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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 6263/2025 & CRL.M.A. 26466/2025,**
CRL.M.A. 26467/2025

SANGEETA VISHWAKARMAPetitioner

Through: Mr. Yogendra Singh, Adv.

versus

SAVE HOUSING FINANCE LTDRespondent

Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **04.09.2025**

1. By the present petition, the petitioner seeks quashing of the proceedings in complaint case being CC (NI Act) No. 3795/2024 filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act').

2. Briefly stated, it is alleged the petitioner along with the other accused persons approached the respondent with a view to availing a credit facility. It is alleged that based on the representations of the petitioner and the other accused persons, the respondent granted a loan for a sum of ₹21,17,751/- to the accused persons with future interest at 13.50%. It is alleged that the accused persons failed to clear the dues within the stipulated period of time. Thereafter, two cheques bearing nos. 123474 and 294008 both dated 01.12.2023 for a sum of ₹9,19,803/- each were issued by the petitioner as part payment of the loan amount. It is alleged that the subject cheques, on presentation, got



dishonoured and returned unpaid *vide* return memos dated 01.12.2023 with remarks “*funds insufficient.*” Subsequently, upon the non-payment of the cheque amounts within the statutory period despite the receipt of demand notice, the respondent filed a complaint under Section 138 of the NI Act.

3. The learned counsel for the petitioner submits that the subject cheques were given by the petitioner as a security. He submits that the petitioner was misled by the respondent into giving the money as she is an illiterate person. He further submits that the respondent represented that they were in an urgent need of some money and induced the petitioner to part with the subject cheques.

4. At the outset, it is relevant to note that this Court can quash complaints under the NI Act at the pretrial stage in the exercise of its inherent jurisdiction under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (‘BNSS’) if such unimpeachable material is brought forth by the accused persons which indicates that they were not concerned with the issuance of the cheques or that no offence is made out from the admitted facts. The Hon’ble Apex Court in the case of ***Rathish Babu Unnikrishnan v. State (NCT of Delhi) : 2022 SCC OnLine SC 513*** had discussed the scope of interference by the High Court against the issuance of process under the NI Act as under:

“8. The issue to be answered here is whether summons and trial notice should have been quashed on the basis of factual defences. The corollary therefrom is what should be the responsibility of the quashing Court and whether it must weigh the evidence presented by the parties, at a pre-trial stage.

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16. The proposition of law as set out above makes it



abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

17. The consequences of scuttling the criminal process at a pretrial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.

18. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited.”

(emphasis supplied)

5. In line with the dictum of the Hon’ble Apex Court in ***Rathish Babu Unnikrishnan v. State (NCT of Delhi)*** (*supra*), thus, while exercising the power under Section 528 of the BNSS to quash a complaint at the pre-trial stage, it is pertinent for this Court to examine whether the factual defence is of such impeachable nature that the entire allegations made in the complaint is disproved.

6. At the outset, it is pertinent to note that the signature of the petitioner on the subject cheques have not been denied. The main thrust of the petitioner’s argument is that the subject cheques



were given under the pretext that the respondent was in urgent need of funds. It has been argued that the petitioner was misled by the respondent into giving the money as she is an illiterate person.

7. Even if the case of the petitioner is taken at the highest, at this stage, the fact that the petitioner may have been allegedly led to part with the cheques cannot be termed as an unimpeachable fact for this Court to quash the proceedings at the pre-trial stage. The factual issues that serve as defences in the case are not appropriate for determination under the powers conferred by Section 528 of the BNSS at this stage. It is well-established that this Court should refrain from expressing any views on disputed questions of fact in proceedings under Section 528 of the BNSS, as doing so could pre-empt the findings of the trial court.

8. Concededly, the petitioner, at this stage, does not dispute the issuance of the subject cheques. Whether the said cheques were given as part payment of the loan amount issued by the respondent or were given because the petitioner was misled to part with the subject cheques are in the nature of defence and cannot be decided at this stage. The same does not warrant the exercise of the power of this Court under Section 528 of the BNSS.

9. The present petition is accordingly dismissed. Pending applications also stand disposed of.

AMIT MAHAJAN, J

SEPTEMBER 4, 2025

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