IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No.971 of 2024
Date of Decision: 03.07.2026

Jasmer Singh ………Petitioner

Versus

Smt. Sunita …….Respondent

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting?[1] Yes.

For the Petitioner: Mr. Karan Singh Kanwar, Advocate.

For the Respondent: Mr. Rahul Singh Verma, Advocate.

Sandeep Sharma, J. *(oral)*

By way of instant petition filed under Section 528 of Bharatiya Nagrik Suraksha Sanhita, 2023, prayer has been made by the applicant/petitioner (in short "***accused***") for quashing of complaint/proceedings initiated at the behest of respondent-complainant (in short "***complainant***") filed under Section 138 of the Negotiable Instruments Act (in short "***Act***"), being criminal Case No.465 of 2022, pending adjudication before the learned Additional Chief Judicial Magistrate, Court No.1, Paonta Sahib, District Sirmaur, Himachal Pradesh, on the ground that complaint, as detailed hereinabove, is not maintainable for the reason that cheque allegedly issued by him towards discharge of his

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[1] *Whether the reporters of the local papers may be allowed to see the judgment?*

lawful liability was not dishonoured on account of insufficient funds, rather same was returned unpaid on the ground that it was an old cheque.

2. Precisely, the facts of the case, as emerge from the pleadings as well as other material adduced on record by the respective parties are that complainant instituted a complaint under Section 138 of the Act in the competent Court of law, alleging therein that he, on the request of the accused, advanced loan to the tune of Rs.1,30,000/-, who though with a view to discharge his lawful liability, issued cheque in the sum of Rs.1,30,000/- drawn at Oriental Bank of Commerce, Branch at Nahan road, Paonta Sahib, in favour of the complainant, but aforesaid cheque on its presentation to the bank concerned was returned back vide memo dated 10.06.2022 with the remarks “88-Old Cheque”. Immediately after receipt of afore return memo, complainant served the accused with legal notice, thereby calling him to make the payment good within the stipulated period, but since needful was not done as per mandate contained in the legal notice, complainant had no option, but to institute proceedings under Section 138 of the Act in the competent Court of law.

3. Learned trial Court, taking cognizance of the matter, has already issued summons to the accused, but before case could proceed further, accused approached this Court in the instant proceedings, praying therein for quashing of complaint on the ground that no case under Section

138 of the Act is made out and as such, this Court, while exercising power under Section 482 of Criminal Procedure Code (now Section 528 of Bharatiya Nagrik Suraksha Sanhita), may proceed to quash the complaint because continuation thereof would amount to sheer abuse of process of law.

4. Precisely, the grouse of the accused, as has been highlighted in the grounds of the petition and further canvassed by Mr. Karan Singh Kanwar, learned counsel representing the accused, is that bare perusal of Section 138 of the Act clearly reveals that proceedings under the aforesaid provision can be initiated only where a cheque issued towards the discharge of lawful liability is dishonoured on account of 'Insufficient funds'. He states that since return memo dated 10.06.2022, adduced on record by the complainant, clearly reveals that cheque was not dishonoured on account of 'insufficient funds', rather was dishonoured with the remarks "88-Old Cheque", complaint having been filed by the complainant is likely to fail in all probabilities and as such, no fruitful purpose would be served by putting the accused to the ordeal of protected trial, which is bound to fail.

