HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

CRM(M) 743/2024

Reserved on: 15.07.2026
Pronounced on: 03.08.2026
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Whether the operative part or full judgment is pronounced: Full

Sanjay Gupta age 63 years
S/O Shri Jyoti Prakash Gupta
R/O House No.50 Ward No.1
Near Tiny Scholar, Kathua

…. Petitioner/Appellant(s)

Through:- Mr. Sourav Sharma, Advocate.

V/s

Vipan Kumar Mehta
S/o Sh. Satpal
R/O Dhangri
Tehsil and District Rajouri

…..Respondent(s)

Through:- Mr. Rahul Pant, Sr. Advocate with Mr. Anirudh Sharma, Assisting Counsel.

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

Prayer:-

1. Through the medium of the instant petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), the petitioner seeks quashment of order dated 27.06.2024 passed by the learned Sub Judge (Special Mobile Magistrate), Rajouri, whereby process has been issued against him in a complaint under Sections 138 and 142 of the Negotiable Instruments Act, 1881, titled '*Vipan Kumar Mehta v. Sanjay Gupta'*, bearing File No. 84/2024. The petitioner also seeks quashment of the aforesaid complaint, contending that the same is an abuse of the process of law.

2. It is averred in the petition that the petitioner was the successful bidder for a liquor vend at Ramnagar for the financial year 2022-2023 and during the

year 2022 his cheque book bearing cheque Nos. 266301 to 266400 was misplaced. According to the petitioner, immediately upon discovering the loss, he approached his banker on 13.12.2022 and requested stoppage of payment of the entire cheque book. It is also submitted that the said request was duly acted upon by the bank.

3. The petitioner further contends that the respondent thereafter instituted a complaint under Section 138 of the Negotiable Instruments Act alleging that he had extended financial assistance to the petitioner for running his liquor business and that, in discharge of the said liability, the petitioner had issued cheque No. 266309 dated 15.02.2024 for an amount of Rs. 65,68,785/-, which, upon presentation, was dishonoured with the endorsement *"Payment Stopped by Drawer"*. On the basis thereof, the learned trial Magistrate, vide order dated 27.06.2024, took cognizance and issued process against the petitioner.

4. Assailing the aforesaid proceedings, the petitioner contends that no such financial arrangement or liability ever existed between the parties and that he had never issued the cheque in question towards discharge of any legally enforceable debt or liability. It is his specific case that the cheque in question forms part of the cheque book which had been reported misplaced and payment whereof had already been stopped in December, 2022, much prior to the alleged date of issuance of the cheque.

5. It is further contended that after learning about the alleged misuse of the cheque, he approached the police authorities seeking registration of an FIR. The petitioner further relies upon an affidavit allegedly executed by the respondent showing his association with M/s Glare Beverages and also refers to another complaint instituted by M/s Glare Glass Traders in

respect of another cheque from the same cheque book to contend that the cheques have been misused. On these premises, it is urged that the complaint does not disclose commission of any offence under Section 138 of the Negotiable Instruments Act and that continuance of the criminal proceedings would amount to an abuse of the process of Court.

6. Upon notice, the respondent has filed objections resisting the petition. It is submitted that the cheque in question was voluntarily issued by the petitioner in discharge of a legally enforceable liability arising out of financial assistance extended by the respondent. According to the respondent, a sum of Rs. 65,68,785/- had been transferred to the petitioner through banking channels, whereafter the petitioner issued the cheque in question towards repayment. It is contended that upon dishonour of the cheque, statutory notice was served upon the petitioner and, after his failure to make payment within the prescribed period, the complaint under Sections 138 and 142 of the Negotiable Instruments Act came to be instituted in accordance with law.

7. The respondent further submits that the petitioner has neither denied his signatures on the cheque nor disputed receipt of the amount allegedly advanced by the respondent. It is submitted that the defence sought to be projected by the petitioner regarding prior stop-payment instructions and alleged misuse of the cheque raises disputed questions of fact, which can only be adjudicated during trial after evidence is led by the parties.

8. According to the respondent, mere issuance of stop-payment instructions does not by itself exonerate the drawer from liability under Section 138 of the Negotiable Instruments Act, particularly when the statutory presumption under Section 139 operates in favour of the holder of the

cheque. It is also submitted that the petitioner has adopted the plea of misplaced cheques only to evade his liability and that such defence cannot be examined in proceedings under Section 528 BNSS.

