

(2025) 12 SC CK 0003

Supreme Court

Case No: Criminal Appeal No. 5588 Of 2025 (Arising Out Of Special Leave Petition
(Criminal) No. 8703 Of 2019)

M/s Sri Om Sales

APPELLANT

Vs

Abhay Kumar @ Abhay Patel &
Anr

RESPONDENT

Date of Decision: Dec. 19, 2025

Acts Referred:

- Code of Criminal Procedure, 1973- Section 482
- Negotiable Instruments Act, 1881- Section 138, 139

Hon'ble Judges: Manoj Misra, J; Ujjal Bhuyan, J

Bench: Division Bench

Advocate: Abhikalp Pratap Singh, Namita Kumari, Atul Kumar, Saswat Adhyapak, Abid Ali Beeran P, Manish Kumar, Divyansh Mishra, Kumar Saurav

Final Decision: Allowed

Judgement

Manoj Misra, J

1. Leave granted.

2. This appeal impugns judgment and order of the High Court of Judicature at Patna The High Court dated 20.06.2019 in Criminal Miscellaneous No. 3744 of 2015 whereby, while exercising powers under Section 482 of the Code of Criminal Procedure, 1973 The Code, High Court quashed the entire criminal proceedings arising out of Complaint Case No. 1563(C) of 2013.

3. Briefly stated, the facts giving rise to the appeal are that the appellant lodged a complaint under Section 138 of the Negotiable Instruments Act, 1881 N.I. Act against the first respondent by alleging, inter alia, that the first respondent took delivery of goods from the complainant and in lieu thereof issued cheque, dated 04.03.2013, of Rs. 20,00,000. On 04.03.2013 itself, the complainant presented the

said cheque with its banker for collection. However, the same was returned unpaid on 11.03.2013 with a remark of insufficient funds in the drawers account. The complainant thereafter met the first respondent on 12.03.2013 who assured that if the cheque is presented after a week, it will be honored. In consequence, cheque was re-presented on 17.03.2013 but it was again returned unpaid on 18.03.2013, with same remark. As a result, on 02.04.2013 a legal notice of demand was sent to the first respondent. In its reply dated 08.04.2013, the first respondent denied having issued the cheque and refused to make payment. Since payment was not made within the stipulated period, the complaint was filed.

4. The learned Magistrate took cognizance on the complaint and vide order dated 27.09.2013 summoned the first respondent under Section 138 of N.I. Act. Aggrieved by the summoning order dated 27.09.2013, the first respondent filed an application (i.e., Criminal Miscellaneous No. 3744 of 2015), under Section 482 of the Code, before the High Court.

5. By the impugned order dated 20.06.2019, the High Court quashed the complaint proceedings, inter alia, on the ground that the cheque was not issued for the discharge, in whole or in part, of any debt or other liability.

6. Aggrieved by the impugned order, the complainant has filed this appeal.

7. We have heard learned counsel for the parties and have perused the materials available on record.

8. In short, the submission on behalf of the appellant is that the High Court exceeded its jurisdiction under Section 482 of the Code by holding an enquiry as to whether the cheque in question was for the discharge, in whole or in part, of any debt or other liability inasmuch as under Section 139 of the N.I. Act a presumption is raised, 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. Though this presumption is rebuttable, such presumption can only be rebutted in trial and therefore, the complaint which encapsulates all the essential ingredients of an offence punishable under Section 138 of N.I. Act could not have been quashed at the threshold by examining whether the cheque concerned was received by the holder of the cheque for the discharge, in whole or in part, of any debt or other liability.

9. Per contra, the learned counsel for the first respondent submitted that the complaint was mala fide and therefore, the High Court was well within its jurisdiction to consider whether the cheque had been issued for the discharge, in whole or in part, of any debt or other liability. It was argued that once the High Court has recorded a finding that the cheque was not issued for the discharge, in whole or in part, of any debt or other liability, no interference with the order of the High Court is called for.

10. We have considered the rival submissions and have perused the materials on record.

11. The law is well settled that while considering a prayer to quash the criminal complaint and the consequential proceedings at the threshold, the Court is required to examine whether the allegations made in the complaint along with materials in support thereof make out a prima facie case to proceed against the accused or not. If upon reading the complaint allegations and perusing the materials filed in support thereof, a prima facie case is made out to proceed against the accused, the complaint cannot be quashed, particularly, by appreciating the evidence/ materials on record because the stage for such appreciation is at the trial. No doubt, in exceptional circumstances, the Court may take notice of attending circumstances to conclude that continuance of the proceedings would amount to an abuse of the process of the Court, or where quashing of the proceedings is necessary to secure the ends of justice.

