IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63509 of 2024

Arising Out of PS. Case No.-360 Year-2022 Thana- BHOJPUR COMPLAINT CASE District- Bhojpur

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Naveen Kumar @ Naween Kumar S/O Ramchandra Singh R/O Village- Ababakarpur, P.O- Manpur, P.S- Nh Bangra, Distt.- Samastipur.

... ... Petitioner/S

Versus

1. The State of Bihar
2. Vijay Shankar Ojha S/O Arun Kumar Ojha R/O Station Road Bihiya, P.S- Bihiya, Distt.- Bhojpur.

... ... Opposite Party/s

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with

CRIMINAL MISCELLANEOUS No. 55533 of 2025

Arising Out of PS. Case No.-360 Year-2022 Thana- BHOJPUR COMPLAINT CASE District- Bhojpur

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Naveen Kumar @ Naween Kumar Son Of Ramchandra Singh Resident Of Village- Ababakarpur, P.O- Manpur, P.S-NH Bangra, District-Samastipur

... ... Petitioner/s

Versus

1. The State of Bihar
2. Bijay Shankar Ojha S/o Arun Kumar Ojha R/o Station road Bihiya, P.S.- Bihiya, Distt.- Bhojpur

... ... Opposite Party/s

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Appearance :

(In CRIMINAL MISCELLANEOUS No. 63509 of 2024)

For the Petitioner/s	:	Mr. Chitranjan Sinha, Sr. Adv. Mr. Baidhyanath Thakur, Adv. Mr. Kaushik Deo, Adv.
For the State	:	Mr. Arun Kumar Singh, Adv.
For the O.P. No.2	:	Mr. Rajesh Ranjan, Adv. Mr. Mohammad Farooq, Adv. Mr. Himanshu Ranjan, Adv. Ms. Sakshi Bhatnagar, Adv. Mr. Ankur Agraj, Adv.

(In CRIMINAL MISCELLANEOUS No. 55533 of 2025)

For the Petitioner/s	:	Mr. Chitranjan Sinha, Sr. Adv. Mr. Baidhyanath Thakur, Adv. Mr. Kaushik Deo, Adv.
For the State	:	Mr. Ram Sumiran Rai, Adv.
For the O.P. No.2	:	Mr. Rajesh Ranjan, Adv. Mr. Mohammad Farooq, Adv. Mr. Himanshu Ranjan, Adv. Ms. Sakshi Bhatnagar, Adv. Mr. Ankur Agraj, Adv.

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CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

CAV JUDGMENT

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Date : 31-08-2026

Both these applications are being taken up together as they arise out of same complaint case no.360/2022 (CIS No.0592/2022).

2. In Cr. Misc. No. 63509 of 2024, the order under challenge is an order dated 01.02.2024 passed by the learned Judicial Magistrate-1st Class, Bhojpur at Ara in Complaint Case No.360 of 2022 (CIS No.0592/2022) whereby the petitioner was directed to pay the interim compensation i.e. 20% of the dishonored cheque amount to the complainant within six months from the date of the order under Section 143-A of Negotiable Instrument Act, 1881 (hereinafter referred to as 'N.I. Act').

3. The prayer made in Cr. Misc. No.55533 of 2025 is for quashing the order dated 16.08.2022 passed in the aforementioned complaint case by the same Court, whereby cognizance was taken against the petitioner under Section 138 of the N.I. Act and summons were issued thereunder.

4. The short facts as enumerated in the complaint is that the petitioner and the complainant/opposite party no.2 were having business relations and the complainant made payment of a total amount of Rs.52 lakhs in the account of the petitioner's company through different transactions between 27.01.2021 and

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22.02.2021 during the course of business. It is further alleged that during the said period, the complainant also made a payment of a total of 32 lakhs to Jial Das & Company, Pakur, Jharkhand and further payment of Rs.10 lakhs by cheque dated 17.03.2021 was made to JBR Infratech, Jharkhand. These payments were made by the complainant at the behest of the petitioner, however, both the aforementioned companies made the supply of stone chips to the petitioner. In this manner the complainant trusting on the petitioner and the business relations between them, made a total payment of Rs.94 lakhs from the complainant, his father's company and also from his uncle to the petitioner and his associates.

