

| SL. No | Date              | Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures | COURT'S OR JUDGES'S ORDERS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
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|        | <u>19.09.2023</u> |                                                                                                  | <p>C482 No. 1630 of 2023</p> <p><b><u>Hon'ble Sharad Kumar Sharma, J.</u></b></p> <p>Mr. Mahendra Singh Rawat, Advocate, for the applicant.</p> <p>Mr. Vinod Kumar Gemini, Deputy Advocate General, for the State.</p> <p>A proceeding under Section 138 of the Negotiable Instruments Act, stood instituted as back as in 2015, resulting into registration of a Criminal Complaint Case No. 3031 of 2016, Shriram Transport Finance Company Ltd. Vs. Fayyaj Hussain and Another.</p> <p>2. In the pending proceedings, the applicant has filed an application being paper No. 22B, thereby praying for, that a necessary direction may be issued for getting the instrument examined by an handwriting expert from the Central Forensic Science Laboratory, in order to verify the sanctity of the signature appearing on the instrument.</p> <p>3. On the said application, an order was passed as back as on 18.01.2018. The applicant didn't not complied the said order, then again he filed a fresh application, which was considered by the Court and disposed of on 16.10.2018, laying down certain directions, that the applicant was supposed to comply with the directions given therein in order to avail the benefit</p> |

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|  |  | <p>of getting the document examined by an expert as directed by an order which was passed as back as on 18.01.2018.</p> <p>4. The direction as given on 16.10.2018 was that certain codal formalities were required to be undertaken by the applicant for the purposes of getting the document examined by the Central Forensic Science Laboratory.</p> <p>5. Learned counsel for the applicant contends, that he has filed an application seeking to comply with the order, as back as on 16.10.2018 itself, and under the garb of said documents he intends to convey, that he has complied with the directions given in the order dated 16.10.2018, which is contrary to the directions as given in the order dated 16.10.2018 itself.</p> <p>6. Even for the time being, if it is presumed, that he has complied with the order dated 16.10.2018, and even if thereafter the proceedings continued in the Complaint Case No. 388 of 2015, the applicant should have approached before the Court, within an appropriate time, by filing an appropriate application to get the result of the report which was supposed to be submitted by the Central Forensic Science Laboratory. But the applicant has not done so till 01.12.2022, that means he permitted 4 years to be wasted in the proceedings for getting compliance of the order dated 16.10.2018, till he filed a fresh application, praying for to comply with the order dated 16.10.2018.</p> |
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|  |  |  | <p>7. The said application was rejected by the Court of Judicial Magistrate, 2<sup>nd</sup> on 05.12.2022, observing thereof, that since the applicant has not complied with the conditions given in the earlier order dated 16.10.2018, the subsequent application filed by him on 01.12.2022, seeking the liberty to comply with the order dated 16.10.2018 was nothing, but an abuse of process because the subsequent application and the cause of action for him to comply the earlier order already stood initiated, as soon as the order itself was passed on 16.10.2018 and that cannot be permitted to be revived back in pursuance to the subsequent application dated 01.12.2022.</p> <p>8. The said application, upon being rejected by the learned Judicial Magistrate was put to challenge by the applicant in a Criminal Revision No. 176 of 2022 and the same has been dismissed by the impugned order dated 26.07.2023, which too, is under challenge before this Court.</p> <p>9. The proceedings under the Negotiable Instruments Act, are summary in nature and they ought to be decided within the time period as specified under Section 143 of the Act, and they cannot be permitted to be prolonged at the dictates of the applicant or an accused person who is defending himself as against the proceedings drawn against him under Section 138 of Negotiable Instruments Act by resort to a delayed process.</p> |
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|  |  |  | <p>10. Once the applicant himself has sought the documents to be examined by Forensic Science Laboratory and the said order was passed in his favour on 18.01.2018, it was expected, that he should have complied the order within the time period and he ought not to have waited, by filing of an application in 2022 for seeking compliance of the order dated 16.10.2018, after a lapse of more than 4 years.</p> <p>11. Since the observations made by the learned trial Court in the impugned order dated 05.12.2022 is to the effect that the applicant himself has derelicted in complying the order passed on 16.10.2018, no such directions at a belated stage on a second application could have been given, to get the instruments examined by Forensic Science Laboratory because the applicant himself has not availed the directives given by the order dated 16.10.2018, thus the present proceedings would be nothing but an abuse of process at the hands of the present applicant who intends to linger on the proceedings by one way or another, by filing of an application one after another thereby creating an impediment in deciding the case itself on its merit.</p> <p>12. After scrutinisation of the two orders, which are under challenge, coupled with the observations made in the impugned order dated 05.12.2022 and on its comparative scrutiny to the order dated 16.10.2018, the applicant, since he has not complied with the</p> |
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|  |  |  | <p>condition, even on the basis of an application filed by him on 16.10.2018 (page 66 of the C482 Application), the applicant cannot be permitted to revive back the proceedings, by filing of an application for compliance of an order dated 16.10.2018, and that too by filing the same before the Magistrate concerned on 05.12.2022.</p> <p>13. Thus, the impugned orders as passed by the Courts, do not suffer from any apparent illegality in denial made by both the Courts below, permitting the applicant to take the benefit of the order dated 16.10.2018 and that too, at a belated stage by filing of an application only on 05.12.2022.</p> <p>14. Since the intention and act of the applicant is contrary to the provisions as contained under the Negotiable Instruments Act, the C482 Application is not required to be ventured into on merits by this Court, while exercising its inherent powers under Section 482 of the CrPC, in order to assist the applicant to prevail over the abuse of process, by venturing into the second application at this stage permitting the examination of the documents, in pursuance to the order dated 16.10.2018.</p> <p>15. Thus, the C482 Application is misconceived and the same is, accordingly, dismissed.</p> <p style="text-align: right;"><b>(Sharad Kumar Sharma, J.)</b><br/>19.09.2023</p> |
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