5. To the contrary, Mr. Rahul Singh Verma, learned counsel for the complainant, vehemently argued that present petition is not maintainable, rather an attempt has been made at the behest of the accused to scuttle the trial. Mr. Verma, further argued that once cheque

issued by the accused towards discharge of lawful liability has been admitted to be issued and there is no dispute with regard to issuance of cheque, coupled with the fact that same was dishonoured with remarks “88-Old Cheque”, this Court can well presume that cheque in question was returned on account of ‘insufficient funds’. He submitted that otherwise also, question “whether there were sufficient funds in the bank account of the accused at the time of issuance of return memo dated 10.06.2022?” is a matter to be decided by the Court below in totality of evidence. He submitted that admittedly cheque bearing No.004038 dated 08.06.2022 amounting to Rs.1,30,000/- drawn at Oriental Bank of Commerce, Branch Nahan road, Paonta Sahib, was issued by the accused, however, before the cheque was presented for encashment, Oriental Bank of Commerce had merged with Punjab National Bank and as such, after presentation, afore cheque was returned unpaid by Punjab National Bank with the endorsement "88 – Old Cheque." He submitted that since there is no dispute with regard to merger of two banks, as detailed hereinabove, Punjab National Bank otherwise could not have returned the cheque, rather ought to have honoured the same, provided sufficient funds were available in the account of the accused. He further submitted that bank account of the accused in Oriental Bank of Commerce, which now stands merged with the Punjab National Bank, is same, but on account of merger, new cheque book may have been issued. However, in the instant case, accused, with a view to defeat the rightful claim of the complainant, purposely issued old cheque belonging to Oriental Bank of Commerce, which otherwise ought to have been honoured by the Punjab National Bank on account of its merger. While referring to the judgment passed by Hon'ble Apex Court in ***M/s Laxmi Dyechem V. State of Gujarat and Ors, (2012) 13 SCC 375***, Mr. Rahul Singh Verma, learned counsel representing the respondent, argued that expression 'insufficient funds' used under Section 138 of the Act is a genus and dishonour for reasons such as "account closed", "payment stopped", "referred to the drawer" are only species of that genus. He submitted that remarks 'Old cheque' also amounts to insufficient funds, because at the time of issuance of cheque, accused had sufficient knowledge with regard to merger of his bank with Punjab National Bank, but yet he chose to issue cheque of Oriental Bank of Commerce towards discharge of his lawful liability.

6. I have heard the learned counsel for the parties and gone through the records of the case.

7. By now it is well-settled that High Court, while exercising power under Section 482 of Criminal Procedure Code (now Section 528 of Bharatiya Nagrik Suraksha Sanhita), is empowered to quash the criminal proceedings or complaint where it is satisfied that no prima facie offence is

made out. If High Court arrives at a conclusion that proceedings sought to be quashed, if permitted to sustain would amount to sheer abuse of process of law and it is likely to fail in all probabilities, it, while exercising power under Section 528 of Bharatiya Nagrik Suraksha Sanhita, can proceed to quash the FIR, criminal proceedings as well as complaint. Reliance in this regard is placed upon judgment passed by the three-Judge Bench of the Hon'ble Apex Court in case titled **State of Karnataka v. L. Muniswamy and others, 1977 (2) SCC 699**, wherein it came to be held that High Court, while exercising power under Section 482 Cr.PC, is entitled to quash the proceedings, if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed.

8. Subsequently, in case titled **State of Haryana and others v. Bhajan Lal and others, 1992 Supp (1) SCC 335**, the Hon'ble Apex Court, while elaborately discussing the scope and competence of High Court to quash criminal proceedings under Section 482 Cr.PC laid down certain principles governing the jurisdiction of High Court to exercise its power. After passing of aforesaid judgment, issue with regard to exercise of power under Section 482 Cr.PC, again came to be considered by the Hon'ble Apex Court in Criminal Appeal No.577 of 2017 (arising out of SLP (CrL.) No. 287 of 2017) titled Vineet Kumar and Ors. v. State of U.P. and Anr., wherein it

has been held that saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose i.e. court proceedings ought not be permitted to degenerate into a weapon of harassment or persecution.