It is further alleged that the petitioner, in course of business transaction, issued a cheque of Rs.40 lakhs bearing Cheque No.714728 to the complainant with the written note that the said cheque was being handed over by way of security. It was further written that in case the money is returned by 10.01.2022 by the petitioner, the said cheque would be returned by the complainant, else he would deposit the same and get it encashed. The complaint further discloses that the petitioner returned an amount of Rs.32,52,000/- (Rs. Thirty Two Lakhs and Fifty Two Thousand) to the complainant but

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Rs.61,50,000/- (Rs. Sixty One lakhs and 50 thousand) still remained outstanding as against the petitioner and his associates.

Further allegation is that on 10.01.2022 the complainant deposited the cheque given by the petitioner in the Bank. The petitioner told the Manager of the State Bank, Bhojpur telephonically that the said cheque was lost with regard to which *sanha* was lodged. Upon the cheque getting bounced, the complainant once again presented the said cheque on 24.01.2022 but once again it stood bounced as the petitioner had stopped the payment of the said cheque. Legal notice was sent to the petitioner on 01.02.2022 which was not responded and upon inaction of the police, the present complaint was filed.

5. This Court would first take up the arguments made in Cr. Misc. 55533 of 2025 relating to quashing of cognizance order.

6. Mr. Chitranjan Sinha, Learned Senior counsel for the petitioner has submitted that the present complaint petition itself is not maintainable primarily on the ground that the company of the petitioner, namely, Sona Infracon. Pvt. Ltd., in whose account the complainant allegedly transferred the amount has not been made an accused in the present case, as such the consequential order of cognizance is also legally not sustainable.

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In this regard reference has been made to the case of ***Bijoy Kumar Moni vs. Paresh Manna & Anr.*** reported in ***(2026) 5 SCC 380*** and ***Himanshu vs. B. Shivamurthy & Anr.*** reported in ***(2019) 3 SCC 797*** to contend that in absence of the company being arraigned as an accused, a complaint against the Director of the Company who signed the cheque, would not be maintainable. It was argued that commission of offence by company is an express condition precedent to attract vicarious liability of others.

7. It has next been argued that the cheque in question was given by the petitioner only for security purpose and was not in lieu of payment of any debt. It has been specifically pointed out that the cheques in question were given with the clear noting that “This cheque is only for security reason. Not for payment. Payment will be done and cheque refunded.” It has been submitted that in view of the said noting it was made clear by the petitioner that the said cheque was not to be presented for encashment. Moreover, this fact was well within the knowledge of the complainant and he has accepted the same during his inquiry evidence.

8. The above mentioned argument has further been strengthened by the learned Senior Counsel by pointing out the

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fact that the payment had already been made by the petitioner's company to the complainant/opposite party no.2 and others amounting to a total of Rs.1,77,20,000/- (Rs. One Crore Seventy Seven Lakhs and Twenty Thousand), the details of which has been enumerated in paragraph nos. 9, 10 and 11 of the main petition and a copy of the bank statement of the company of the petitioner has been brought on record by way of Annexure-P/5 to the present application. It is thus submitted that the O.P. No.2 and his associates were rather paid in excess to the entitlement, as such, there was no occasion for the complainant to present the cheque in question, especially, in view of the endorsement made at the back of the cheque. In this regard, a reference has been made to the case of ***Sripati Singh (since deceased) Through His Son Gaurav Singh vs. State of Jharkhand & Anr.*** reported in ***(2022) 18 SCC 614***.

9. Per contra, Mr. Rajesh Ranjan, the learned counsel appearing on behalf of complainant/opposite party no.2 has opposed the contentions of the petitioner by submitting that the impugned order taking cognizance of the offence under Section 138 of N.I. Act is completely legal and justified, inasmuch as, a *prima facie* offence under the aforementioned Section is clearly made out in the facts of the case.

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10. Learned counsel for the opposite party no.2 has submitted that the petitioner has been made an accused in this case along with his designation as Managing Director of Sona Infracon Pvt. Ltd. and since it was the petitioner, who was not only the authorized signatory of the cheque, but also handling the entire affairs of the company at the helm, he was the necessary party who was impleaded as an accused. It is further submitted that since the company was family owned and run by present petitioner and since the petitioner was impleaded in the capacity of he being the Managing Director of the said company, non-impleading of the company itself would not come in way of the criminal prosecution.

