

2025:PHHC:064433



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

126

**CRM-M-22977-2025 (O&M)  
Date of decision: 15.05.2025**

**Maninder Kaur****...Petitioner****Versus****Pooja Malhan****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. J. S. Thakur, Advocate  
for the petitioner.

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**MANISHA BATRA, J. (Oral)**

1. The instant petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) seeking quashing of complaint bearing COMA/4325 titled as ***Pooja Malhan vs. Maninder Kaur***, filed under Section 138 of Negotiable Instruments Act, 1881 (*for short 'NI Act'*) which is pending before the Court of Judicial Magistrate First Class, Ludhiana along with all the subsequent proceedings arising therefrom.

2. Brief facts of the case relevant for the purpose of disposal of present petition are that the aforementioned complaint has been filed by the respondent on the allegations that the petitioner had approached her with a request to extend her financial help for personal need. Considering the past good relations with the petitioner, the respondent gave her an amount of Rs.6,65,000 on 15.12.2023 as loan, after withdrawing an amount of Rs. 6,00,000/- from the current account of her firm and Rs. 65,000/- as cash.

2025:PHHC:064433



In order to discharge her legal liability towards the respondent, the petitioner issued a cheque for a sum of Rs.6,65,000/- in favour of the respondent. The said cheque had been dishonoured on presentation. Statutory notice was issued against the petitioner. She failed to pay the amount of cheque in question, thereby compelling the respondent to file the aforementioned complaint.

3. On considering the preliminary evidence produced by the respondent, the learned trial Magistrate summoned the petitioner to face trial for commission of offence punishable under Section 138 of the N. I. Act. The petitioner had moved an application under Section 245 of Cr.P.C. before the learned trial Court seeking discharge and dismissal of the impugned complaint. However, vide order dated 50.03.2025, the said application has been dismissed by the learned trial Court and the case is now fixed for cross-examination of CW-1. Dissatisfied with the same, the petitioner has prayed for quashing of the complaint as well as subsequent proceedings arising therefrom.

4. It is argued by learned counsel for the petitioner that the impugned complaint as well as the summoning order are liable to be set aside as while passing the impugned order, the learned Magistrate ignored the fact that there was no material to show that she had obtained any loan from the respondent. In fact, the husband of the petitioner had taken a loan to the tune of aforesaid amount from the husband of the respondent in order to repay his vehicle loan obtained from Allahabad Bank in the year 2019.

2025:PHHC:064433



She had given two blank signed cheques as security for repayment of the loan taken by her husband. Subsequently, in order to discharge his liability, the husband of the petitioner had paid an amount of Rs. 85,000/- in cash and an amount of Rs. 5,80,000/- was paid through a cheque bearing No. 021133 in March, 2019 to the husband of the respondent and nothing was due against the petitioner or her husband, vide copy of bank statement annexed as Annexure P-3. However, despite receiving full payment against the said loan, the respondent, by misusing the blank signed cheques which were given as security, has filed the impugned complaint, which is not sustainable in the eyes of law. With these broad submissions, it is urged that the petition deserves to be allowed and the impugned complaint as well as subsequent proceedings are liable to be set aside.

5. I have heard learned counsel for the petitioner at considerable length and have also gone through the material placed on record.

6. At the outset, it is to be considered as to whether, the prayer made by the petitioner for quashing of complaint can be considered by this Court in a petition filed under Section 528 of BNSS (*which is pari materia with Section 482 of Cr.P.C.*). The Hon'ble Supreme Court has laid down certain conditions whereby the complaint can be quashed by invoking the powers under the above mentioned Section in a case reported as *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalzi and others (1976) 3 SCC 736* which are as follows:-

(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same,

2025:PHHC:064433



taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

7. Further, the question as to whether the order passed by the Magistrate of issuing summons, can be interfered with, in exercise of powers under Section 482 of Cr.P.C. had also been considered by Hon'ble Supreme Court in ***Bhushan Kumar and another Vs. State (NCT of Delhi) and another (2012) 5 SCC 424*** and in ***M/s Pepsi Food Ltd's case (supra)*** wherein it was observed that a petition filed under Section 482 of Cr,P,C, for quashing an order summoning the accused is maintainable.

8. Similarly, in a recent judgment dated 22.02.2024 titled as '***Vikas Chandra Vs. State of Uttar Pradesh and another 2024 INSC 261***', the Hon'ble Supreme Court reiterated the position that the order of issuance of summons could be interfered with by the High Court in exercise of powers under Section 482 of Cr.P.C.

