(2026) 03 AHC CK 0332

In the Allahabad High Court, Lucknow Bench

Case No : Application U/S 482 No. 6506 Of 2023

Rudra Pratap Singh APPELLANT

Vs

State Of U.P. Thru. Prin. Secy. Home Lko. And Another RESPONDENT

Date of Decision : 19-03-2026

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 504, 506
Negotiable Instruments Act, 1881 — Section 118, 138, 139
Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 156(3), 202, 482

Citation : (2026) 03 AHC CK 0332

Hon'ble Judges : Brij Raj Singh, J

Bench : Single Bench

Advocate : Dhruv Mathur, Inam Uddin Ahmed Shubham Tripathi, G.A., Suresh Chandra Shukla

Final Decision : Allowed

Judgement

Brij Raj Singh, J

1. Heard Sri Dhruv Mathur, learned Senior Advocate, assisted by S/Sri Shubham Tripathi and Inam Uddin Ahmed for the applicant and Sri Rao Narendra Singh, learned AGA-I appearing for State-opposite party no.1. However, counsel for opposite party no.2 is not present even in revised call.

2. The present application has been filed seeking quashing of the entire proceedings of Complaint Case No.3394 of 2019, Krishna Lal Sharma Vs. Rudra Pratap Singh, under Sections 504 and 506 IPC, Police Station Madiyaon, District Lucknow and the summoning order dated 26.06.2022 passed by the Judicial Magistrate-III, Lucknow.

3. It is a case of the applicant that in respect to a business transaction between the applicant and one Mr. Mukesh Sharma with regard to a property situated in Lucknow, opposite party no.2 stood as surety for Mukesh Sharma, who entered

into a settlement dated 10.03.2017 with the applicant. It is said that from a bare perusal of the aforesaid settlement, it is apparent that it was agreed with respect to Rs.90,00,000/- by means of the settlement dated 10.03.2017, wherein opposite party no.2 admitted his liability and agreed to provide nine undated cheques of Rs.10,00,000/-each and the same were provided to the applicant so that the applicant could encash the cheques as and when required. It is further said that thereafter the applicant presented one cheque, which was returned unpaid on 02.03.2019. Subsequently, the applicant presented the remaining eight cheques dated 02.04.2019 on 02.04.2019 for clearance before H.D.F.C. Bank, Safdarjung Enclave Branch, New Delhi. All the said cheques were returned unpaid by HDFC Bank with an endorsement that 'stop payment instruction issued by opposite party no.2’.

4. It is said that on account of non-payment of the legally admissible debt, the applicant initiated the process of prosecuting opposite party no.2 under the Negotiable Instrument Act, 1881 (for short “NI Act"). Thereafter, the applicant issued a demand notice dated 26.04.2019 under Section 138 of NI Act, which was duly received by opposite party no.2 on 29.04.2019. On receiving the said notice, opposite party no.2 instead of making the payment, sent a reply on 11.05.2019 thereby denying the contents of the legal notice dated 26.04.2019. Thereafter, the applicant filed a complaint under Section 138 of the NI Act before the Metropolitan Magistrate, Saket District Court, New Delhi, which was registered as Case No.11981 of 2019 and the trial court vide order dated 24.07.2019 summoned opposite party no.2.

5. It is further said that upon gaining the knowledge that summons have been issued against him, opposite party no.2 started filing complaints against the applicant before the police authorities in Lucknow in order to implicate him in a false case and to escape from liability by pressurizing him. When nothing was done, on 22.08.2019 opposite party no.2 filed an application under Section 156(3) Cr.P.C. before the Additional Chief Judicial Magistrate-IV, Lucknow, on which the Magistrate called for a report from the concerned police station. On 25.08.2019, the concerned police station filed its report specifically mentioning that the application under Section 156(3) Cr.P.C was filed after the applicant filed Complaint Case No.11981 of 2019, under Section 138 of the NI Act against opposite party no.2. However, the Magistrate concerned without proper application of his judicial mind and without considering the report submitted by the police on 25.08.2019, proceeded to treat the application under Section 156(3) Cr.P.C as a complaint case vide order dated 30.09.2019. T hereafter, on 28.03.2022, statements of two witnesses, namely, Mr. Rishi Kumar Saxena, who is the neighbour of the complainant, and Ms. Pushpa Sharma, who is the wife of the complainant, were recorded under Section 202 Cr.P.C., wherein they supported the allegations made in the complaint. Thereafter, the Magistrate concerned issued summons against the applicant vide order dated 26.06.2022.

