

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

2026.PHHC.079863



CRM-M-17623-2023 (O&M)

Parmod Kumar

...Petitioner

Versus

Devender Singh

...Respondent

Sr. No.	Particulars	Details
1	The date when the judgment is reserved	13.05.2026
2	The date when the judgment is pronounced	22.05.2026
3	The date when the judgment is uploaded on the website	22.05.2026
4	Whether only operative part of the judgment is pronounced or full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sukesh Kumar Jindal, Advocate and
Ms. Komal Jindal, Advocate
for the petitioner.

Mr. Rahul Jaswal, Advocate
for the respondent.

MANISHA BATRA, J.

1. The present petition has been filed under Section 482 Cr.P.C. (which corresponds to Section 528 of BNSS, 2023) seeking quashing Criminal Complaint bearing CIS No. NACT-242 of 2017 (Annexure P-1), titled as **Devender Singh v. Parmod Kumar**, filed under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for short ‘N. I. Act’) along with all consequential proceedings arising therefrom, including the order dated

09.10.2017 (Annexure P-5), whereby the petitioner was summoned to face trial for commission of aforementioned offences.

2. Brief facts relevant for the purpose of disposal of the present petition are that the aforementioned complaint was filed by the respondent-complainant with the allegations that in April, 2017, the present petitioner had approached the respondent for the purpose of lending him an amount of Rs.4 lakhs. The respondent had agreed to the same and had given the aforementioned amount of money in cash to the petitioner. He had assured to repay the same within a period of one month. As he could not pay the same within the said time, then on demand of the respondent, the petitioner issued a cheque bearing No. 385205 dated 10.05.2017 for a sum of Rs.4 lakhs in favour of the respondent. The said cheque was presented by the respondent before his banker for realization. However, the same had been received back with the remarks ***'kindly contact drawer/drawee bank and please present again'***, vide memo dated 13.06.2017.

3. The respondent contacted the petitioner, who assured him to present the cheque again after one month, which was so done but was returned again on 29.07.2017 with the remarks ***'funds insufficient and dormant account'***. The statutory notice to the petitioner was also issued but to no avail, thereby compelling the respondent to file the aforementioned complaint.

4. After presentation of the complaint and recording of preliminary evidence, the learned trial Magistrate, vide impugned order dated 09.10.2017, issued process against the petitioner summoning him to face the trial. Aggrieved from the same, the present petition has been filed.

5. It is argued by learned by learned counsel for the petitioner that

the impugned complaint as well as the summoning order are not sustainable in the eyes of law as while entertaining the complaint and passing the summoning order, the learned trial Magistrate ignored the fact that the respondent was under an obligation to serve notice under Section 138(b) of the N. I. Act within 30 days from the date of receipt of information qua dishonour of cheque. The cheque in dispute was dishonoured on 29.07.2017 but the legal notice was issued only on 29.08.2017 i.e. after 31 days from the date of receipt of information by him and on this very ground itself, the complaint was not sustainable. It is, therefore, argued that the impugned summoning order as well as the complaint are liable to be quashed and the petition deserves to be allowed. To buttress his arguments, learned counsel for the petitioner has relied upon the authorities cited as ***Kamlesh Kumar v. State of Bihar and another, 2014 (1) RCR (Criminal) 332*** and ***Sivakumar v. Natarajan, 2009(3) RCR (Criminal) 365***.

6. *Per contra*, learned counsel for the respondent-complainant has argued that the complaint and the summoning order do not suffer from any illegality warranting interference under Section 482 Cr.P.C. It is submitted that the petitioner seeks quashing solely on the plea that the statutory notice under Section 138(b) of the N.I. Act was not issued within the prescribed period; however, such objection cannot be adjudicated in proceedings under Section 482 Cr.P.C. as the question regarding receipt of information of dishonour and compliance with statutory notice requirements involves factual determination and appreciation of evidence. Once the complaint discloses the foundational ingredients of the offence and process has been issued, the accused must raise his defence before the trial Court. Reliance has been placed upon ***Kishore***

Sharma v. Sachin Dubey, 2020(1) NIJ 355 wherein the Hon'ble Supreme Court held that the issue whether legal notice was duly served within the statutory period is a triable issue and proceedings under Section 138 of the N.I. Act cannot be quashed under Section 482 Cr.P.C. on such ground alone. Further reliance has been placed upon *Rathish Babu Unnikrishnan v. State (Govt. of NCT of Delhi), 2022(2) RCR(Criminal) 871* to contend that quashing at the pre-trial stage in cheque dishonour matters ought to be exercised sparingly and only where the defence raised is of unimpeachable character; otherwise, disputed factual issues must be left to be adjudicated during trial. With these broad submissions, it is urged that the petition is liable to be dismissed.