11. With regard to the arguments relating to the cheque in question being only in the form of security cheque which was not to be encashed, it has been submitted that merely by making a noting that the cheque was for said purpose and not for payment would not extricate the accused from discharge of liability arising from dishonour of the said cheque and the presentation for realization of cheques in such nature are not barred under all circumstances, as has been held in the case of ***Sripati Singh (supra)***

12. With regard to payment of the amount in

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question having already been made by the petitioner's company, it has been contended that the same is purely disputed question of fact and hence, whether the security cheque can be treated as against debt or liability would be a triable issue and the onus would lie on the petitioner to prove the same by leading evidence. Reliance has been placed upon the case of ***Sri. Om Sales vs. Abhay Kumar Alias Abhay Patel & Anr.*** reported ***2025 SCC Online 2897***. Further a submission with regard to the existence of a presumption under Section 139 of the N.I. Act in favour of holder of the cheque has also been advanced by stating that the rebuttal to the said presumption can be done by adducing evidence, relying upon the case of ***RajeshBhai MuljiBhai Patel & Ors. vs. State of Gujarat & Anr.*** reported in ***(2020) 3 SCC 794***.

13. The learned counsel has next contended that in any view of the matter, the trial in the present case has commenced and reached the stage of recording of statement of accused under Section 313 of Cr.P.C., as such, at this stage of proceedings, interference with the impugned order taking cognizance and issuance of summons is not warranted.

14. In response to the above mentioned submission with regard to the stage of the case learned Senior counsel on

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behalf of the petitioner has submitted that the stage of the case would not be a relevant consideration where the complaint itself suffers from inherent defect and the prosecution based on such a complaint would be non-est and if on facts, a case of exceptional nature is made out, the inherent powers of the Court under Section 482 of Cr.P.C. cannot be restricted for the purposes of securing the ends of justice. In order to fortify such argument that there is no bar for exercising powers under Section 482 of Cr.P.C. even if trial has commenced, reliance has been placed upon the decision of the Hon'ble Apex Court in the case of **Kamlesh Kumar vs. State of Bihar & Anr.** reported in **(2014) 2 SCC 424**. Further, judgments in the cases of **Shirish Subhash Kekan & Ors. vs. State of Maharashtra & Anr. [Cr. Writ Petition No.479 of 2019]**, **Shesh Rao S/o Makhram Jadhav vs. State of Maharashtra** of Bombay High Court and one judgment passed by a co-ordinate Bench of Pattna High Court in **Cr. Misc. No.45981 of 2015**, **Md. Nausad Khan @ Md. Naushad Khan & Ors. Vs. State of Bihar & Anr.** have also been referred and relied upon. The learned Senior Counsel has also made reference to the case of **Madan Mohan Agarwala vs. State of Orissa** reported in **1985 Cri.L.J. (NOC) 92 (ORI)** wherein it has been held that there is no bar under Section 482

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Cr.P.C. in the interest of justice and to prevent the abuse of process of the Court, even if the criminal proceeding is part heard in which some witnesses have been examined and some have not been, if clearly and without requiring an appreciation of the evidence so far adduced, the criminal proceeding cannot be sustained.

15. I have heard the rival contentions of the parties and have also perused the entire material placed on record.

16. This court would first take up the primary contention on behalf of the petitioner relating to non-maintainability of the present complaint itself on the ground that the company of the petitioner was not arrayed as an accused. A perusal of the complaint itself indicates that the petitioner i.e. Navin Kumar by name has been made an accused, however, his designation as Managing Director of Sona Infracon Pvt. Ltd. has been indicated but, admittedly, the company itself has not been made an accused. The narration of facts in the complaint clearly disclose that all money transactions were made in the account of the company, as has been expressly admitted by complainant/opposite party no.2 in unequivocal terms. A three-Judges Bench of the Hon'ble Apex Court in the case of ***Aneeta Hada vs. Godfather Travels & Tours (P) Ltd.*** reported in **(2012)**

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5 SCC 661 expressly dealing with N.I. Act has clearly noted the fact that arraigning of the company as an accused is imperative and commission of an offence by a company is an express condition precedent for attracting vicarious liability of its Directors and Officers. Paragraph no.58 of the said judgment is being reproduced as :-

> *"58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted."*

17. The maintainability of complaint of such nature was further considered in the case of ***Himanshu vs. B. Shivamurthy & Anr.*** reported in ***(2019) 3 SCC 797***, paragraph 13 and 14 whereof are being quoted hereinbelow:-

> *"**13.** In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The*

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appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused.

