applicant and that the underlying transaction concerns immovable property. However, the Supreme Court has consistently held that the existence of a civil dispute does not bar criminal proceedings under Section 138 NI Act if the ingredients of the offence are made out. A dishonoured cheque gives rise to a

distinct cause of action under the criminal law irrespective of civil remedies, and both proceedings may go on concurrently.

21. It is significant to note that the complaint discloses that the cheque was issued after the complainant confronted the Applicant regarding non-payment and the Applicant, by signing the cheque, acknowledged some form of obligation. At this stage the presumption under Section 139 NI Act operates in favour of the complainant, namely that the cheque was issued for the discharge of a debt or liability, unless and until the contrary is proved. The Applicant is at liberty to rebut this presumption at trial by leading cogent evidence.

22. The Applicant has also assailed the issuance of coercive process by the trial court. While this Court does not express any conclusive opinion on subsequent orders of the trial court, it notes that the Applicant has an efficacious remedy before the trial court to seek recall of warrants or to contest coercive steps in accordance with law. The extraordinary jurisdiction under Section 482 Cr.P.C. cannot be used to short-circuit statutory remedies or to forestall trial on disputed factual pleas.

23. In sum, the material on record shows that the complaint satisfies the statutory requirements under Section 138 NI Act and discloses a prima facie case. The defences raised by the Applicant involve adjudication of factual controversies and documentary evidence which can only be evaluated during trial.

24. This Court is therefore of the considered opinion that no case for quashing the summoning order or the proceedings is made out at this stage. However, nothing observed herein shall prejudice the trial court in deciding the matter on its own merits, nor shall it prevent the Applicant from raising all permissible legal defences at the appropriate stage.

ORDER

In view of the foregoing discussion and for the reasons recorded above, this Court finds no merit in the present application under Section 482 Cr.P.C. The Criminal Miscellaneous Applications are, accordingly, **dismissed**.

The interim order passed earlier by this Court shall stand **vacated**

It is further made clear that nothing stated in this order shall prejudice the rights and contentions of the parties at trial and the learned trial court shall proceed uninfluenced by any observation contained in this judgment.

Ashish Naithani, J.
07.10.2025

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