7. This Court has heard the rival submissions.

8. After hearing the arguments of the parties and on perusal of the record, it is apparent and evident that the challenge in the present case is not based upon a disputed defence touching upon the existence of liability, issuance of cheque, presumption under Sections 118 or 139 of the N.I. Act, or any issue requiring appreciation of oral or documentary evidence. Rather, the petitioner has raised a pure legal objection arising from the complainant's own pleadings, i.e. whether the mandatory requirement contained in Section 138(b) of the N.I. Act stood complied with before institution of the complaint or not? For attracting penal consequences under Section 138 of the N.I. Act, the legislature has prescribed certain conditions precedent in the proviso appended thereto. One of such indispensable conditions is that the payee or holder in due course must make a demand for payment by issuing a written notice **within thirty days from the date of receipt of information from the**

bank regarding dishonour of the cheque. Compliance of this requirement is not procedural in nature but constitutes a substantive statutory pre-condition for accrual of cause of action itself. Unless the said requirement is fulfilled, the offence under Section 138 of N. I. act cannot be said to have matured.

9. In the present case, the averments contained in paragraph No.8 of the complaint assume significance. The complainant himself has pleaded that after presentation of the cheque, the same was returned on **29.07.2017** with the remarks “*funds insufficient and dormant account*” and thereafter statutory notice came to be issued. No assertion has been made in the complaint that information regarding dishonour was received on any subsequent date. There is equally no pleading that the return memo was delivered later or that knowledge of dishonour was acquired after 29.07.2017. Thus, for purposes of the present proceedings, the complainant’s own case proceeds on the footing that information regarding dishonour stood received on 29.07.2017 itself. Once that position emerges from the complaint, computation under Section 138(b) of the N. I. Act leaves no possibility for any controversy. Excluding the date of receipt of information i.e. 29.07.2017, limitation commenced on 30.07.2017 and expired on 28.08.2017. Admittedly, the legal notice was issued only on **29.08.2017**, i.e. beyond the statutory period. Consequently, one of the foundational requirements for institution of complaint under Section 138 stood unfulfilled. The contention of learned counsel for the respondent that such issue is triable and therefore cannot be examined in proceedings under Section 482 Cr.P.C. is not acceptable in the peculiar facts of the present case. Reliance placed upon ***Kishore Sharma’s case (supra)*** does not advance the case of the respondent. In the said matter,

the Supreme Court was dealing with a situation where the question whether notice had been duly served within the statutory period was itself disputed and required evidence. It was in those circumstances that the Court observed that service of notice constituted a triable issue and quashing was unwarranted. Similarly, in *Ajeet Seeds Ltd. v. K. Gopala Krishnaiah*, (2014) 12 SCC 685, upon which the judgement of *Kishore Sharma's case (supra)* is based, was rendered in the context of presumptive service and proof of notice. The Supreme Court held that where service of notice is disputed, evidence would be necessary and the complaint should not be quashed at threshold merely because service is not specifically established at the summoning stage.

10. However, the present case stands on a different footing. Here, the issue is not whether notice was served, deemed to be served, refused, or avoided. The issue is whether the complainant issued the notice **within limitation at all or not?** This question finds answer in affirmative in the complainant's own admissions in the complaint. In this regard, reference can be made to the the judgment of the Hon'ble Supreme Court in *Kamlesh Kumar's case (supra)*, where the Hon'ble Supreme Court examined the maintainability of the complaint on admitted dates appearing from the complaint itself and held that where notice had not been issued within the prescribed period under Section 138(b), the complaint could not be sustained. The Court further observed that once the material facts stand admitted from the pleadings themselves, relegating the accused to trial would serve no useful purpose and would amount to continuation of proceedings despite absence of statutory compliance.

11. The broad observations made in *Rathish Babu Unnikrishnan's*

case (supra) that quashing powers should be exercised sparingly in cheque dishonour matters also do not extend any help to the case of the petitioner as in that case, the Hon’ble Supreme Court was cautioning against quashing where disputed questions regarding liability and rebuttal of statutory presumptions existed. Such principle cannot be relied upon to compel an accused to undergo trial where the complaint itself discloses failure to satisfy a mandatory statutory requirement.

12. It is well settled proposition of law that the inherent jurisdiction of this Court exists to prevent abuse of process and to secure the ends of justice. Where admitted averments contained in the complaint demonstrate that the statutory notice itself was issued beyond the period contemplated under Section 138(b) of the N.I. Act, continuation of proceedings would be an empty formality and an unnecessary prolongation of criminal process. Keeping in view the discussion made about, this Court is of the considered opinion that the impugned complaint deserves to be quashed. Accordingly, the present petition is allowed and the impugned complaint along with all consequential proceedings arising therefrom, including the summoning order dated 09.10.2017, is hereby quashed.

(MANISHA BATRA)
JUDGE

22.05.2026
Waseem Ansari

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