14. *We, accordingly, are of the view that the High Court was in error in rejecting the petition under Section 482 CrPC. We hence allow the appeal and set aside the judgment of the High Court. In consequence, the complaint, being CRP No. 27 of 2004 shall stand quashed."*

18. Reference made on behalf of the petitioner of the recent case of ***Bijoy Kumar Moni (supra)*** is also noticed by this Court and para 56 of the aforesaid judgment is being quoted as hereunder:-

"56. A catena of decisions of this Court have settled the position of law that in case of a cheque issued on behalf of a company by its authorised signatory, prosecution cannot proceed against such authorised signatory or other post-holders of the company as described under Section 141 of the NI Act, unless the company who is the drawer of the cheque is arraigned as an accused in the complaint case filed before the Magistrate. Further, vicarious liability can only be affixed against the Directors, authorised signatories, etc. of the company after the company is held liable for the commission of offence under Section 138."

19. In the context of the present discussion, this Court would also gainfully refer to the case of ***Manjula Kapoor***

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vs. State of State of Himachal Pradesh & Anr. reported in ***2026 SCC Online SC 1521*** wherein their Lordships following view taken in ***Aneeta Hada (supra)*** have held that since the complaint itself suffer from fatal defect of impleading the company as an accused on whose account the cheque was drawn, no cognizance on such a complaint could have been taken. The Hon'ble Apex Court has gone forward, by making a reference to the case of ***N. Harihara Krishnan vs. J. Thomas*** reported ***(2018) 13 SCC 663*** to hold that where the complaint suffers from so fundamental defect that no cognizance thereupon can be taken, the Courts cannot even proceed and take recourse to the provisions of Section 319 Cr.P.C to cure such defect. Filing of a fresh complaint after removing the defect, within the period of limitation prescribed by the Act or condoned by the concerned Court on sufficient cause is the only course left open.

20. The case of the petitioner also involves the issue relating to an objection raised by the petitioner against the action of the complainant/opposite party no.2 of presenting the cheque issued by the company of the petitioner which was strictly issued as a security cheque and not against any legally enforceable debt. In support of such contention, the attention of this Court has been invited to the cheque in question (Annexure-

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2) of an amount of Rs.40 lakhs issued by the company of the petitioner, he being the authorized signatory thereof, which bears a clear noting/endorsement which is as follows:-

> *"This cheque is only for security reason. Not for payment. Payment will be done and cheque refunded."*

21. Further, a Debit Voucher (Annexure-P/3) is also placed on record bearing the signature of both the petitioner and the complainant with the following particulars:

> *"Paid for material payment vide Cheque No.714728, Cheque Dated 10.01.2022, Cheque only for security reasons. Not for payment. Cheque will be refunded after payment. Rs. Fourty lac only."*

22. It is thus clear from the above endorsements and noting that the cheque in question was issued only for the purpose of security and not for presentation for encashment. The contention of the aforesaid cheque strictly being for security purpose and that there was no occasion even to present the same for encashment, is further strengthened by the petitioner's argument that the entire amount was already paid, as such, there was no amount due at the time of presentation of the cheque. To substantiate such arguments the photocopy of the entire bank statement of the petitioner's company has been brought on record by way of Annexures to this petition and has also been elucidated in paragraph 9, 10 and 11.

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23. On the aforesaid issue of the cheque in question being only for the security purposes and not for presentation before the Bank for encashment, reliance has been placed on the case of ***Sripati Singh (supra)*** to contend that when a cheque is issued and treated as "Security" towards repayment of an amount, it ensures that the said cheque cannot be presented which was issued as security, especially in the backdrop that there was a clear noting in this regard and the petitioner company had made the said payments which were due, rather in excess of the due amount.

24. With respect to such argument, the contentions made on behalf of complainant/O.P. no.2 also needs to be considered at this juncture. The counsel for opposite party no.2 has relied on the same judgment of ***Shripati Singh (supra)*** in order to bolster his argument that mere handing over the cheque by way of security *per se* would not extricate/absolve the accused from the discharge of his liability arising of dishonor of such cheque. Paragraph nos. 21, 22 and 28 of the said judgment may be quoted for ready reference :-

> *"**21**. A cheque issued as security pursuant 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*

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as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified time-frame and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of the NI Act would flow.

22. *When a cheque is issued and is treated as "security" towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as "security" cannot be presented prior to the loan or the installment maturing for repayment towards which such cheque is issued as security……..*

When a cheque is issued even though as "security" the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation.

