

प्रशान्त कुमार,

आई०पी०एस०



डीजी परिपत्र सं० - 02 /2025

पुलिस महानिदेशक,

उत्तर प्रदेश।

पुलिस मुख्यालय, गोमती नगर विस्तार,

लखनऊ-226002

दिनांक: फरवरी 10, 2025

विषय: अप्लीकेशन (482) संख्या-27154/2024 परमानन्द उर्फ परमानन्द सिंह बनाम उ०प्र० राज्य व अन्य में मा० उच्च न्यायालय, इलाहाबाद द्वारा पारित आदेश दिनांकित 11.12.2024 में दिये गये निर्देशों के अनुपालन के सम्बन्ध में दिशा-निर्देश।

प्रिय महोदय/महोदया,

कृपया परिपत्र के साथ संलग्न अप्लीकेशन (482) संख्या-27154/2024 परमानन्द उर्फ परमानन्द सिंह बनाम उ०प्र० राज्य व अन्य में मा० उच्च न्यायालय, इलाहाबाद द्वारा पारित आदेश दिनांकित 11.12.2024 का सदर्थ ग्रहण करें।

2- मा० उच्च न्यायालय इलाहाबाद ने आवेदक द्वारा प्रस्तुत प्रार्थनापत्र का अंकन जीडी पर न किये जाने के सम्बन्ध में अप्रसन्नता व्यक्त करते हुये अपने अधीनस्थ पुलिस अधिकारियों को आवश्यक दिशा-निर्देश निर्गत करने हेतु अधोहस्ताक्षरी को निम्नवत निर्देशित किया गया है—

“12. Therefore, S.S.P., Etah is directed to conduct a preliminary inquiry against the police personnel who has given this receiving to the applicant without maintaining the record of the same in General Diary. If required, the S.S.P., Etah will also direct to register an FIR against the person(s) responsible and thereafter will conduct the investigation.

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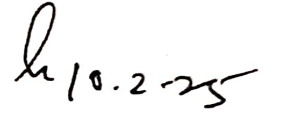
14. This order be also sent to Director General of Police, U.P. who will look into the matter and issue necessary direction to all his subordinates that whenever an application for missing item is received at police station, it should be mentioned in the general diary of the police station or in any other Prescribed Registrar.”

3- वर्तमान प्रकरण में याची द्वारा अपनी चेक बुक गुम हो जाने के सम्बन्ध में थाना कोतवाली नगर, जनपद एटा पर प्रार्थना पत्र प्रस्तुत किया गया था, जिसे कार्यलेख पर मौजूद सहायक जीडी लेखक द्वारा थाने की मोहर लगाकर प्राप्ति के हस्ताक्षर बनाकर आवेदक को प्रार्थनापत्र की प्रति उपलब्ध करायी गयी किन्तु चेक बुक गुमशुदगी के सम्बन्ध में रो०आम में इन्द्राज नहीं किया गया है। किसी वस्तु/मोबाइल/चेक बुक/पास बुक/एटीएम कार्ड व अन्य बहुमूल्य वस्तु गुम हो जाने के सम्बन्ध में थाने पर प्राप्त होने वाले समस्त प्रार्थनापत्रों का अंकन जीडी पर किया जाना विधिक दृष्टि से अनिवार्य है।

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4- अतः आप सभी को निर्देशित किया जाता है कि मा0 उच्च न्यायालय द्वारा पारित आदेश के अनुपालन में यदि किसी वस्तु/मोबाइल/चेक बुक/पास बुक/एटीएम कार्ड व अन्य बहुमूल्य वस्तु गुम हो जाने के सम्बन्ध में प्रार्थनापत्र प्राप्त होता है, तो तत्काल उसका विवरण जनरल डायरी व सीसीटीएनएस के सम्बन्धित फार्म में इन्द्राज कर आवश्यक विधिक कार्यवाही करना/कराना सुनिश्चित करेंगे। यदि किसी अधिकारी / कर्मचारी द्वारा इन निर्देशों के अनुपालन में शिथिलता बरती जाती है, तो उनके विरुद्ध नियमानुसार कार्यवाही की जाए।

भवदीय,



(प्रशान्त कुमार)

1. समस्त पुलिस आयुक्त, उत्तर प्रदेश।
2. समस्त वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक, प्रभारी जनपद, उत्तर प्रदेश।