9. Reliance is also placed upon judgments passed by the Hon'ble Apex Court in ***Prashant Bharti Vs. State (NCT of Delhi), (2013) 9 SCC 293, Rajiv Thapar and Others Vs. Madan Lal Kapoor, (2013) 3 SCC 330, Anand Kumar Mohatta and Anr. v. State (Government of NCT of Delhi) Department of Home and Anr, AIR 2019 SC 210*** *and* ***Pramod Suryabhan Pawar v. The State of Maharashtra and Anr, (2019) 9 SCC 608.***

10. Now being guided by the aforesaid proposition of law laid down by the Hon'ble Apex Court, this Court would make an endeavour to examine and consider the prayer made in the instant petition vis-à-vis factual matrix of the case.

11. Having heard learned counsel representing the parties and perused material available on record, this Court finds that there is no specific denial, if any, on the part of the accused with regard to issuance of cheque as well as signatures thereupon, rather an attempt has been made to get the complaint filed at the behest of complainant quashed on the ground that cheque issued by accused in favour of complainant was never

dishonoured on account of 'insufficient funds', rather same was returned upaid with remarks '88-Old cheque'.

12. Mr. Karan Singh Kanwar, learned counsel representing the accused, while referring to Section 138 of the Act, vehemently argued that proceedings under Section 138 of the Act can only be initiated if cheque issued towards discharge of lawful liability is returned on account of 'insufficient funds' in the bank account of the accused. To ascertain the correctness of aforesaid plea raised at the behest of accused, it would be apt to take note of Section 138 of the Act, which reads as under:

> "138. Dishonour of cheque for insufficiency, etc., of funds in the account.—
> Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:
> Provided that nothing contained in this section shall apply unless—
> (a)the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
> (b)the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the

receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c)the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—

For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.]

13. Careful perusal of aforesaid provision of law reveals that where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person towards discharge of lawful liability, is returned by the Bank unpaid, because of 'insufficiency of funds' in the Bank account or that it exceeds the amount otherwise agreed to be paid from that account by an agreement shall be deemed to have committed an offence and shall, without prejudice to any other provisions of the Act, be punished with imprisonment, as prescribed under Section 138 of the Act. As per aforesaid provision of law, a cheque dishonoured on account of 'insufficient funds' or where it exceeds the amount arranged to be paid would attract the provisions under Section 138 of the Act.

14. Question, which needs to be determined in the case at hand is whether reasons, if any, other than the reasons, as detailed in Section 138 of the Act, assigned by the Bank concerned, while returning the Cheque can be a ground to file complaint under Section 138 of the Act, has been aptly

and elaborately answered by Hon'ble Apex Court in ***Laxmi Dyechem*** (supra). In afore case, Hon'ble Apex Court held that first contingency expression i.e. "either because of the amount of money standing to the credit of that account is insufficient to honour the cheque" used under Section 138 of the Act is a genus and dishonour for reasons such as "account closed", "payment stopped", "referred to the drawer", "signature do not match" or "image not found" are only species of that genus. In afore judgment, Hon'ble Apex Court categorically held that two contingencies envisaged under Section 138 of the Act cannot be interpreted strictly or literally. Relevant Paras of afore judgment read as under:

> "15. The above line of decisions leaves no room for holding that the two contingencies envisaged under Section 138 of the Act must be interpreted strictly or literally. We find ourselves in respectful agreement with the decision in NEPC Micon Ltd. (supra) that the expression "amount of money .... is insufficient" appearing in Section 138 of the Act is a genus and dishonour for reasons such "as account closed", "payment stopped", "referred to the drawer" are only species of that genus. Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138, so also dishonour on the ground that the "signatures do not match" or that the "image is not found", which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of Section 138 of the Act. This Court has in the decisions referred to above taken note of situations and contingencies arising out of deliberate acts of omission or commission on the part of the drawers of the cheques which would inevitably result in the dishonour of the cheque issued by them. For instance this Court has held that if after issue of the cheque the drawer closes the account it must be presumed that the amount in the account was

