



2026:UHC:1453

Judgement Pronounced on: 27.02.2026

Judgement Reserved on: 15.12.2025

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No.1721 of 2022

Bhim Singh

.....Applicant

Versus

Bhawan Dutt Bhatt

.....Respondent

Presence: Mr. Sumit Bajaj, learned counsel for the Applicant.
Mr. B. S. Kathayat, learned counsel for the Respondent.

Hon'ble Ashish Naithani, J.

1. The This application under Section 482 of the Code of Criminal Procedure has been filed by the Applicant for quashing the summoning order dated 29.07.2022 passed by the Additional Chief Judicial Magistrate, Khatima, District Udham Singh Nagar in Complaint Case No.1012 of 2022 (Bhawan Dutt Bhatt vs. Bhim Singh) under Section 138 of the Negotiable Instruments Act, as well as the entire proceedings arising therefrom.
2. The brief and undisputed background, as emerges from the record, is that the Respondent filed a complaint under Section 138 of the Negotiable Instruments Act alleging that he had paid a total amount of Rs. 20 lakhs in cash to the Applicant for construction of a residential house, and that upon failure of the Applicant to carry out the construction, two cheques of Rs. 10 lakhs each dated 18.06.2022 were issued, which on presentation were dishonoured due to insufficiency of funds. After issuance of statutory notice and non-payment, the



complaint was filed, whereupon the learned Magistrate, by order dated 29.07.2022, summoned the Applicant.

3. It is not in dispute that the Applicant is a resident of District Nainital, whereas the complaint was filed and entertained by the court at Khatima, District Udham Singh Nagar. It is also borne out from the summoning order that before issuance of process, no enquiry or investigation under Section 202 Cr.P.C. was conducted.
4. Heard learned counsel for the parties and perused the records.
5. Learned counsel for the Applicant assailed the impugned summoning order primarily on the ground of mandatory non-compliance of Section 202 Cr.P.C. It was submitted that the Applicant is admittedly a resident of District Nainital, whereas the complaint was filed before the court at Khatima, District Udham Singh Nagar. In such circumstances, the Magistrate was statutorily bound to postpone issuance of process and conduct an enquiry or direct investigation before summoning the Applicant. The summoning order dated 29.07.2022, on the face of it, does not reflect that any such exercise was undertaken, rendering the order illegal and unsustainable.
6. It was further submitted that the impugned order is mechanical and non-speaking, and does not disclose any application of judicial mind. Summoning of an accused being a serious matter, the Magistrate was required to record satisfaction based on some preliminary verification, particularly when the accused resides outside territorial jurisdiction.



7. Learned counsel also contended that the complaint is a malicious prosecution arising out of a prior civil dispute between the parties, which had culminated in a decree in favour of the Applicant shortly before filing of the present complaint. It was argued that the alleged cash transaction of Rs. 20 lakhs is unsupported by any documentary proof, and that the cheques in question were misused after being procured through third parties. On these grounds, it was submitted that continuation of the proceedings would amount to abuse of the process of court.
8. Per contra, learned counsel for the Respondent opposed the application and submitted that the complaint clearly discloses all the essential ingredients of Section 138 of the Negotiable Instruments Act, namely issuance of cheques, their dishonour, service of statutory notice and failure to make payment. It was argued that at the stage of summoning, the Magistrate is only required to see whether a prima facie case is made out, which condition stands fully satisfied in the present case.
9. It was further contended that the pleas raised by the Applicant regarding civil dispute, misuse of cheques and absence of liability are purely matters of defence, which can only be adjudicated during trial. The inherent jurisdiction of this Court cannot be invoked to examine disputed questions of fact or to conduct a mini trial. Statutory presumptions under Sections 118 and 139 of the Negotiable Instruments Act operate in favour of the complainant and can be rebutted only by evidence.



10. With regard to Section 202 Cr.P.C., learned counsel submitted that the Magistrate, after considering the complaint and supporting material, was satisfied that sufficient ground existed to proceed. It was argued that mere technical objections should not be permitted to thwart a legitimate prosecution, and the Applicant ought to raise all his defences before the trial court. Accordingly, it was prayed that the application be dismissed.
11. This Court upon due consideration observes that the core issue that arises for consideration is not the correctness of the allegations on merits, but whether the impugned summoning order suffers from any fundamental legal infirmity warranting interference under Section 482 Cr.P.C. It is well settled that the inherent powers of this Court are to be exercised sparingly; however, where the very initiation of proceedings is vitiated by non-compliance of a mandatory statutory safeguard, the High Court would be justified in stepping in to prevent abuse of the process of court.
12. From the material on record, it is not in dispute that the Applicant is a resident of District Nainital, whereas the complaint was instituted before the Additional Chief Judicial Magistrate, Khatima, District Udham Singh Nagar. In such circumstances, the proviso to Section 202 Cr.P.C. clearly mandates that before issuance of process, the Magistrate “shall” postpone the same and either conduct an enquiry himself or direct an investigation for the purpose of deciding whether sufficient ground exists to proceed. This requirement is not an empty formality; rather, it is a substantive safeguard intended to protect persons residing beyond the territorial jurisdiction of the court from being summoned in a mechanical manner.



13. A perusal of the summoning order dated 29.07.2022 shows that the learned Magistrate has not adverted to Section 202 Cr.P.C. at all, nor does the order reflect that any enquiry or investigation was conducted prior to issuance of process. The order merely notices the allegations and proceeds to summon the Applicant. There is nothing on record to indicate application of judicial mind to the statutory requirement or to the necessity of preliminary verification. Such an omission goes to the root of the matter and renders the summoning order legally unsustainable.
14. While it is true that the complaint discloses the formal ingredients of an offence under Section 138 of the Negotiable Instruments Act and that disputed questions regarding liability, misuse of cheques or civil disputes ordinarily fall within the domain of trial, the present case stands on a different footing. The defect pointed out is not factual but procedural and jurisdictional. When a mandatory condition precedent to issuance of process has not been fulfilled, the continuation of criminal proceedings would amount to permitting prosecution founded upon an invalid exercise of jurisdiction.
15. This Court, therefore, refrains from expressing any opinion on the merits of the allegations or the defences raised by either side. However, in view of the clear non-compliance of Section 202 Cr.P.C., the impugned summoning order cannot be sustained. The inherent powers of this Court are thus required to be exercised to secure the ends of justice and to prevent abuse of the process of court.

ORDER

The application under Section 482 Cr.P.C. is **allowed**.



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The summoning order dated 29.07.2022 passed by the Additional Chief Judicial Magistrate, Khatima, District Udham Singh Nagar in Complaint Case No.1012 of 2022 (Bhawan Dutt Bhatt vs. Bhim Singh) is hereby quashed.

Consequently, the proceedings of the said complaint case are also quashed. However, it is made clear that this order shall not preclude the Respondent from pursuing his remedy in accordance with law, and it shall be open to the learned Magistrate to proceed afresh in the matter, if so advised, strictly in accordance with law, after due compliance of Section 202 Cr.P.C.

The interim order stands vacated.

Ashish Naithani, J.
27.02.2026

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