28. *In the above circumstance, the cheque though*

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> *issued as security at the point when the loan was advanced, it was issued as an assurance to repay the amount after the debt becomes due for repayment. The loan was in subsistence when the cheque was issued and had become repayable during June/July 2015 and the cheque issued towards repayment was agreed to be presented thereafter. If the amount was not paid in any other mode before June/July 2015, it was incumbent on Respondent 2 to arrange sufficient balance in the account to honour the cheque which was to be presented subsequent to June/July 2015."*

25. It is thus gathered from the settled legal proposition that a cheque although issued as security, at a particular point of time with an assurance to repay the amount and if such payment is not made within the stipulated period, it cannot be said that said cheque cannot be presented. However, in the present case the contention of the petitioner has been that the payment has already been made, and hence in view of the specific noting and understanding between the parties, the cheque in question continued to be a security cheque, not liable to be presented for encashment.

26. To counter such argument, the counsel for O.P. No.2 has emphatically refuted the contention of the due payment having been made to the O.P. No.2 and has rather submitted that a cheque could not remain in the form of security cheque for eternity and in case of non-refund of the amount in question, the

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complainant cannot be barred from presenting the said cheque on a subsequent occasion of the same assuming the nature of a cheque against an enforceable debt. Strong reliance has been placed on the case of ***Sri Om Sales (supra)*** and this Court has also noticed paragraph 13, 17 and 18 thereof to come to the conclusion that the different stand taken by the parties with regard to payment of amount in question, makes it a triable issue and this Court is not in a position to probe or conduct a roving enquiry at the pre-trial stage, as to whether the said payments were made or not for the purposes of reaching a conclusion as to whether the cheque in question would be construed subsequently of being issued against discharge of debt or liability.

27. This Court would not go into the question of deciding whether the cheques which were issued initially in the nature of a security cheque, would continue to remain in the same nature, in view of the claims and counter-claims made by both the parties in litigation, which could only be thrashed out by leading evidence. However, so far as the primary issue of there being a fatal defect in the complaint itself of not arraying the company as an accused, this Court would be well within its rights to invoke inherent jurisdiction under Section 482 Cr.P.C.

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for considering to quash an order of cognizance emanating from a defective complaint, which is not legally sustainable.

28. Upon a plain reading of 138 of the N.I. Act, it is clear that the emphasis has been laid on the factum that the cheque has to be drawn by a person on the account maintained by him and he must have issued the cheque in discharge of debt or other liability. Thus, considering that company is a 'juristic person' maintaining an account in a Bank, it would be the company which would be deemed to have committed the offence under Section 138 of N.I. Act, if any, while Section 141 of the said Act calls for the vicarious libility of certain other persons, being Directors, Managers etc. when such offence has been committed by the company. The Hon'ble Apex Court in the case of ***Aneeta Hada (supra)*** while interpreting the provisions of section 138 and 141 of the Act clearly held that the commission of offence by the company is a condition precedent to attract the vicarious liability of others. Thus, for maintaining of any complaint/prosecution against the Director of the Company, as in the present case, arraigning the company as an accused is mandatory, as it is the company which is the primary offender.

29. So far as the argument with regard to the

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advanced stage of the case is concerned, the Hon'ble Apex Court has clearly held in the case of ***Anand Kumar Mohatta & Anr. vs. State (NCT of Delhi) & Anr.*** reported in ***(2019) 11 SCC 706*** in paragraph nos. 16 and 30 thereof, as under:

> *"**16.** There is nothing in the words of this section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High Court can exercise jurisdiction under Section 482 CrPC even when the discharge application is pending with the trial court [G. Sagar Suri v. State of U.P., (2000) 2 SCC 636, para 7 : 2000 SCC (Cri) 513. Umesh Kumar v. State of A.P., (2013) 10 SCC 591, para 20 : (2014) 1 SCC (Cri) 338 : (2014) 2 SCC (L&S) 237] . Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced and the allegations have materialised into a charge-sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge-sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.*
>
> ***30.** It is necessary here to remember the words of this Court in State of Karnataka v. L. Muniswamy [State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699 : 1977 SCC (Cri) 404] which read as follows: (SCC p. 703, para 7)*
>
> *"7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the*

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> *process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice."*