6. Sri Dhruv Mathur, learned Senior Advocate for the applicant submits that the

case under Section 138 of the NI Act has been decided against opposite party no.2 and he has been convicted vide judgment of conviction dated 24.12.2024 and sentence dated 01.05.2025, copies of which have been placed on record by way of rejoinder affidavit. He further submits that the trial court has discussed the entire facts of the present complaint as well as the criminal case and thereafter the complaint case under Section 138 of the NI Act filed by the applicant has been allowed and opposite party no.2 has been convicted and sentenced vide aforesaid judgement and conviction. Counsel for the applicant has invited the attention of the Court towards paragraphs 16 to 19 of the said judgement and conviction, which read as under:-

“16. Now, coming to defence of the accused on merits, it is the case of the accused that the accused owes no liability towards the complainant and the cheques in question and the settlement deed were got executed by the accused by way of force and coercion. Now in this regard, it is pertinent to state that it is not the case of the accused that the alleged settlement deed dated 10.03.2017 and the cheques in question were not executed by the accused, thus the execution is admitted and also the document. The only defence taken by the accused is that the same was got executed by way of force and pressure. Now, as per the record, the alleged police complaint lodged by the accused against the complainant was not produced before this court. Secondly, in the letter dated 14.03.2017 ie Ex.DW1/2 issued to the bank concerned by the accused for issuing stop payment instructions, again there is no mention of the said fact that the cheques were got issued by the complainant by way of force or pressure and only a vague statement that cheques were got issued forcefully is there.

17. Thirdly, it is pertinent to mention that present complaint was filed on 23.05.2019 and the reply to the legal demand notice was issued on behalf of the accused on 11.05.2019 i.e. only 12 days before the date of filing of the present complaint and approximately 2 years after the date of the alleged incident. However, in the said reply i.e Ex. CW1/21, there is no mention of any court complaint having been initiated by the accused, though there is mention of a police complaint lodged at the instance of the accused. As such it is reasonable to observe that alleged court complaint was filed by the accused as a matter of an afterthought in the year 2019, only to counter the complaint filed on behalf of the complainant herein. In this regard the accused in his testimony has deposed that since he was sacred of the complainant, he did not file any complaint in the court soon after the incident. However, the said defence of the accused is not plausible for the simple reason that when on one hand it is the stand of the accused that a police complaint was lodged by the accused within 2 months of the alleged incident, he cannot in the same breath turn around and say that he was afraid of initiating complaint in Court.

18 Further for the reasons best known to the accused, the younger son of the accused who is alleged to have accompanied the accused during the entire alleged incident, has not been examined by the accused as a witness to

corroborate the defence. Further, it is the case of the accused that his son Mukesh Sharma and complainant have conspired together and thus filed the present complaint. However, admittedly, Mukesh Sharma has not been party by the accused in the case filed against the complainant herein. Further, on one hand the accused admits the fact in his cross examination that Mark CWI/I was got executed at Police Station and on the other hand gave suggestion to the CWI/ Complainant to the contrary. Moreover, when it is an admitted stand of the accused that the settlement deed was got executed at the Police station and in the absence of any considerable allegation qua any police official, the possibility of the said deed being executed under any alleged threat or pressure is ruled out.

19. Therefore, in the light of the afore highlighted facts, this court is of the view that since the accused has admitted the execution of the settlement deed and the issuance of the cheque in question and having failed to convincingly establish his defence, the defence that the cheques and the settlement deed was got executed under threat or pressure is liable to be rejected."

7. Learned Senior Counsel for the applicant has further invited the attention of the Court towards the conclusion part of the judgement and conviction dated 24.12.2024, which reads as under:-

"CONCLUSION

30. In view of the provision of section 139 of the Act r/w Section 118 of the Act, the Court has to presume that cheque has been issued for discharging debt or liability. The said presumption which is rebuttable could be rebutted by accused by proving the contrary. For shifting the burden, accused had to prove his defence by preponderance of probabilities, whereas, in the present case, the accused has completely failed to do so. Comprehensive perusal of the evidence led on record shows that the accused has failed to rebut the presumption in favour of the complainant and has failed to create any doubt over the case put forth by the complainant.

31. Though the accused is not required to conclusively prove his evidence in support of his defence to rebut the presumption but he has to show certain circumstances or lead evidence so that the court either believes his defence to exist or the court considers its existence so probable that a prudent man would, under the circumstances of the case, believe the same. However, in the present case, the accused has failed to meet the required threshold. Something which is probable has to be brought on record for getting the burden of proof shifted to the complainant. Without rebutting the presumption, the onus to prove his case will not shift to complainant. It is clear the accused has not led any cogent evidence to rebut presumptions under S. 118/139 of the Act.

ORDER

32. Accordingly, for the reasons stated above, this court hereby Convicts the accused Krishan Lal Sharma for the offence punishable u/s 138 of the Negotiable

Instruments Act, 1881 in respect of cheques in question."