प्रतिलिपि: निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु :—

1. समस्त अपर पुलिस महानिदेशक, उ0प्र0, लखनऊ।
2. समस्त जोनल अपर पुलिस महानिदेशक, उ0प्र0।
3. समस्त परिक्षेत्रीय पुलिस महानिरीक्षक / पुलिस उपमहानिरीक्षक, उ0प्र0।

Court No. - 79

Case :- APPLICATION U/S 482 No. - 27154 of 2024

Applicant :- Paramanand @ Parmanand Singh

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Shailendra Kumar Singh

Counsel for Opposite Party :- Ajendra Kumar, G.A.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Sri Shailendra Kumar Singh, learned counsel for the applicant, Sri Ajendra Kumar, learned counsel for opposite party No.2, Sri Pankaj Saxena, learned A.G.A. for the State and Sri Abhay Singh Tomar, Advocate holding brief of Sri Adarsh Tomar, learned counsel for UCO Bank.
2. Instructions of the Bank is taken on record.
3. The present 482 Cr.P.C. application has been filed to quash the summoning order dated 10.05.2024 as well as entire proceeding of Complaint Case No.22948 of 2023 (Anil Kumar Vs. Paramanand), under Section 138 of Negotiable Instrument Act, P.S. Kotwali City, District Etah.
4. Contention of learned counsel for the applicant is that cheque in question was not issued in discharge of any liability but the same was lost and regarding which an intimation dated 05.04.2023 was given to the bank and also to the police on 27.06.2023. In support of his contention, learned counsel for the applicant has placed reliance upon judgment in the case of *Raj Kumar Khurana Vs. State of (NCT of Delhi) and Another, (2009) 6 SCC 72.*
5. This Court, to test the veracity of the intimation to the police as well as bank directed vide order dated 23.11.2024 to the Branch Manager, UCO Bank as well as SHO, Kotwali Nagar, Etah to submit report. In compliance of the order dated 23.11.2024, Sri Begram Singh, Inspector Crime, Police Station Kotwali Nagar, Etah has filed affidavit and in paragraph No.3 of that affidavit, it is mentioned that the applicant has not lodged any information about the missing of his cheque book of the account No.32970110017524 at Police station Kotwali Nagar, Etah and there is no such entry in the general diary of the police.
6. In compliance of the order dated 23.11.2024, learned counsel for the UCO Bank has also submitted instructions of Branch Manager UCO Bank, Etah and in that instruction, it is mentioned that the applicant has given an intimation on 05.04.2023 that his cheque book has been lost bearing cheque no.1 to 20.
7. From perusal of the record, it appears that the bank has returned the cheque in question with the endorsement 'contact drawer'.



8. Hon'ble the Apex Court in the case of *Laxmi Dyechem Vs. State of Gujarat reported in (2012) 13 SCC 375*, observed that even if a cheque is returned by the bank with the endorsement 'signature differ' even that is sufficient to issue process for Section 138 N.I. Act because after dishonouring the cheque, drawer gets statutory notice giving him opportunity to arrange the payment of amount covered by cheque and it is only when the drawer despite getting opportunity on receiving said notice failed to make the payment within 15 days, proceeding under Section 138 N.I. Act is initiated. Paragraph nos.16.2 and 17 of the *Laxmi Dyechem (supra)* case is being quoted as under:-

*"16.2. There may indeed be situations where a mismatch between the signatories on the cheque drawn by the drawer and the specimen available with the bank may result in dishonour of the cheque even when the drawer never intended to invite such a dishonour. We are also conscious of the fact that an authorised signatory may in the ordinary course of business be replaced by a new signatory ending the earlier mandate to the bank. Dishonour on account of such changes that may occur in the course of ordinary business of a company, partnership or an individual may not constitute an offence by itself because such a dishonour in order to qualify for prosecution under Section 138 shall have to be preceded by a statutory notice where the drawer is called upon and has the opportunity to arrange the payment of the amount covered by the cheque. It is only when the drawer despite receipt of such a notice and despite the opportunity to make the payment within the time stipulated under the statute does not pay the amount that the dishonour would be considered a dishonour constituting an offence, hence punishable. Even in such cases, the question whether or not there was a lawfully recoverable debt or liability for discharge whereof the cheque was issued would be a matter that the trial court will examine having regard to the evidence adduced before it and keeping in view the statutory presumption that unless rebutted the cheque is presumed to have been issued for a valid consideration.*