9. In view of the above discussed proposition of law, it is explicit

2025:PHHC:064433



that a complaint can be quashed and an order of issuance of summons can be interfered with by this Court by invoking powers under Section 528 of BNSS, however at the same time, it is also to be kept in mind that the inherent jurisdiction under Section 528 of BNSS is to be exercised sparingly and with caution only when such exercise is justified by the test specifically laid down in the section itself. It is well settled proposition of law that an appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of this power and the inherent powers so vested do not confer any arbitrary jurisdiction upon the High Court to act according to whims and caprices.

10. On applying the above mentioned proposition of law to the facts of the present case, it is to be seen as to whether the complaint as filed by the respondent and the subsequent proceedings are liable to be quashed or not? The main thrust of the arguments address by learned counsel for the petitioner is that the cheque in question was issued by her as a security cheque against the loan taken by her husband from the husband of the respondent, which was subsequently fully repaid to him, and she had no legally enforceable liability towards the respondent and as such the complaint could not be filed against her. However, on going through the record, this Court is of the considered opinion that the contention as raised by learned counsel for the petitioner has no substance in view of the fact that at this stage, she has neither denied her signatures on the cheque in question nor the factum of issuance thereof. Her claim is that the loan was in fact

2025:PHHC:064433



taken by husband of the petitioner from the husband of the respondent and the same was duly repaid to him. However, a combined perusal of the impugned complaint as well as copy of bank statement (Annexure P-3) reveals that the claim of the respondent is that she had given the said loan to the petitioner in the year 2023 and the cheque in question was issued by her in February, 2024. On the other hand, the transaction by way of which the amount of Rs. 5,80,000/-is shown to be returned to the husband of the respondent pertains to the year 2019, i.e. much prior to period when the loan was allegedly given to the petitioner. These are the disputed questions of facts, which cannot be assessed and examined at this stage in a petition filed under Section 528 of BNSS. It is well settled proposition of law that if on the date of issuance of cheque, liability of debt exists or the amount mentioned therein has become legally recoverable, Section 138 of the N. I. Act is attracted since issuance of cheque itself represents the outstanding liability. Reliance in this context can be placed upon the authority cited as ***Sripati Singh (since deceased) Through his Son Gaurav Singh vs. The State of Jharkhand & another : Livelaw 2021 SC 606***, wherein the cheque in question was issued as security. The loan amount had matured and it had fallen due. It was observed by Hon'ble Supreme Court that a cheque if issued as a security to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It was observed that if it is given, deposited or

2025:PHHC:064433



pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound, such cheque matures for presentation and its drawee is entitled to present the same. On its presentation, if the same is dishonoured, the consequences contemplated under Section 138 of the N. I. Act and the other provisions of N.I. Act would follow. Hon'ble Supreme Court had also observed that when a cheque is issued even though as 'security', the consequences flowing therefrom are also known to the drawer of the cheque and if such cheque is presented and dishonoured, the holder of the cheque would have the option of initiating the civil proceedings for recovery or the criminal proceedings.

11. The security cheque is integral part of commercial process entered into between the accused and the complainant. It is not only a deterrent for the drawer against dishonouring his financial commitment but can also be legally and validly utilized towards the discharging of the liability of the drawer, as observed by Hon'ble Supreme Court in *Shalini Enterprises vs. Inida Bulls Financial Service : 2013 (2) CCC 835*.

12. It is worth mentioning that the learned Magistrate, after considering the evidence produced on record and by forming opinion under Section 227 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*which is pari materia with Section 204 of Cr.P.C.*) observed that there are sufficient grounds for proceeding and issued summons for procuring the attendance of the petitioner as an accused. The Magistrate was not required to examine the merits and de-merits of the case as the test to be applied at this stage is as to

2025:PHHC:064433



whether the allegations in the complaint as they stand without adding or detracting the complaint *prima facie* established the ingredients of the offence alleged. It is well settled that the Court at the stage of issuing process cannot test the veracity of allegations nor for that matter can it proceed in the manner that a judge conducting a trial would, on the basis of the evidence collected during the course of the trial. As such, the contention as raised by the petitioner cannot be accepted.

13. The Magistrate, after applying his mind and on due consideration and appraisal of the evidence produced on record and on being *prima facie* satisfied, passed the summoning order. In view of the discussion as made above, no error had been committed by the learned trial Magistrate as there was sufficient material on record to summon the petitioner to face trial in the aforementioned complaint. As such, no ground has been made out to quash the complaint as well as the subsequent proceedings arising therefrom. Accordingly, finding no merit, the petition is dismissed.

**[MANISHA BATRA]**  
**JUDGE**

**15.05.2025**

*Waseem Ansari*

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