

**Court No. - 92**

**Case :-** APPLICATION U/S 482 No. - 17884 of 2013

**Applicant :-** Smt. Reena Jaiswal

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

**Counsel for Applicant :-** Manoj Kumar

**Counsel for Opposite Party :-** Govt. Advocate

**Hon'ble Anish Kumar Gupta,J.**

1. None appears for the applicant to press the instant application, however, Shri Prem Prakash Tripathi, learned A.G.A for the State is present.

2. The instant application has been filed seeking quashment of order dated 03.04.2012 and 05.06.2012 passed by learned Additional Judicial Magistrate-II, Varanasi whereby an application of discharge under Section 245(2) Cr.P.C filed by the applicants was rejected. In the instant application it was contended by the applicant that no offence under Section 138 is made out against applicant as applicant had no debt or any other legal liability against the opposite party no.2 for which the cheque in question was issued by the applicant. The said cheque has been misused and mis-appropriated by the opposite party no.2 with ulterior motives.

3. This court has gone through the record of the case and the contentions raised by the applicant that the said cheque was mis-appropriated or misused by the opposite party no.2 is to be established by the applicant during the trial of the case. In view of the provisions of Section 139 of Negotiable Instruments Act, prima facie, there is a presumption in favour of the holder of the cheque that said cheque was issued in due course against the legal liability. The applicant have liberty to rebut such presumption during the trial. In the summary proceedings in the discharge application the said presumption have not been rebutted by the applicant as that would require leading of the evidence as to how the cheque was came in possession of the complainant/ opposite party no.2,

4. Hence, in view thereof, the instant matter is devoid of merits and is thereby **dismissed**.

**Order Date :-** 30.10.2023

A Gautam