nil hence insufficient to meet the demand of the cheque. A similar result can be brought about by the drawer changing his specimen signature given to the bank or in the case of a company by the company changing the mandate of those authorised to sign the cheques on its behalf. Such changes or alteration in the mandate may be dishonest or fraudulent and that would inevitably result in dishonour of all cheques signed by the previously authorised signatories. There is in our view no qualitative difference between a situation where the dishonour takes place on account of the substitution by a new set of authorised signatories resulting in the dishonour of the cheques already issued and another situation in which the drawer of the cheque changes his own signatures or closes the account or issues instructions to the bank not to make the payment. So long as the change is brought about with a view to preventing the cheque being honoured the dishonour would become an offence under Section 138 subject to other conditions prescribed being satisfied. There may indeed be situations where a mismatch between the signatories on the cheque drawn by the drawer and the specimen available with the bank may result in dishonour of the cheque even when the drawer never intended to invite such a dishonour. We are also conscious of the fact that an authorised signatory may in the ordinary course of business be replaced by a new signatory ending the earlier mandate to the bank. Dishonour on account of such changes that may occur in the course of ordinary business of a company, partnership or an individual may not constitute an offence by itself because such a dishonour in order to qualify for prosecution under Section 138 shall have to be preceded by a statutory notice where the drawer is called upon and has the opportunity to arrange the payment of the amount covered by the cheque. It is only when the drawer despite receipt of such a notice and despite the opportunity to make the payment within the time stipulated under the statute does not pay the amount that the dishonour would be considered a dishonour constituting an offence, hence punishable. Even in such cases, the question whether or not there was a lawfully recoverable debt or liability for discharge whereof the cheque was issued would be a matter that the trial Court will examine having regard to the evidence adduced before it and keeping in view the statutory

> presumption that unless rebutted the cheque is presumed to have been issued for a valid consideration.
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> 16. In the case at hand, the High Court relied upon a decision of this Court in Vinod Tanna's case (supra) in support of its view. We have carefully gone through the said decision which relies upon the decision of this Court in Electronics Trade & Technology Development Corporation Ltd. (supra). The view expressed by this Court in Electronics Trade & Technology Development Corporation Ltd. (supra) that a dishonour of the cheque by the drawer after issue of a notice to the holder asking him not to present a cheque would not attract Section 138 has been specifically overruled in Modi Cements Ltd. case (supra). The net effect is that dishonour on the ground that the payment has been stopped, regardless whether such stoppage is with or without notice to the drawer, and regardless whether the stoppage of payment is on the ground that the amount lying in the account was not sufficient to meet the requirement of the cheque, would attract the provisions of Section 138."

15. It is quite apparent from the aforesaid provision of law laid down by Hon'ble Apex Court that expression "amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient" appearing in Section 138 of the Act cannot be given narrower meaning, rather requires to be given wider meaning. Though Court in afore judgment, while interpreting aforesaid expression referred to certain other contingencies, as has been taken note hereinabove, but while doing so, it is also observed that expression "amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other

liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient" is required to be given wider meaning. Most importantly, in afore judgment, Hon'ble Apex Court held that very object and purpose of Sections 138 to 142 inserted in the Negotiable Instruments Act is to punish only those who know fully well that they have no amount in the Bank and yet issue a Cheque in discharge of debt or liability already borrowed/incurred, which amounts to cheating, and not to punish those who refused to discharge the debt for *bona fide* and sustainable reason. While referring to its earlier decision in ***M.M.T.C. Ltd. and Anr vs. Medchl Chemical and Pharma (P) Ltd. And Anr.*, (2002) 1 SCC 234**, Hon'ble Apex Court in afore case further held that Cheque dishonour on account of drawer's stop payment instruction constitutes an offence under Section 138 of the Act, but it is subject to the rebuttable presumption under Section 139 of the Act as the same can be rebutted by the drawer even at the first instance. While referring to Section 139 of the Act, Hon'ble Apex Court held that accused has to show that dishonour was not due to insufficiency of funds but there was valid cause, including absence of any debt or liability for the stop payment instruction to the Bank. Para No.22 of the judgment in ***Laxmi Dyechem*** (supra), reads as under:

