

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 1283 of 2023

Petitioner :- Farhan Ul Haq

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Mohd. Ayyuq Hasan

Counsel for Respondent :- G.A.,Firoz Haider

Hon'ble Mrs. Jyotsna Sharma,J.

1. Case called out in the revised list. None responds for the petitioner, therefore heard Sri Firoz Haider, learned counsel for respondent no. 2 and Sri L.D. Rajbhar, learned AGA for the State and perused the papers on record.

2. This petition under Article 227 of the Constitution has been filed with a prayer to quash the summoning order dated 30.09.2021 passed by the learned Additional Court, District Muzaffarnagar in complaint case no. 4639 of 2021 (Aman Zama vs. Farhan Ul Haq) and the impugned order dated 31.10.2022 passed by the learned Sessions Judge, District Muzaffarnagar in criminal revision no. 260 of 2022 (Farhan Ul Haq vs. State of UP and Another) under section 138 of the Negotiable Instruments Act.

3. The petitioner's case as revealed from the petitioner is that legal demand notice was given by the complainant, after delay of 20 days, therefore, no offence under section 138 of N.I. Act is made out. Learned trial court as well as the revisional court completely ignored the fact that the provisions of section 138 of N.I. Act required the payee or the holder in due course of the cheque, as the case may be, to make a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information of dishonor of cheque. The case of the petitioner is that the information regarding dishonor and return memo was received by the accused on 12.04.2021 and the demand notice was admittedly given after a gap of 1½ month, on 31.05.2021, therefore, the summoning order is bad in law.

4. Learned counsel for respondent no. 2 has referred to a judgment of the Supreme Court given in ***In Re: Cognizance for Extension of Limitation (Suo Motu Writ Petition (C) No. 3 of 2020) decided on 10.01.2022***. The Supreme Court in, the wake of extraordinary Covid conditions, took suo motu cognizance of difficulties faced by the litigants to adhere to the periods of limitation, as prescribed under the law. The Supreme Court issued several directions. The relevant portion of the direction is a below:-

"It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

5. The learned trial court and the learned revisional court took notice of the above judgment and therefore accepted the notice as valid one and coming within the provisions of section 138(b) of N.I. Act.

6. In my view, in the light of the judgment of the Supreme Court, there is no illegality committed by the trial court and the revisional court, therefore, the petition lacks merit and is **dismissed**.

Order Date :- 6.11.2023/#Vikram/-