9. The respondent has also pointed out that another petition preferred by the petitioner challenging proceedings arising out of a separate complaint filed by M/s Glare Glass Traders in respect of another cheque has already been dismissed by this Court, and contends that the present petition is similarly devoid of merit. It is, accordingly, prayed that the petition be dismissed and the interim protection granted to the petitioner be vacated.

<u>Legal Analysis:-</u>

10. Heard learned counsel for the parties and perused the record.

11. The principal contention advanced on behalf of the petitioner is that the cheque in question had been misplaced in the year 2022 and that he had already issued instructions to his banker on 13.12.2022 for stoppage of payment. It has further been contended that the respondent has misused the said cheque and that there existed no legally enforceable debt or liability between the parties. On the strength of these submissions, it has been argued that continuance of the complaint under Section 138 of the Negotiable Instruments Act amounts to an abuse of the process of law warranting exercise of the inherent jurisdiction of this Court under Section 528 of the BNSS.

12. A perusal of the complaint, however, reveals that the respondent has categorically pleaded that financial assistance had been extended to the petitioner and that in discharge of the liability arising therefrom, the petitioner issued cheque No. 266309 dated 15.02.2024 for an amount of Rs. 65,68,785/-. It has further been pleaded that the cheque, upon presentation,

was dishonoured with the endorsement *'Payment Stopped by Drawer'*. A statutory notice as envisaged under Section 138 of the Negotiable Instruments Act was served upon the petitioner and that despite receipt thereof, the petitioner failed to liquidate the liability within the prescribed period, thereby compelling the respondent to institute the complaint. Upon considering the averments made in the complaint, the preliminary statement of the complainant and the material placed on record, the learned Sub Judge (Special Mobile Magistrate), Rajouri, found a *prima facie* case to exist and accordingly issued process against the petitioner.

13. It is well settled that at the stage of taking cognizance and issuance of process, the learned Magistrate is only required to examine whether the complaint and the material accompanying it disclose the commission of a *prima facie* offence. At that stage, the Court is not expected to meticulously evaluate the probable defence of the accused or adjudicate upon disputed questions of fact, which necessarily require appreciation of evidence during trial.

14. Since one of the principal grounds urged by the petitioner is the absence of any legally enforceable debt or liability, it becomes necessary to advert Section 139 of the Negotiable Instruments Act, which provides as under:

> ***"139. Presumption in favour of holder.—***
> ***It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."***

15. A plain reading of the aforesaid provision makes it evident that once the foundational facts constituting an offence under Section 138 are pleaded and *prima facie* established, the statutory presumption operates in favour of the holder of the cheque that it was received in discharge, in whole or in

part, of a legally enforceable debt or other liability. Although the said presumption is rebuttable, the burden to rebut the same lies upon the accused by raising an appropriate defence before the learned trial Court in accordance with law.

16. The pleas projected by the petitioner, that the cheque had been misplaced, that stop-payment instructions had already been issued to the bank, that the cheque has been misused by the respondent and that no legally enforceable debt or liability existed, constitute his defence to the complaint. Whether the cheque had in fact been lost, whether it was voluntarily issued by the petitioner, whether it was issued in discharge of a legally enforceable debt or liability, and whether the statutory presumptions available under the Negotiable Instruments Act stand rebutted, are all disputed questions of fact which cannot be conclusively determined in proceedings under Section 528 of the BNSS. These issues necessarily require evidence to be led by the parties before the learned trial Court.

17. The Hon'ble Supreme Court, in **"Indian Bank Association & Ors. v. Union of India &Anr.", (2014) 5 SCC 590,** while examining the scheme and procedure governing prosecutions under Section 138 of the Negotiable Instruments Act, particularly the stage of taking cognizance and the conduct of proceedings, it has held as under:

> ***"16. ….We make it clear that if the proviso (a), (b) & (c) to Section 138 of the Act are shown to have been complied with, technically the commission of the offence stands completed and it is for the accused to show that no offence could have been committed by him for specific reasons and defences."***