30. I have also gone through the judgments of Bombay High Court being ***Shirish Subhas (supra)*** and ***Seshrao (supra)*** and also the judgment of ***Md. Nausad Khan (supra)*** passed by a co-ordinate Bench of this Court, and in all these judicial pronouncements, it has been held that there is no bar for exercising power of 482 of the Cr.P.C. even if the trial has commenced, if the Court comes to the conclusion that continuation of prosecution is an abuse of the process of the law. This Court has also taken note of the fact that the Hon'ble Apex Court in the case of ***Manjula Kapoor (supra)*** had held directed the quashing of the complaint and all consequential proceedings arising therefrom, even though the case was at the stage of recording of statement of accused under Section 313 Cr.P.C. at which stage the accused had filed the application for quashing of

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the proceedings in view of the law laid down in the case of ***Aneeta Hada (supra)*** as the company was not impleaded as an accused.

31. Ordinarily this Court would be hesitant and reluctant to interfere with the proceedings at an advanced stage of the case but considering the fact that there is a fundamental defect in the complaint itself making it legally unsustainable, this Court finds no legitimate ground or justification in allowing the trial to continue, after having noticed the said defect and also in view of the various judicial precedents.

32. It is a fact that no restriction or limitations have been imposed upon exercising the power under Section 482 of the Cr.P.C., even after recording of evidence of witnesses. The Hon'ble Apex Court has gone further to hold in the cases of ***Ramawatar vs. State of Madhya Pradesh; [(2022) 13 SCC 635]*** and ***Ramagopal & Anr. Vs. State of Madhya Pradesh; [(2022) 14 SCC 531]***, that power under Section 482 Cr.P.C. is even exercisable in post-conviction matters where appeal is pending. On grounds of compromise, criminal cases involving non-henious offences or being predominantly of a private nature, has been held to be set aside at any stage of the proceedings, including at the appellate level, in appropriate cases.

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33. It is thus only a question of self-enforced discipline and self-restraint, in not interfering with proceedings normally which have reached advance stages. But in cases of exceptional nature, as in this case, where the complaint itself is legally not sustainable on the grounds as aforementioned, being squarely covered by the judgments of the Hon'ble Apex Court in ***Aneeta Hada (supra)*** and ***Manjula Kapoor (supra)***, which has been brought within the knowledge of this Court, the inherent power under Section 482 Cr.P.C. can undoubtedly be invoked to prevent the abuse of process of law and to secure the ends of justice.

34. Thus, taking a comprehensive view of the entire facts and circumstances where the initiation of the case itself by way of the complaint suffers from an inherent defect which is fatal to the complaint itself, no cognizance could have been taken on such a complaint, as such order taking cognizance and further proceeding arising therefrom is visited with illegality and is, thus, fit to be quashed. Accordingly, the order impugned dated 16.08.2022 passed by learned Judicial Magistrate-1st Class, Ara, Bhojpur in Complaint Case No.360C/2022 (CIS No.0592/2022) in Cr. Misc. No.55533 of 2025 stands quashed including all further proceedings arising therefrom.

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35. So far as prayer made in Cr. Misc.63509 of 2024 is concerned, the same relates to payment of the interim compensation i.e. 20 % of the dishonored cheque amount to the complainant within six months from the date of the order under Section 143-A of the N.I. Act. It goes without saying that once the complaint itself has been held to be not maintainable and the cognizance taken under Section 138 of the N.I. Act has been quashed, there is no question of sustaining the subsequent the order dated 01.02.2024, directing interim compensation of the dishonored cheque, as the said order is only in the nature of an interim compensation to the complainant by the Court which is trying an offence under Section 138 of N.I. Act and as such, it is only an interim consequence flowing from the cognizance under Section 138 of the N.I. Act.

36. Thus, in view of the aforesaid cognizance order having been quashed, the order passed under Section 143-A of the N.I. Act, as subject matter of challenge in Cr. Misc. No.63509 of 2024, also cannot be sustained and is thus quashed.

37. Accordingly, both the application bearing Cr. Misc No.55533 of 2025 and Cr. Misc. No.63509 of 2024 stand allowed.

38. However, it is made clear that since the above

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mentioned applications have been allowed in view of the unignorable and fatal defect in the complaint and not on merits of allegations, the complainant/opposite party no.2 would be at liberty to pursue other remedies, if so advised, in law in order to redress his grievances.

(Soni Shrivastava, J)

Harsh/-

AFR/NAFR	AFR
CAV DATE	20.08.2026
Uploading Date	31.08.2026
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