ITEM NO.14 COURT NO.11 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s).5770/2026

[Arising out of impugned final judgment and order dated 11-02-2026 in Application Under Section 528 BNSS No.4537/2026 passed by the High Court of Judicature at Allahabad]

PRABHAT SHARMA Petitioner(s)

VERSUS

GOVIND MOHAN & ORS. Respondent(s)

(IA No. 98991/2026 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT
IA No. 98989/2026 - EXEMPTION FROM FILING O.T.)

WITH

SLP(Crl) No. 5940/2026 (II)

(IA No. 101095/2026 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT
IA No. 101092/2026 - EXEMPTION FROM FILING O.T.)

SLP(Crl) No. 5844/2026 (II)

(IA No. 99940/2026 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT
IA No. 99938/2026 - EXEMPTION FROM FILING O.T.)

SLP(Crl) No. 6151/2026 (II)

(IA No. 105055/2026 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

SLP(Crl) No. 5964/2026 (II)

(IA No. 101448/2026 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT
IA No. 101447/2026 - EXEMPTION FROM FILING O.T.)

SLP(Crl) No. 6185/2026 (II)

(IA No. 105761/2026 - EXEMPTION FROM FILING C/C OF THE IMPUGNED

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JUDGMENT)

SLP(Crl) No. 6245/2026 (II)

SLP(Crl) No. 6353/2026 (II)

Date : 27-10-2026 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE K.V. VISWANATHAN
HON'BLE MR. JUSTICE ARUN PALLI

For Petitioner(s) **Mr. Ashish Pandey- 3825, AOR**
Mr. Shubham Saxena, Adv.
Mr. Prateek Rai, Adv.
Mr. Ashutosh Bhardwaj, Adv.
Mr. Ayush Yadav, Adv.

For Respondent(s) **Mr. Giriraj Subramanium, Adv.**
Mr. Simarpal Singh Sawhney, Adv.
Mr. Aditya Sharma, Adv.
Ms. Bijaharini G., Adv.
Mr. Pratyuj Sharma, Adv.
Mr. Prayuj Sharma, Adv.
Mr. Dhrumil Manoj Suchak, Adv.
Mr. Mr. Dhrumil Manoj Suchak, Adv.
Mr. Sachin Saini- 3697, AOR
Mr. Raghav Singh, Adv.
Mr. Ujjwal Singh Parmar, Adv.
Ms. Neha Raj Singh, Adv.

Ms. Sakshi Kakkar- 2481, AOR
Ms. Snehasish Suman, Adv.
Mr. Harsh Pratap Shahi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. These present matters call in question the correctness of impugned order dated 11.02.2026 passed by the High Court of Judicature at Allahabad in Application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, “the BNSS”) being No.4537 of 2026. Pursuant to dishonour of a cheque issued by

the respondent No.2-M/s. Sai Infra Solutions, the petitioner(s) filed a complaint case being Complaint Case No.280 of 2025 before the Judicial Magistrate-I, Aonla, District Bareilly, Uttar Pradesh on 25.06.2025. On 26.11.2025, the Trial Court issued summons to the respondent no.1, who is the sole proprietor of respondent no.2. In the said order issuing summons, it was expressly noticed that the complainant(s) has produced an affidavit in support of his complaint and that upon perusal of the aforesaid evidence on record and on the establishment of a *prima facie* case, summons were issued to the respondent no.1 under Section 138 of the Negotiable Instruments Act, 1881 (for short, the "N.I. Act").

2. It was this order which the respondents-accused have challenged before the High Court by filing an Application under Section 528 BNSS contending that since the respondents-accused were the residents outside the territorial jurisdiction of the Court at Bareilly, Uttar Pradesh, the procedure under Section 202 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") (Section 225 of the BNSS, 2023) ought to have been followed.

3. According to the respondents-accused, the complainant(s) and other witnesses ought to have been examined by the Trial Court under Section 202 of the Cr.P.C. before issuance of summons. It appears from the impugned order that notice was not issued to the petitioner(s)-complainant(s) and the appearance reflects only the presence of the learned counsel for the accused and the Government Advocate.

4. Be that as it may, while setting aside the summoning order dated 26.11.2025 issued by the Trial Court and remitting the matter

back to the Court concerned to decide the matter afresh, the High Court recorded the following in paragraph no.4 of the impugned order:-

> **"4. In view of the submission made by learned counsel for the applicants and in view of the judgment of Apex Court in *Re*: Expeditious Trial of Cases under Section 138 of N.I. Act, 1881;2021 (116) ACC 609, summoning order dated 26.11.2025/ B.W. dated 19.1.2026 passed by court below in Complaint Case No.280 of 2025, under section 138 Negotiable Instrument Act, Police Station- Kotwali Aonla, District-Bareilly, pending in the court of Judicial Magistrate-I, Bareilly, is, hereby, set aside and the matter is remanded back to the court concerned for decision afresh, in accordance with law."**

5. We have heard Mr. Ashish Pandey, learned counsel for the petitioners and Mr. Giriraj Subramanium, learned counsel for the accused/contesting respondent Nos.1 and 2.