> "22. We have to bear in mind that the Legislature while incorporating the provisions of Chapter XVII, Sections 138 to 142 inserted in the NI Act

(Amendment Act 1988) intends to punish only those who know fully well that they have no amount in the bank and yet issue a cheque in discharge of debt or liability already borrowed/incurred -which amounts to cheating, and not to punish those who refused to discharge the debt for bona fide and sustainable reason. It is in this context that this Hon'ble Court in the matter of M.M.T.C. Ltd. And Anr vs. Medchl Chemical and Pharma (P) Ltd. And Anr., (2002) 1 SCC 234, was pleased to hold that cheque dishonour on account of drawer's stop payment instruction constitutes an offence under Section 138 of the NI Act but it is subject to the rebuttable presumption under Section 139 of the NI Act as the same can be rebutted by the drawer even at the first instance. It was held therein that in order to escape liability under Section 139, the accused has to show that dishonour was not due to insufficiency of funds but there was valid cause, including absence of any debt or liability for the stop payment instruction to the bank. The specific observations of the Court in this regard may be quoted for ready reference which are as follows:

> "19. ....The authority shows that even when the cheque is dishonoured by reason of stop-payment instructions by virtue of Section 139 the court has to presume that the cheque was received by the holder for the discharge, in whole or in part, of any debt or liability. Of course this is a rebuttable presumption. The accused can thus show that the "stop-payment" instructions were not issued because of insufficiency or paucity of funds. If the accused shows that in his account there were sufficient funds to clear the amount of the cheque at the time of presentation of the cheque for encashment at the drawer bank and that the stop-payment notice had been issued because of other valid causes including that there was no existing debt or liability at the time of presentation of cheque for encashment, then offence under Section 138 would not be made out. The important thing is that the burden of so proving would be on the accused. Thus a court cannot quash a complaint on this ground." Therefore, complaint filed in such a case although might not be quashed at the threshold before trial, heavy onus lies

> on the court issuing summons in such cases as the trial is summary in nature."

16. At this stage, this Court finds it necessary to refer to the judgment passed by Hon'ble Apex Court in ***Vinod Tanna & Anr. Vs. Zaher Siddiqui & Ors. (2002) 7 SCC 541***, which has been pressed into service by learned counsel representing the petitioner. If the judgment in *Laxmi Dyechem* (supra), rendered in the year 2012, is perused in its entirety, it clearly reveals that its earlier judgment rendered in *Vinod Tanna* (supra) has been taken note of, but for the reasons given in detail, it virtually differed with its earlier decision, wherein it was ruled that dishonour of Cheque because of reasons other than insufficiency of funds in the bank account of the drawer did not attract Section 138 of the Act.

17. In the instant case, admittedly factum with regard to issuance of cheque as well as signatures thereupon is not in dispute, rather specific claim of the accused is that complaint is not maintainable because cheque in question was not returned on account of 'insufficient funds' in the bank of the accused. Pleadings and material adduced on record by the respective parties reveal that account of the accused was originally maintained with Oriental Bank of Commerce, which subsequently came to be merged with Punjab National Bank. Though factum with regard to merger of Oriental Bank of Commerce with Punjab National Bank was in the knowledge of the

accused, but yet he issued cheque of Oriental Bank of Commerce. Though bank account of the accused remained same even after the merger, but cheque having been issued towards discharge of lawful liability in favour of the complainant came to be dishonoured by the Punjab National Bank with remarks "Old cheque".

