



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

125

CRM-M-50556-2025

Date of Decision : 11.09.2025

KUNAL BABUTA

.... PETITIONER

V/S

AVNISH KUMAR

.... RESPONDENT

CORAM:HON'BLE MR. JUSTICE SUBHAS MEHLA

Present : Mr.Sandeep Singh, Advocate
for the petitioner.

SUBHAS MEHLA, J. (Oral)

1. Prayer in the present petition is for quashing of impugned complaint case No. NACT 41108 of 2021 titled as “Avnish Kumar vs. M/s Kings Hospitality & others” dated 17.11.2021 (Annexure P-6) and the summoning order dated 21.12.2022 (Annexure P-7) whereby the petitioner has been called upon to face trial in a negotiable instruments case.

2. Learned counsel for the petitioner contended that the impugned complaint and summoning order suffer from a fundamental jurisdictional defect, inasmuch as the complaint under Section 138 of Negotiable Instruments Act, 1881 is filed beyond the statutory period of limitation prescribed under Section 142 (b) of the Act, and no application for condonation of delay was ever filed. Ergo, taking of cognizance in absence of such condonation is wholly illegal and amounts to abuse of process of law. Learned counsel further contended that the petitioner was granted liberty to assail the impugned order before Revisional Court by this Court



vide order dated 19.08.2025 passed in CRM-M-44908-2025 but such remedy was not found to be an efficacious remedy on account of considerable delay of 972 days since the passing of summoning order.

3. Heard.

4. Factual position is that in order to discharge his liability, petitioner issued cheques which were dishonoured their being 'payment stopped by drawer'. Legal notice was served to discharge his liability but he failed to make the payment. Earlier also, petitioner filed a petition bearing CRM-M-44908 of 2025 assailing the summoning order which was dismissed as withdrawn with liberty to exhaust his remedy before the revisional Court but he did not avail his remedy and again approached this Court by filing petition under Section 528 of BNSS. The moot question which is raised in this petition is question of facts which can be adjudicated by receiving evidence of parties during trial. When disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of the N.I. Act ought not to have been quashed by this Court by taking recourse to Section 528 BNSS. The inherent jurisdiction, though wide and expansive, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself, that is, to make orders as may be necessary to give effect to any order under the Code, to prevent the abuse of the process of any Court or to otherwise secure the ends of justice. In exercising jurisdiction under Section 528 of BNSS, it is not permissible for the Court to act as if it were a trial Court. The Court is only



to be *prima facie* satisfied about existence of sufficient ground for proceeding against the accused.

5. In view of the above discussion, this Court finds no merit in the present petition. Hence the same is hereby dismissed.

(SUBHAS MEHLA)
JUDGE

11.09.2025

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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No