8. Learned Senior Counsel for the applicant has also invited the attention of the Court towards the order passed on quantum of sentence dated 01.05.2025, which reads as under:-

"In view of the aforesaid facts and circumstances and the conduct of the convict, convict is hereby sentenced to pay a fine of Rs.1,00,00,000/- (Rupees One Crore Only). The fine amount includes the interest component as well as the litigation costs. The said fine shall be payable to the complainant as compensation. In default of payment of fine amount, the convict shall undergo sentence of 4 months simple imprisonment."

9. Learned Senior Counsel for the applicant has submitted that it is a case where the Court may infer that out of retaliation and counter blast, the present complaint was filed by opposite party no.2 after two years from the date of incident because as per complaint itself the date of incident is 10.03.2017, whereas the complaint has been filed in August, 1999. He further submits that there is no denial that cheques have not been issued and this Court may certainly infer that it is only due to mala fide intention, the present complaint has been filed, otherwise there is discharge of liability between the parties and that is why the trial court had convicted opposite party no.2 under Section 138 of NI Act by giving a detail finding. It is submitted that an appeal was filed against the judgement of conviction and sentence before the appellate court, which has been admitted on 23.05.2025 and only the sentence is stayed. In support of his contention, counsel for the applicant has placed reliance upon the following judgements:-

1. State of Haryana and others Vs. Bhajan Lal and others, 1992 Supp (1) SCC 335;

2. Hasmukhlal D. Vora Vs. State of Tamil Nadu, 2022 SCC OnLine SC 1732;

3. Fiona Shrikhande Vs. State of Maharashtra and another, (2013) 14 SCC 44;

4. Jia Lal Vs. UT of J & K and another, (2023) SCC OnLine J&K 76;

5. Manik Taneja Vs. State of Karnataka, (2015) 7 SCC 423; and

6. Pepsi Foods Limited. Vs. Special Judicial Magistrate, (1998) 5 SCC 749.

10. Heard Sri Dhruv Mathur, learned Senior Advocate for the applicant and perused the record.

11. In the case of Bhajan Lal (supra), Hon'ble Supreme Court has held that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance can be quashed. In the aforesaid judgement, Hon'ble Supreme Court while dealing with the similar situation has given the following categories of cases by way of illustration wherein the Courts could exercise the powers under

Section 482 Code of Criminal Procedure either to prevent abuse of the process of any court or otherwise to secure the ends of justice. Paragraph 102 of the said judgement, especially paragraph 102(7) reads as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. (emphasis applied)”.

12. Hon’ble Supreme Court in the case of Hasmukhlal D. Vora (supra) while

considering the question of inordinate delay in initiating the proceedings, has held that while inordinate delay in itself may not be ground for quashing of a criminal complaint, in such cases, unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint. In the aforesaid judgment, Hon'ble Supreme Court while considering the judgement rendered in the case of Bijoy Singh Vs. State of Bihar, (2002) 9 SCC 147 held as under:-

"24. There has been a gap of more than four years between the initial investigation and the filing of the complaint, and even after lapse of substantial amount of time, no evidence has been provided to sustain the claims in the complaint. As held by this Court in Bijoy Singh and another Vs. State of Bihar, inordinate delay, if not reasonably explained, can be fatal to the case of the prosecution. The relevant extract from the judgment is extracted below:-

"Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn, but failure to explain the delay would require the Court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. Insisting upon the accused to seek an explanation of the delay is not the requirement of law. It is always for the prosecution to explain such a delay and if reasonable, plausible and sufficient explanation is tendered, no adverse inference can be drawn against it."

26. While inordinate delay in itself may not be ground for quashing of a criminal complaint, in such cases, unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint."

13. In the case of Pepsi Foods Limited (supra) while considering the question that summoning of an accused in a criminal case is a serious matter and the criminal law cannot be set into motion as a matter of course. The relevant paragraph of the aforesaid judgement reads as under:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

14. After going through the record, this Court finds that the present complaint is nothing but a counter blast to the case instituted by the applicant under Section 138 of the NI Act against opposite party no.2. because the same has been filed subsequently after service of notice under Section 138 of the NI Act upon him. Opposite party no.2 wanted to settle his personal score and that is why he has filed the present complaint with an expectation that some compromise may takes place between the parties. Therefore, it can be inferred on the face of record that the present complaint has been filed by opposite party n.2 with mala fide intention. The case of the applicant is covered with the judgements of Bhajan Lal and Pepsi Foods Limited (supra), therefore, the present proceedings cannot go on as it amounts to abuse of process of law and deserved to be quashed.

15. Application is accordingly allowed and the entire proceedings of Complaint Case No.3394 of 2019, Krishna Lal Sharma Vs. Rudra Pratap Singh, under Sections 504 and 506 IPC, Police Station Madiyaon, District Lucknow and the summoning order dated 26.06.2022 passed by the Jud icial Magistrate-III, Lucknow, so far it relates to the applicant, are hereby quashed.

