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The Inherent Boundaries of Justice: Section 528 BNSS and the Limits of Pre- Trial Quashing in Cheque Dishonour Cases

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Introduction

The Punjab and Haryana High Court's decision in *Atul Vig v. Hunny Singh Ahluwalia & Anr.* (CRM-M-21239-2026), delivered on 8 May 2026 by Justice Manisha Batra, offers an instructive exposition of the interplay between the inherent jurisdiction of the High Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), and the statutory framework governing cheque dishonour under Section 138 of the Negotiable Instruments Act, 1881 (NI Act). The judgment reinforces the well-settled principle that pre-trial quashing of a criminal complaint is an exceptional remedy, not a substitute for trial.

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Factual Background

The respondent-complainant alleged that he had advanced a friendly loan of Rs. 49 lakhs to the petitioner in multiple cash tranches between March 2023 and October 2023. In discharge of the said liability, the petitioner issued two cheques amounting to Rs. 29 lakhs and Rs. 20 lakhs respectively. Both cheques were returned dishonoured with the remark 'Payment Stopped by Drawer'. Despite receipt of a statutory legal notice, the petitioner failed to make payment, compelling the complainant to institute a complaint before the Judicial Magistrate First Class, Gurugram, under Section 138 read with Section 142 of the NI Act.

The Petitioner's Case for Quashing

The petitioner sought quashing of the complaint by invoking the inherent jurisdiction of the High Court under Section 528 of BNSS. Through counsel, he advanced several contentions. He argued that the alleged loan of Rs. 49 lakhs was entirely in cash, made in small tranches over eight months, with no contemporaneous documentation such as receipts, promissory notes, or bank records rendering the complainant's version wholly improbable. He further submitted that cash transactions of such magnitude were impermissible under applicable fiscal laws. The petitioner also challenged the bona fides of a loan agreement dated 20 October 2023, pointing out that the complainant had admitted in cross-examination that the entire loan had already been disbursed prior to the date of the agreement, thereby exposing an internal inconsistency in the complainant's case.

The Coercion Plea

Most significantly, the petitioner contended that the cheques in question were never issued in discharge of any legally enforceable debt. Rather, he alleged that they were forcibly extracted by the complainant through coercion and intimidation arising from a failed property transaction involving a property at DLF City, Phase-I, Gurugram, where the petitioner had acted as a General Power of Attorney holder of one Samir Gupta. In support of this plea, reliance was placed upon a police complaint filed by the petitioner on 3 February 2024, prior to the institution of the Section 138 complaint, alleging that blank signed cheques had been procured from him under duress.

Legal Framework: Scope of Section 528 BNSS

The Court commenced its analysis by examining the scope of its inherent jurisdiction under Section 528 of BNSS the functional successor to Section 482 of the Code of Criminal Procedure, 1973. Drawing upon the landmark Supreme Court decision in *Smt. Nagawwa v. Veeranna Shivalingappa Konjalzi & Ors.*, (1976) 3 SCC 736, the Court reiterated the four conditions under which a

complaint may be quashed: first, where the allegations, taken at face value, disclose no case or fail to establish essential ingredients of the offence; second, where the allegations are patently absurd and inherently improbable; third, where the Magistrate's issuance of process is capricious or arbitrary; and fourth, where the complaint suffers from fundamental legal defects such as want of sanction. The Court emphasised that inherent jurisdiction must be exercised sparingly and with caution, and that it does not confer any arbitrary power upon the High Court to conduct a trial at the stage of quashing.

Court's Analysis and Findings

Applying the aforesaid principles to the facts at hand, the Court held that the petitioner had neither denied his signatures on the cheques nor disputed the factum of their issuance. This proved decisive. Once the execution and issuance of a cheque are not in dispute, the statutory presumptions enshrined in Sections 118 and 139 of the NI Act are automatically attracted in favour of the complainant. These provisions create a rebuttable presumption that the cheque was issued in discharge of a legally enforceable debt or liability a presumption that can only be dislodged through evidence adduced during trial.

Evidentiary Questions Reserved for Trial

The Court further observed that the central question whether the cheques were issued voluntarily in discharge of a debt or were coercively obtained constitutes a disputed question of fact requiring full appreciation of evidence. Such a determination plainly lies beyond the scope of quashing proceedings. As regards the police complaint of 3 February 2024, the Court noted the absence of any material on record demonstrating that the petitioner had pursued the said complaint before a higher authority or that any action had been taken thereon. The belated and unsubstantiated nature of the coercion plea, without any corroborating action or outcome, rendered it insufficient to constitute grounds for quashing.

Decision and Key Takeaway

Finding no merit in the petition, the High Court dismissed it. The judgment serves as a clear reminder that the remedy of quashing is not intended to insulate an accused from trial where disputed questions of fact are involved. The non-denial of signatures on a dishonoured cheque, coupled with the operation of statutory presumptions under the NI Act, creates a strong prima facie case that must be addressed through the trial process.

Conclusion

This decision underscores the importance of maintaining the integrity of the Section 138 mechanism as a commercial remedy.

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