6. Learned counsel for the petitioner(s) draws the attention to a judgment of this Court in *Re: Expeditious Trial of Cases under Section 138 of N.I. Act, 1881,* reported in (2021) 16 SCC 116 more importantly, paragraph Nos.10 and 11 thereto. Learned counsel for the petitioner(s) submits that while specifically dealing with the applicability of Section 202 of the Cr.P.C. to the proceedings under Section 138 of the N.I. Act, the Court held that while the procedure under Section 202 of the Cr.P.C. is mandatory in view of Section 145 of the N.I. Act, the evidence given on affidavit ought to be permitted on behalf of the complainant and the witnesses. Paragraph no.12 of the said judgment reads as under:-

> **"12. Another point that has been brought to our notice relates to the interpretation of Section 202 (2) which stipulates that the Magistrate shall take evidence of the witness on oath in an inquiry conducted under Section 202 (1) for the purpose of issuance of process. Section 145 of the Act provides that the evidence of the complainant**

may be given by him on affidavit, which shall be read in evidence in any inquiry, trial or other proceeding, notwithstanding anything contained in the Code. Section 145 (2) of the Act enables the court to summon and examine any person giving evidence on affidavit as to the facts contained therein, on an application of the prosecution or the accused. It is contended by the learned Amici Curiae that though there is no specific provision permitting the examination of witnesses on affidavit, Section 145 permits the complainant to be examined by way of an affidavit for the purpose of inquiry under Section 202. He suggested that Section 202 (2) should be read along with Section 145 and in respect of complaints under Section 138, the examination of witnesses also should be permitted on affidavit. Only in exceptional cases, the Magistrate may examine the witnesses personally. Section 145 of the Act is an exception to Section 202 in respect of examination of the complainant by way of an affidavit. There is no specific provision in relation to examination of the witnesses also on affidavit in Section 145. It becomes clear that Section 145 had been inserted in the Act, with effect from the year 2003, with the laudable object of speeding up trials in complaints filed under Section 138. If the evidence of the complainant may be given by him on affidavit, there is no reason for insisting on the evidence of the witnesses to be taken on oath. On a holistic reading of Section 145 along with Section 202, we hold that Section 202 (2) of the Code is inapplicable to complaints under Section 138 in respect of examination of witnesses on oath. The evidence of witnesses on behalf of the complainant shall be permitted on affidavit. If the Magistrate holds an inquiry himself, it is not compulsory that he should examine witnesses. In suitable cases, the Magistrate can examine documents for satisfaction as to the sufficiency of grounds for proceeding under Section 202."

7. Learned counsel for the petitioner(s) has also submitted that the complainant(s) is the only witness whom the respondents seek to examine insofar as for the issuance of cheque and dishonour is concerned and the rest would only be the bank officials, if any.

8. On the contrary, Mr. Giriraj Subramanium, learned counsel for the accused/contesting respondent Nos.1 and 2 submits that detailed evidence should have been led in at the pre-summoning stage by the

complainant in person especially, with regard to the date of issue of legal notice and service thereto.

9. *Prima-facie*, we are of the opinion that the impugned order is erroneous and that the summoning order having proceeded on the basis of the evidence on affidavit of the complainant(s), there is due compliance of Section 202 of the Cr.P.C (Section 225 BNSS, 2023).

10. At this stage, Mr. Giriraj Subramanium, learned counsel for the accused/contesting respondent Nos.1 and 2 submits that without prejudice to the rights and contentions, an attempt should be made to mediate the dispute between the parties to see, if an amicable resolution is possible. The total amount involved, which are eight cheques in question, is Rs.1.15 Crores.

11. Learned counsel for the petitioner(s) has no objection if the matter is referred to mediation which again would be without prejudice to the rights and contentions of the petitioner(s).

12. Parties to appear before the Coordinator of the Supreme Court Mediation Centre on 06.11.2026 at 11:00 a.m.

13. The first meeting with the Coordinator shall be virtual. The learned Mediator appointed by the Supreme Court Mediation Centre is requested to conduct the proceedings, as far as possible, through the medium of video conferencing.

14. In the event, the learned Mediator desires personal presence of the parties, they shall undertake to appear physically.

15. List on 08.01.2027.

16. In the meantime, interim order earlier granted on 08.04.2026, shall continue.

(SAPNA BISHT)
ASTT. REGISTRAR-cum-PS

(NIKITA SINGH)
COURT MASTER (NSH)