18. This Court, having taken note of aforesaid facts, is persuaded to agree with learned counsel for the complainant that "whether at the time of issuance of cheque, the accused had sufficient funds in the account, which is most relevant factor in the cases filed under Section 138 of the Act, shall be decided by the learned trial Court in totality of evidence. Learned counsel for the accused, stated that in case complainant is able to prove by leading cogent and convincing evidence that at the time of issuance of cheque, which came to be dishonoured with remarks "old cheque", accused had no sufficient funds in his account, complaint having been filed by the complainant would be maintainable and accused is also held guilty of his having committed offence punishable under Section 138 of the Act. At the cost of repetition, though this Court has no reason to differ with Mr. Karan Singh Kanwar, learned counsel representing the accused, that under Section 138 of the Act, there are only two contingencies i.e. insufficient funds and exceeds arrangement", in which complainant can proceed to file complaint under Section 138 of the Act. However, as has been clarified in

Laxmi Dyechem (supra) that expression 'insufficient funds' used under Section 138 of the Act is a genus and dishonour for reasons such as "account closed", "payment stopped", "referred to the drawer" are only species of that genus. In afore judgment, Hon'ble Apex Court held that expression "amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient" appearing in Section 138 of the Act cannot be given narrower meaning, rather requires to be given wider meaning. It is not in dispute that validity of cheque, if any, issued towards discharge of lawful liability is determined from the date of issuance of the same, but certainly accused cannot be permitted to take advantage of the situation that cheque issued by bank, which ultimately merged into some other bank, had become old, especially when it is not in dispute that account of the accused as was existing in the Oriental Bank of Commerce remained same with new Bank i.e. Punjab National Bank.

19. In similar facts and circumstances, High Court of Punjab and Haryana in case CRM-M No.51125/2023, titled as ***Surjit Kumar Vs. Sunil Kumar Dalmia,*** decided on 09.10.2023, held that once it is not in dispute that cheque was issued towards discharge of lawful liability, mere fact that cheque was returned unpaid on account of fact that erstwhile State Bank of

Patiala stood merged with State Bank of India cannot be accepted, rather relevant question in such like cases would be *"whether cheque has been misused by the complainant or not?"* is a question of trial and can only be adjudicated by the learned trial Court. Relevant paras of the afore judgment are extracted hereinbelow:-

> *"6. Thus, what flows from the above extracted provisions is that at the initial stage, once the conditions of Section 138 of the Act are fulfilled, the presumption under Section 139 would arise in favour of the complainant, which would be sufficient to warrant the summoning of the accused.*
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> *7. Adverting to the case in hand, the petitioner has not disputed his signatures on the cheque in question and not even disputed that the cheque was issued in discharge of his legal liability. The petitioner himself has admitted issuance of the cheque to the complainant as well as the receipt of the legal notice (Annexure P-5). Rather, he has merely stated that the cheque had been returned on account of the State Bank of Patiala cheques not being acceptable at SBI due to the merger of SBOP with SBI, and thereafter, the cheque had been misused by the complainant. Whether the cheque has been misused by the complainant, or not is a question of trial, which would be adjudicated upon by the trial Court after both the parties lead their respective evidence. This Court cannot be expected to delve into the merits of the submissions made by the learned counsel for the petitioner at this stage. Trite to say, the presumption under Section 139 of the Act is rebuttable and it would always be open for the petitioner to rebut this presumption while leading his defence evidence during trial."*

20. In yet another case decided by the Punjab and Haryana High Court in CRM-M No.36565/2019, titled as ***Balkour Singh Vs. State of Punjab and others***, in similar facts and circumstances, following order

came to be passed. Relevant para of the afore judgment is extracted hereinbelow:-

