HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application (u/s 528) No.2132 of 2025

04 December, 2025

Saumya Pandey --Applicant

Versus

Arshdeep Singh Sandhu --Respondent

Presence:-

Ms. Geetanjali Dhami, learned counsel for applicant.

Hon'ble Pankaj Purohit, J. (Oral)

By means of the present C528 application, the applicant has challenged the cognizance/summoning order dated 10.07.2025 passed by learned Additional Chief Judicial Magistrate, Kashipur, District Udham Singh Nagar in Criminal Case No.781 of 2025 *Arshdeep Singh Sandhu Vs. Ms. Saumya Pandey*, whereby, the applicant was summoned under Section 138 of the Negotiable Instruments Act (hereinafter to be referred to as 'the Act') as well as the entire proceedings of the aforesaid criminal case.

2. The brief facts of the case are that the applicant and respondent was business partners in a café under the name and style M/s Kismat Konnection Kafe K3 and applicant was taking care of day to day activities of café and studio while respondent was investing funds in the café. After some time, there was a monetary dispute arose between the partners, due to which, on 09.04.2024, applicant sent an information through notice regarding terminating the partnership deed and thereby claiming Rs.10,00,000/- to the applicant on various false and concocted grounds. During the execution of partnership deed, respondent secured a post dated

cheque from the applicant as security and after termination of partnership deed, respondent misused the said cheque thereby filling it for an amount of Rs.18,56,300/- without informing the applicant. When the respondent presented the said cheque for encashment before his Banker on 09.05.2025 and the said cheque was dishonored with an endorsement 'refer to drawer' on 12.05.2025. Thereafter, respondent allegedly informed the applicant about the dishonoring the cheque and applicant denied to make any payment, consequent to which, respondent sent a legal notice to applicant on 15.05.2025 which was returned unserved on 24.05.2025. Respondent also sent a legal notice to applicant on her email on 20.05.2025, for which reply was given to the respondent. Thereafter, respondent filed complaint under Section 138 of the Act against the applicant on 09.06.2025 before the learned ACJM, Kashipur, District Udham Singh Nagar, which was registered as Criminal Criminal Case No.781 of 2025 *Arshdeep Singh Sandhu Vs. Ms. Saumya Pandey*.

3. After registration of the complaint, learned Trial Court issued notice to applicant before issuance of summon as provided under Section 223 BNSS, however, applicant could not present herself due to her personal difficulties before the learned Trial Court. Hence, after closing her opportunity, learned Trial Court took the cognizance and summoned the applicant vide order dated 10.07.2025. Thus applicant is before this Court.

4. Learned counsel for the applicant submits that the learned Trial Court issued summons against the applicant in a very erroneous manner completely ignoring the mandate of Section 225(1) BNSS, as the applicant is residing at a place beyond the jurisdiction of learned Trial Court. She further submits that after issuance of

summons and due to non appearance of applicant before the learned Trial Court, learned Trial Court issued Bailable Warrants against the applicant vide order dated 18.09.2025.

5. It is further contended by learned counsel for the applicant that the cheque in question was given to respondent as security and relations between the applicant and respondent were governed by partnership deed, which was subsequently, terminated by the applicant himself and only thereafter, the respondent launched the entire proceedings against the applicant for his personal and private grudge on the basis of concealment of facts and solely on the ground of oblique motive, the respondent instituted the instant case, which is not maintainable, hence, the entire proceedings initiated against the applicant is nothing but a gross misuse of process of law.

6. Having heard the learned counsel for the applicant and having gone through the entire material available on record, this Court is of the firm opinion that the submissions made by learned counsel for the applicant are dependent upon the evidences adduced during trial. Such disputed question of facts could only be gone into by the trial court after evidence having been adduced by both the parties. This Court while invoking its inherent jurisdiction under Section 528 of BNSS is not armored with to dissect the disputed question of facts as alleged at this stage. Therefore, no force is made out in the submission made by learned counsel for the applicant. In order to make out a case for interference under Section 528 of BNSS, the applicant has to satisfy the Court that even if the entirety of the case of the prosecution has taken as true, no case is made out. But,

here this is not a case, therefore, this Court doesn't incline to interfere into the matter.

7. So far as the submission made by learned counsel for applicant regarding not conducting an enquiry under Section 225(1) BNSS is concerned, the same is also not tenable. In support of his complaint, the respondent-complainant has produced affidavit under Section 223 BNSS and produced documentary evidence under Section 225 of BNSS. There was sufficient material before the learned Magistrate to summon the applicant under Section 138 of the Act. In such a situation, no further inquiry was needed. No illegality or perversity is there in the impugned summoning order.

8. In view of the above, the present C528 application fails and the same is accordingly dismissed *in-limine*.

9. Pending application, if any, also stands disposed of.

(**Pankaj Purohit, J**.)
04.12.2025

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