

Court No. - 92

Case :- APPLICATION U/S 482 No. - 12560 of 2022

Applicant :- Chandra Kant Mishra

Opposite Party :- State Of U.P And Another

Counsel for Applicant :- Shashi Kant Shukla

Counsel for Opposite Party :- G.A.,Anupam Shukla,Murli Dhar Mishra,Ramesh Chandra Shukla,Vivek Shukla

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Shashi Kant Shukla, learned counsel for the applicant, Sri Murli Dhar Mishra, learned counsel for opposite party no.2 and Sri Pankaj Srivastava, learned A.G.A. for the State.

2. The instant application has been filed seeking quashing of summoning order dated 21.10.2019 and entire proceedings of Complaint Case No.938 of 2019 (Umesh Chandra Shukla Vs. Chandra Kant Mishra), under Section 138 Negotiable Instruments Act, Police Station - George Town, District - Allahabad.

3. Learned counsel for the applicant submits that there was an agreement to sale between the parties and in terms of the said agreement to sale, a cheque of Rs.30,00,000/- was issued by the applicant herein in favour of opposite party no.2. The said cheque was presented by opposite party no.2 for encashment with bank which was dishonoured and after dishonoured of the cheque the complainant has informed the applicant for the said dishonour of cheque and demanded the cheque amount within 15 days. However, in spite of making the payment, the applicant herein is disputed the liability and refused to make the payment of cheque amount, therefore, the complaint under Section 138 Negotiable Instruments, Act was filed by the opposite party no.2 herein, wherein the applicant herein has been summoned by order dated 21.10.2019 against which the instant application has been filed by the applicant seeking quashing of the summoning order as well as entire proceedings of the said complaint case.

4. Learned counsel for the applicant has disputed the liability, however, in view of the presumption of Section 139 Negotiable Instruments, Act, *prima facie*, case is made out against the applicant herein as the applicant has not denied the issuance of cheque or the cheque amount. He has disputed the liability to

make the payment for want of consideration for the same. The contention which has been raised by learned counsel for the applicant in the instant application disputing the liability for want of consideration, are the disputed facts which has to be proved by the applicant during the trial of the said case by leading the evidence in trial. Learned counsel for the applicant has further relied upon Section 58 of Negotiable Instruments, Act, whereby he has argued that the said cheque was obtained by the opposite party no.2 by unlawful means for unlawful consideration, however, whether the said cheque was obtained by the opposite party no.2 for unlawful consideration that has to be proved before the trial court by giving cogent evidence in support thereof.

5. In the case of ***Rathish Babu Unnikrishnan Vs. The State (Govt. of NCT of Delhi) & Another*** reported in **[2022] 4 S.C.R. 989**, the Apex Court has held that whenever the facts are disputed the truth should be allowed to emerge by weighing the evidence. Apex Court has held as under:

"12. At any rate, whenever facts are disputed the truth should be allowed to emerge by weighing the evidence. On this aspect, we may benefit by referring to the ratio in Rajeshbhai Muljibhai Patel vs. State of Gujarat where the following pertinent opinion was given by Justice R. Banumathi:

"22. When disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of the NI Act ought not to have been quashed by the High Court by taking recourse to Section 482 CrPC. Though, the Court has the power to quash the criminal complaint filed under Section 138 of the NI Act on the legal issues like limitation, etc. criminal complaint filed under Section 138 of the NI Act against Yogeshbhai ought not to have been quashed 4 (2010) 11 SCC 441 5 (2020) 3 SCC 794 merely on the ground that there are inter se disputes between Appellant 3 and Respondent 2. Without keeping in view the statutory presumption raised under Section 139 of the NI Act, the High Court, in our view, committed a serious error in quashing the criminal complaint in CC No. 367 of 2016 filed under Section 138 of the NI Act."

13. Bearing in mind the principles for exercise of jurisdiction in a proceeding for quashing, let us now turn to the materials in this case. On careful reading of the complaint and the order passed by the Magistrate, what is discernible is that a possible view is taken that the cheques drawn were, in discharge of a debt for purchase of shares. In any case, when there is legal presumption, it would not be judicious for the quashing Court to carry out a detailed enquiry on the facts alleged, without first permitting the trial Court to evaluate the evidence of the parties. The quashing Court should not take upon itself, the burden of separating the wheat from the chaff where facts are contested. To say it differently, the quashing proceedings must not become an expedition into the merits of factual dispute, so as to conclusively vindicate either the complainant or the defence.

14. The parameters for invoking the inherent jurisdiction of the Court to quash the criminal proceedings under S.482 CrPC, have been spelled out by Justice S. Ratnavel Pandian for the two judges' bench in State of

*Haryana v. Bhajan Lal*⁶, and the suggested precautionary principles serve as good law even today, for invocation of power under Section 482 of the Cr.P.C.

"103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

15. In the impugned judgment, the learned Judge had rightly relied upon the opinion of Justice J.S.Khehar for a Division Bench in *Rajiv Thapar* (supra), which succinctly express the following relevant parameters to be considered by the quashing Court, at the stage of issuing process, committal, or framing of charges,

"28. The High Court, in exercise of its jurisdiction under Section 482 CrPC, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/ complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/ complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same."

6. Therefore, while exercising the powers under Section 482 Cr.P.C. and from perusal of the complaint under Section 138 Negotiable Instruments, Act, *prima facie* case is made out against the applicant herein in view of the presumption under Section 139 Negotiable Instruments, Act and the conditions of Section 138 Negotiable Instruments, Act are satisfied, therefore, there is no ground for interfering in the summoning order passed by the learned Magistrate, hence, the instant application is devoid of merit and is hereby **dismissed**.

7. Since, the instant complaint case is pending since 2019, learned Magistrate is directed to proceed with the matter in accordance with law and particularly, in accordance with the provisions of Section 143 of Negotiable Instruments Act and try to conclude the said proceeding, expeditiously.

Order Date :- 3.11.2023

Atul