> *"11. Another argument raised by the counsel for the petitioner that the return memo dated 18.12.2018 with remarks 'account closed' was obtained by the respondent No.2 in an illegal and unjust manner, as the cheque issued was of the State Bank of Bikaner and Jaipur, which bank was merged with State Bank of India and on such merger, the cheques issued by the erstwhile State Bank of Bikaner and Jaipur were declared invalid by the Reserve Bank of India w.e.f. 30.06.2018. The dishonour of cheque with remarks 'account closed' would certainly be an offence under Section 138 of the NI Act as has been held by the Hon'ble Supreme Court in NEPC Micon Ltd. v. Magma Leasing Ltd., (1999) 4 SCC 253. Further, invalidation of the cheque on account of merger with another bank would be a disputed question of fact and would be a probable defence that the petitioner is free to take before the trial Court. This Court cannot negate the complainant's case without allowing the complainant to lead evidence while exercising its discretionary power under Section 482 Cr.P.C. Furthermore, it is also a disputed question of fact whether the respondent No.3 kept the cheque of the petitioner with him or the petitioner himself gave the alleged invalid cheque, which was dishonoured on presentation by respondent No.2. Therefore, at this nascent/pre-trial stage, this Court cannot delve upon the disputed question of fact under Section 482 Cr.P.C., without giving an opportunity to the respondent No.2-complainant to lead evidence in rebuttal. A two Judge Bench of the Hon'ble Supreme Court in In Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd. (2008) 13 SCC 678 speaking through Justice S.B. Sinha has held as under:-*
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> > *"17. The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well settled. Although it is of wide amplitude, a great deal of caution is also required in its exercise. What is required is application of the wellknown legal principles involved in the matter.*
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> > *xxxxx xxxxx xxxxx*

> *22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of process of court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable."*

21. Reliance is also placed upon judgment passed by the Punjab and Haryana High Court in CRM-M No.17555 of 2022 titled as ***M/s K.K. Tractors and Ors. Vs. M/s Mahindra and Mahindra Limited***. Relevant paras of the afore judgment are extracted hereinbelow:-

> "*I have considered the contention of learned counsel for the petitioner that cheques in question were issued for a different purpose and were misused by the respondent, however, in my considered view, this contention would be again a matter of trial as the petitioners herein have taken a stand, which is different from the stand taken by the respondent complaint in its complaint under Section 138 of the Negotiable Instruments Act. The third contention of learned counsel for the petitioners is that the cheques in question, are invalid cheques as the State Bank of Patiala stood merged/acquired by the State*

Bank of India, way back in the year 2017 and accordingly, the cheques in question, should have been returned by the concerned bank; whereas, the same were wrongly considered and returned with the memo "insufficient funds". Although, learned counsel for the petitioners has placed reliance upon various annexures to substantiate his arguments that the cheques in question, were required to be returned; however, in my considered view, all such annexures would also be required to be proved in accordance with law. It is well settled law that the annexures attached with the petition filed under Section 482 of the Code of Criminal Procedure, cannot be considered as evidence so as to be relied upon. In this regard, reference can be made to the judgment rendered by the Hon'ble Apex Court in ***State of Madhya Pradesh v. Awadh Kishore Gupta 2004(1) RCR (Criminal) 233****, wherein, the following observations have been made:-*

> *"While exercising jurisdiction under Section 482 of the Code, it is not permissible for the Court to act as if it was a trial Judge. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.*
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> ***In Chand Dhawan (Smt.) v. JawaharLal and Ors. (1992(3) SCC 317: 1992(3) RCR (Criminal) 534 (SC))****, it was observed that when the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under Section 482 of the Code, which cannot be termed as evidence without being tested and proved. When the factual position of the case at hand is considered in the light of principles of law highlighted, the inevitable conclusion is that the High Court was not justified in quashing the investigation and proceedings in the connected case (Crime No.116/94) registered by the Special Police Establishment, Lokayukt, Gwalior. We set aside the impugned*

judgment. The State shall be at liberty to proceed in the mention further."

