

**Court No. - 69**

**Case :-** APPLICATION U/S 482 No. - 10440 of 2002

**Applicant :-** Smt. Roshini Narain Agarwal

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

**Counsel for Applicant :-** Ashwini Kumar Awasthi, Manish Tiwary

**Counsel for Opposite Party :-** Govt. Advocate, Nishant Mehrotra

**Hon'ble Samit Gopal, J.**

1. List revised.

2. Heard Sri Pravesh Singh, Advocate holding brief of Sri Ashwini Kumar Awasthi, learned counsel for the applicant, Sri M.K. Maurya, Advocate holding brief of Sri Nishant Mehrotra, learned counsel for the opposite party no.2 and Sri Virendra Pratap Singh, learned counsel for the State and perused the records.

3. The present application U/s 482 Cr.P.C. has been filed by the applicant Smt. Roshini Narain Agarwal with the following prayers:-

*"It is, therefore, prayed that this Hon'ble court be pleased to quash the complaint and all further proceedings of complaint case No.7380 of 2001 u/s 138 of Negotiable Instrument Act pending in the court of C.J.M., Pilibhit.*

*It is also prayed that this Hon'ble court be pleased to stay all further proceedings of complaint case No.7380 of 2001 u/s 158 of Negotiable Instrument Act pending in the court of C.J.M. Pilibhit till the pendency of this petition under section 482 Cr.P.C. in this Hon'ble court or this court may pass such other order or direction which this Hon'ble court may deem fit and proper looking to the facts and circumstances of the present case."*

4. The facts of the case as sculled out from the complaint dated 22.10.2001 filed on behalf of the opposite party no.2 against the applicant, L.P. Papers Ltd., Lalit Bisht, Pramod Narain Agarwal, Smt. Meenu Bisht and Sunil Kumar Goel for offence under Section 138 of Negotiable Instrument Act, P.S. Sungarhi, District Pilibhit is that the complainant is a body incorporated and registered under the Registrar of Companies Act for doing business.

5. The accused no.1/L.P. Papers Pvt. Ltd. is a registered company and manufacturer of board and papers. The accused nos.2 and 3

namely Lalit Bisht and Pramod Narain Agarwal on behalf accused no.1 agreed to sell D.G. Sets and Electric Motors etc. to the complainant and there was some terms settled for the same. In pursuance of the said understanding, the accused nos.2 and 3 issued cheque No. 066023 dated 30.08.2001 for Rs. 5,45,468/- as part payment drawn on Syndicate Bank, Civil Lines, Bareilly in favour of the complainant company. The same was deposited in the bank account of the complainant company in SBI, L.H. Factory Branch, Pilibhit which was sent for collection to the payee branch. The payee bank through its memorandum of communication to the SBI, Pilibhit returned with the same with the comments that funds were insufficient in the account of accused no.1. The SBI informed the complainant through its memorandum dated 14.09.2001 about the same.

6. The notice dated 19.09.2001 was sent by registered post on 20.09.2001 by the complainant calling upon the accused persons to pay Rs. 5,45,438/- within 15 days of the same. It is stated that the notice was also served personally on the accused nos.2 to 5 on 21.09.2001 and on the accused no.1 on 24.09.2001. The accused no.6 refused to accept the same on 25.09.2001. The accused persons despite service of notice did not pay the said amount. It is averred that the accused nos. 2 to 6 had a financial control and were responsible to the company for conduct of business and its affairs and had neglected to arrange the necessary funds in the account of the company. The complaint was thus filed.

7. The trial court after due enquiry vide its order dated 09.10.2002 summoned the accused persons against which the accused persons filed an objection which was also rejected vide order dated 09.10.2002.

8. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that general and omnibus allegations have been levelled against the applicant as having financial control and being responsible for the company for conduct of business and purchase. It is argued that there is nothing on record to show that the applicant was responsible for the day to day business and was also incharge of the financial matters of the company. It is argued that in so far as the cheque is concerned, it is specific case of the complainant that the cheque was issued by the accused no.2/Lalit Bisht and the accused no.3/Pramod Narain Agarwal. It is argued that the applicant is not the signatory of the cheque and had not issued the cheque in question. The case of the complainant is specific in these terms. Further, it is argued that even the said two accused persons being

the accused nos.2 and 3 the persons who had being instrumental in initiating the matter with the complainant company as per the complainant case. It is further argued that in so far the notice dated 19.09.2001 is concerned, there is nothing on record to show that the notice was personally served on the applicant. Further, while placing the said notice which is annexure 2 to the affidavit it is argued that the said notice was through lawyer on behalf of L.H. Sugar Factories Ltd. to M/s L.P. Papers Ltd. in which the applicant along with other accused persons were arrayed. It is argued that there is nothing credible on record to show that the said notice had been served upon the applicant.

9. Further, learned counsel for the applicant has placed the judgment of the Apex Court in the case of **Sunita Palita and others Vs. Panchami Stone Quarry : 2022 (10) SCC 152** and while placing para 45 of the same has argued that that the impleadment of all directors of an accused company on the basis of a statement that they are incharge and responsible for conduct of the business of the company without anything more, does not fulfill the requirements of Section 141 of the N.I. Act. It is argued that as such the present petition be deserves to be quashed. It is no specific allegation in which the applicant being in person incharge of the responsible of the company. It is argued that the case is distinguishable with that of the accused nos. 2 and 3 namely Lalit Bisht and Pramod Narain Agarwal.

10. Per contra, learned counsel for the complainant opposed the prayer for quashing and argued that there is an allegation against the applicant along with other accused persons were incharge responsible of the financial and affairs of the company and as such the complaint needs to be proceed before the trial court. It is argued that as such the prayer for quashing of the applicant be rejected.

11. After having heard learned counsels for the parties and perusing the records, it is evident that in so far as the applicant is concerned, the allegation against the applicant is that along with four other accused persons had controlled on the finance and were responsible to the company for its conduct and business. There is nothing on record to show as to how the applicant was responsible and incharge of the conduct of business of the company and had been working for the company on day to day basis. In so far as the accused no.2/Lalit Bisht and the accused no.3/Pramod Narain Agarwal is concerned, the allegations against them is that they had issued the cheque in question which stood dishonoured. The case of the applicant is thus distinguished with the case of Lalit Bisht

and Pramod Narain Agarwal.

12. In view of the settled law and the case of the applicant, the proceedings against the **applicant/Roshi Narain Agarwal** is quashed.

13. The present petition is ***allowed***. No order as to costs.

**Order Date :- 31.10.2023**

M. ARIF

(Samit Gopal, J.)