12. In the instant case, the complaint clearly spells out the necessary ingredients for commission of an offence punishable under Section 138 of the N.I. Act. It is also alleged in the complaint that the cheque was issued in the discharge of liability qua goods supplied by the complainant. The cheque was brought on record along with the dishonor memo of the bank concerned which indicated that it was returned unpaid for insufficient funds in the drawers account. The complaint also indicated that complainant had served notice of demand within the specified period and despite service of notice of demand, no payment was made. In such circumstances, the necessary ingredients of an offence punishable under Section 138 of N.I. Act were disclosed by the complaint warranting issuance of process to the accused (i.e., the first respondent).

13. However, the High Court, in its jurisdiction under Section 482, proceeded to test whether the cheque was issued for the discharge, in whole or in part, of any debt or other liability. In our view, such an exercise was unwarranted because, under Section

139 of the N.I. Act, there is a presumption 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. This presumption can be rebutted by evidence led in trial. A fortiori, the said issue can appropriately be decided either at the trial, or later, upon conclusion of trial, by the appellate/ revisional court.

14. In **Maruti Udyog Ltd. v. Narender and others** (1999) 1 SCC 113, this Court held that a presumption must be drawn that the holder of the cheque received the cheque of the nature referred to in Section 138, for the discharge of any debt or other liability unless the contrary is proved and, therefore, the High Court was not justified in entertaining and accepting the plea of the accused at the initial stage of the proceedings and quash the complaint.

15. Likewise, in **Rangappa v. Sri Mohan** (2010) 11 SCC 441, it was held that the presumption mandated by Section 139 of the N.I. Act includes the existence of a legally enforceable debt or liability. It was observed that such a presumption is rebuttable, and the accused must raise its defense in the trial.

16. In **Rajeshbhai Muljibhai Patel v. State of Gujarat** (2020) 3 SCC 794, it was held that the High Court should not quash the criminal complaint under Section 138 of N.I. Act by going into disputed questions of fact regarding the cheque in question being issued for the discharge of debt or liability. Moreso, when Section 139 of the N.I. Act raises a statutory presumption as regards the cheque being issued for discharge of debt or liability.

17. In **Rathish Babu Unnikrishnan v. State (NCT of Delhi)** (2022) 20 SCC 661, this Court held that when there is a legal presumption under Section 139 of N.I. Act, it would not be judicious to carry out a detailed enquiry on a disputed question of fact at a pre-trial stage to quash the complaint. The relevant observations in the judgment are extracted below:

17. The proposition of law as set out above makes it abundantly clear that the court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defense without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

18. The consequences of scuttling the criminal process at a pretrial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial court is ousted from weighing the material evidence. If this is allowed, the accused may be given an unmerited advantage in the criminal process. Also, because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favor of the complainant / prosecution, as the accused will have the opportunity to adduce defense evidence during the trial, to rebut the presumption.

19. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited.

18. Having regard to the aforesaid decisions of this Court as also the provisions of Section 139 of the N.I. Act, we are of the considered view that the High Court committed an error by conducting a roving enquiry, at the pre-trial stage, as regards

the cheque being issued for the discharge of debt or liability. Such an exercise, in our view, was not merited in exercise of power under Section 482 of the Code more so when the complaint allegations disclosed that the cheque was issued for discharge of liability. As fulfillment of the necessary ingredients of Section 138 N.I. Act are prima facie made out from the complaint allegations, in our view, neither the summoning order nor the complaint could have been quashed by the High Court at the pre-trial stage.

19. For the aforesaid reasons, this appeal is allowed. The order of the High Court is set aside. The criminal complaint in question is restored on the file of the concerned Magistrate and shall be dealt with in accordance with law.

20. We make it clear that we have not expressed any opinion as to whether the cheque in question was issued for the discharge, in whole or in part, of any debt or liability. The said issue shall be decided by the Trial Court independently without being prejudiced by any of the observations made in the order of the High Court which has been set aside by this order.

21. Pending application(s), if any, shall stand disposed of.