22. Since the cheque allegedly issued by the accused towards the discharge of lawful liability was returned unpaid by Punjab National Bank merely with the endorsement "88 – Old Cheque", it cannot be presumed that the complainant was aware of the legal or contractual consequences flowing from the merger of Oriental Bank of Commerce with Punjab National Bank. The complainant could not reasonably be expected to know whether cheques issued by account holders of the erstwhile Oriental Bank of Commerce had ceased to be encashable after the merger, whether Punjab National Bank was under any obligation to honour such cheques, or what the rights and liabilities of the two banks were under the terms and conditions governing the scheme of amalgamation are the questions to be determined during trial. These are matters lying within the exclusive knowledge of the concerned banking institutions and cannot, by themselves, be made a ground to non-suit the complainant at the threshold. The questions whether the bank with which the bank of the accused came to be merged was under a legal obligation to honour the cheque issued by the accused, and the extent of its liability, if any, under the terms governing the merger, are matters germane to the controversy. So far as the complainant is concerned, it is an admitted position that the

cheque was issued in favour of the complainant towards the discharge of a legally enforceable debt or liability. The aforesaid questions involve disputed issues of fact and law, which can be effectively adjudicated only after the parties have led evidence in a full-fledged trial and as such, these issues are required to be determined by the learned Trial Court after appreciation of the pleadings and the evidence adduced on record.

23. For the reasons discussed hereinabove, this Court is not persuaded to agree with Mr. Karan Singh Kanwar, learned counsel for the petitioner, that there is ample material adduced on record to suggest that prima facie no complaint is made out against the accused, and as such, this is not a fit case where this Court, while exercising power under Section 528 of Bharatiya Nagrik Suraksha Sanhita, can proceed to quash the complaint.

24. At this stage, it is apt to take note of judgment pressed into service by the learned counsel for the accused passed by the Hon'ble Apex Court in ***Balaji Traders Vs. State of Uttar Pradesh & Anr. (2025) 10 Supreme Court Cases 638***, wherein it came to ruled that in the absence of clear, compelling language, the provision should not be given a wider interpretation. While placing reliance upon afore judgment, Mr. Kanwar vehemently argued that since Section 138 of the Act clearly provides for two situations under which a complaint under Section 138 of the Act can be

maintained; any return memo issued under situation other than the aforesaid two situations provided under Section 138 of the Act cannot constitute a ground to constitute a complaint under Section 138 of the Act. Though, this Court cannot have any quarrel with the aforesaid proposition of law, rather same deserves to be respected, having been laid down by the superior Court of law, but observation, as has been taken note herein above, appears to be made by the Hon'ble Apex Court in altogether different context. Hon'ble Apex Court, while specifically dealing with Section 138 of the Act in *Laxmi Dyechem* (supra), has already held that the expression "insufficient funds" used under Section 138 of the Act is not required to be given a narrow meaning but deserves to be given a wider interpretation. In the aforesaid case, apart from the two contingencies expressly provided under Section 138 of the Act, certain other situations have also been held to fall within the ambit of the expression "insufficient funds".

25. No doubt, while exercising power under Section 528 of BNSS, this Court has ample power to quash the complaint in case it is satisfied that no prima-facie case is made out against the accused and evidentiary value of material collected on record is not such that in any probability, accused would be punished, but as has been discussed in detail herein above, prima-facie case is made out against the petitioner under the

relevant provision of law and there is sufficient material to connect the accused with the alleged commission of offence.

26. Consequently, in view of detailed discussion made hereinabove as well as law taken into consideration, this Court finds no merit in the present petition and accordingly, the same is dismissed accordingly. Interim order, if any, stands disposed of.

27. Learned counsel representing the parties undertake to cause presence of their respective clients before the learned trial Court on 03.08.2026, enabling it to proceed with the matter further. Needless to say, observations/findings, if any, given in the instant judgment have been made for the purpose of disposal of the petition at hand and same shall have no bearing, if any, whatsoever, on the final outcome of the complaint filed under Section 138 of the Act, which shall be decided by the Court concerned on the basis of pleadings as well as totality of evidence led on record by the respective parties in accordance with law.

The present petition is disposed of in the above terms, so also the pending miscellaneous application(s), if any.

July 03, 2026 **(Sandeep Sharma),**
(Sunil) **Judge**