*17. In the case at hand, the High Court relied upon a decision of this Court in Vinod Tanna case in support of its view. We have carefully gone through the said decision which relies upon the decision of this Court in Electronics Trade & Technology Development Corpn. Ltd. The view expressed by this Court in Electronics Trade & Technology Development Corpn. Ltd. that a dishonour of the cheque by the drawer after issue of a notice to the holder asking him not to present a cheque would not attract Section 138 has been specifically overruled in Modi Cements Ltd. case<sup>10</sup>. The net effect is that dishonour on the ground that the payment has been stopped, regardless whether such stoppage is with or without notice to the drawer, and regardless whether the stoppage of payment is on the ground that the amount lying in the account was not sufficient to meet the requirement of the cheque, would attract the provisions of Section 138."*

9. The apex Court in the case of *Lafarge Aggregates & Concrete India (P) Ltd. v. Sukarsh Azad, (2014) 13 SCC 779* which was also followed by this Court in the case of *Vijay Kumar Vs. State of U.P.; Application u/s 482 No.17464 of 2024* that in case cheque is returned with endorsement refer to drawer or "stop payment", then issuance of process against the accused is not erroneous as the accused has right to put his defence during trial to explain the reason for giving instruction to the bank, therefore, judgment relied upon by the learned counsel for the applicant



in **Raj Kumar Khurana (supra)** is not applicable in the present case. Paragraph No.8 of the *Lafarge Aggregates & Concrete India (P) Ltd. (supra)* case is quoted as under:-

*"8. The object of bringing Sections 138 to 142 of the Negotiable Instruments Act on statute appears to be to inculcate faith in the efficacy of banking operations and credibility in transacting business of negotiable instruments. Despite several remedies, Section 138 of the Act is intended to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induces the payee or holder in due course to act upon it. Therefore, once a cheque is drawn by a person of an account maintained by him for payment of any amount or discharge of liability or debt or is returned by a bank with endorsement like (i) refer to drawer, (ii) exceeds arrangements, and (iii) instruction for stop payment and like other usual endorsement, it amounts to dishonour within the meaning of Section 138 of the Act. Therefore, even after issuance of notice if the payee or holder does not make the payment within the stipulated period, the statutory presumption would be of dishonest intention exposing to criminal liability."*

10. Even otherwise, information given to the police station was found to be false but in the case of **Raj Kumar Khurana (surpa)**, there was FIR for missing of cheque, therefore, this Court does not find any illegality in impugned proceeding. Accordingly, the present application is *dismissed*. However, the applicant can raise these grounds during trial.

11. However, considering the fact that the applicant has specifically stated in his affidavit filed in support of the present application that the applicant has given intimation to police on 27.06.2023 in which seal of the Police Station Kotwali Nagar, District Etah is also present but the Incharge Inspector of the Kotwali Nagar Etah clearly denied the receiving of such information.

12. Therefore, **S.S.P., Etah is directed to conduct a preliminary inquiry** against the police personnel who has given this receiving to the applicant without maintaining the record of the same in General Diary. If required, the S.S.P., Etah will also direct to register an FIR against the person(s) responsible and thereafter will conduct the investigation.

13. From the perusal of the instructions of the Bank, it is clear that though the Bank has received the application of the applicant that the cheque has been lost, but while returning the cheque in question, Bank instead of mentioning "reported lost" or "stop payment" has mentioned the reason as "referred to drawer" which is not only confusing but against the instruction of the applicant, therefore, **Chairman, UCO Bank is directed to issue necessary direction to all the Branches of UCO Bank to rectify this mistake.**

14. **This order be also sent to Director General of Police, U.P.** who will look into the matter and issue necessary direction to all his **subordinates** that whenever an application for missing item is received at police station, it should be mentioned in

the general diary of the police station or in any other Prescribed Registrar.

15. Registrar (compliance) is directed to send a copy of this order to Chairman, UCO Bank at Kolkata, S.S.P. Etah and D.G.P., U.P. for necessary compliance.

**Order Date :- 11.12.2024**

R.S. Tiwari