18. The principle enunciated by the Hon'ble Supreme Court squarely governs the controversy involved in the present case. The complaint, on its face, discloses

compliance with the statutory requirements contemplated under Section 138 of the Negotiable Instruments Act and the learned Magistrate, upon considering the averments made therein along with the preliminary evidence adduced by the complainant, has rightly recorded a *prima facie* satisfaction for issuance of process against the petitioner. Significantly, the petitioner does not dispute his signatures on the cheque in question. Once the execution of the cheque is not denied, the statutory presumption under Section 139 of the Negotiable Instruments Act comes into operation in favour of the holder of the cheque. The said presumption is rebuttable, however, the burden to rebut the same lies upon the petitioner by leading appropriate evidence before the learned trial Court. The pleas sought to be urged by the petitioner, namely, that the cheque had been misplaced, that stop-payment instructions had already been issued, that the cheque has been misused and that no legally enforceable debt or liability existed, are essentially matters of defence, which cannot be adjudicated in exercise of the inherent jurisdiction of this Court under Section 528 of the BNSS.

19. The inherent jurisdiction preserved under Section 528 of the BNSS is intended to prevent abuse of the process of any Court or otherwise to secure the ends of justice. However, such jurisdiction cannot be invoked to undertake an appreciation of disputed facts or to evaluate the defence sought to be projected by an accused at a stage when the trial has not yet commenced. Acceptance of the petitioner's contentions at this stage would virtually amount to conducting a mini trial, which is beyond the permissible scope of interference while exercising inherent jurisdiction.

20. It would also be pertinent to note that in a case titled'*Sanjay Gupta v. M/s Glare Glass Traders'*, CRM(M) No. 740/2024,decided on 01.03.2025, this

Court was dealing with a similarpetition filed by the same petitioner, wherein substantially similar pleas were raised, namely that the cheque in question had been lost, that instructions for stop payment had already been issued to the bank and that the cheque had not been issued in discharge of any legally enforceable debt or liability. While dealing with the aforesaid contentions, this Court observed as under:

> ***"8. The petitioner may be having some defence as urged by the petitioner and noted by this Court above but the same cannot be considered at the very initial stage and the petitioner is well within his right to demonstrate before the learned Trial Court during the course of trial that he had lost the cheque and had not issued the same in order to discharge any legal enforceable debt or liability.***
> ***9. In view of this, the present petition is disposed of by permitting the petitioner to raise all the pleas raised in the present petition before the learned Munsiff/JMIC during course of trial."***

21. The factual matrix of the present case is substantially similar. In the present case also, the petitioner seeks quashment of the complaint by raising the plea that the cheque had been misplaced, that stop-payment instructions had been issued much prior to its presentation and that no legally enforceable debt or liability existed. As already noticed hereinabove, these are essentially matters of defence which require adjudication upon appreciation of evidence before the learned trial Court. The ratio laid down by this Court in the aforesaid decision, therefore, squarely applies to the facts of the present case and fortifies the conclusion that no case is made out for exercise of the inherent jurisdiction under Section 528 of the BNSS for quashing the complaint or the order taking cognizance.

Conclusion:-

22. From the material placed before the learned Magistrate, it cannot be said that the essential ingredients of the offence punishable under Section 138 of the

Negotiable Instruments Act were absent or that the complaint did not disclose a *prima facie* case. The learned Magistrate, upon considering the averments made in the complaint and the preliminary evidence adduced by the complainant, has rightly arrived at a *prima facie* satisfaction for issuance of process. This Court finds no jurisdictional error, perversity or patent illegality in the order dated 27.06.2024 warranting interference in exercise of powers under Section 528 of the BNSS.

23. Needless to observe, all the pleas sought to be raised by the petitioner in the present petition shall remain available to him before the learned trial Court. The learned trial Court shall consider and decide the same on the basis of the evidence led by the parties and strictly in accordance with law, without being influenced by any observation made herein.

24. In view of the foregoing discussion, the present petition, being devoid of merit, is accordingly **dismissed**alongwith all connected applications. Interim direction(s), if any, shall stand vacated. As a necessary corollary, order dated 27.06.2024 passed by Court of Learned Sub Judge, Special Mobile Magistrate Rajouri is upheld and the Learned Trial Court shall proceed in the compliant titled Vipan Kumar Mehta v. Sanjay Gupta, bearing File No. 84/2024, expeditiously in accordance with law without being influenced by any observations made by this Court while deciding the instant petition.

(Wasim Sadiq Nargal)
Judge

Jammu:
03.08.2026
Vijay

Whether Judgment is Speaking? *Yes*
Whether Judgment is Reportable? *Yes/No*