

Court No. - 90

Case :- APPLICATION U/S 482 No. - 20967 of 2023

Applicant :- Smt. Preeti Gupta

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

Counsel for Applicant :- Ajay Rajendra

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak,J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. As per office report dated 6.9.2023, notice upon respondent No.2 could not be served inasmuch as he is not residing at the given address and has already left the said address, where he resided, as mentioned in the notice. Learned counsel for the applicant submits that his client (present applicant) does not know another address then what is written in the complaint and instant application u/s 482 Cr.P.C.

3. In view of the peculiar facts and circumstances of the present case, no useful purpose would be served to keep the instant application pending, therefore, in view of the order proposed to be passed hereinunder, this Court proceeds to decide the instant application exparte in absence of private respondent No.2 with liberty accord him to move recall/restoration application if any fact and details of the case, as mentioned in the instant application, are found incorrect.

4. Instant application under Section 482 Cr.P.C. has been filed beseeching setting aside the impugned order dated 20.4.2022 passed by learned Additional Chief Judicial Magistrate, Court No.3, Meerut in Complaint Case No.70937 of 2015 (Smt. Preeti Gupta vs. Samer Ahmad), under Section 138 of the Negotiable Instruments Act (in brevity N.I. Act), P.S. Sadar Bazar, District Meerut.

5. Facts culled out from the record are that the present applicant has filed a complaint dated 7.9.2015 u/s 138 of N.I. Act with an averment that accused has demanded Rs.20 lakhs from her husband and assured him to return principal amount along with profit of Rs.two lakhs within a year. Husband of the complainant has given about Rs.14 lakhs to the accused. In lieu thereof, he has furnished a

Cheque bearing Cheque No.371546 dated 24.6.2015, amounting Rs.5 lakhs. While the said Cheque was represented before the Bank, same has been returned for want of sufficient fund. During pendency of the proceedings opposite party appeared before the Court, however, at later stage, he has avoided the Court proceedings. In the meantime, due to Covid-19 Pandemic, complainant could not appear before the Court below on 20.4.2022. Consequently, the complaint was ordered to be dismissed under Section 257 Cr.P.C. Having been aggrieved, the instant application has been filed assailing the order dated 20.4.2023.

6. It is submitted by learned counsel for the applicant that complainant has not withdrawn her case, therefore, the complaint could not have been dismissed as withdrawn under the provisions as initiated u/s 257 Cr.P.C. It is further submitted that considering the bluish of Covid-19 Pandemic, one opportunity may be given to the present applicant by adopting liberal approach.

7. Per contra, learned A.G.A. has vehemently opposed the submission made by learned counsel for the applicant and supported the order dated 20.4.2022.

8. Having considered the rival submissions advanced by learned counsel for the applicant as well as learned A.G.A. for the State and perusal of the order, it is manifested that the present applicant has moved a complaint dated 7.9.2023 owing to dishonor of cheque bearing Cheque No.371546 dated 24.6.2015 amounting Rs.5 lakh for want of sufficient fund. Accused (respondent no.2) was served with notice. In absence of the present applicant, her complaint u/s 138 N.I. Act has been dismissed, vide order dated 20.4.2022, citing the provisions of Section 257 Cr.P.C. The same is quoted as below :-

*" **Section 257 - Withdrawal of complaint** - If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused against whom the complaint is so withdrawn. "*

9. Perusal of Section 257 Cr.P.C. reveals that at any stage of trial, before final judgment being passed, if the complainant satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his

complaint against the accused/s, the Magistrate may permit him to withdraw the same and shall thereupon acquit the accused/s against whom complaint is so withdrawn. In the instant matter, there is no case of complainant that he had made a request to the Court concerned for withdrawal of the complaint. Bare perusal of the order dated 20.4.2022 reveals that on the date fixed, complainant could not appear before the Court below, consequently, the case was ordered to be dismissed under Section 257 Cr.P.C. It appears that the learned Magistrate has inadvertently referred Section 257 Cr.P.C. while dismissing the complaint for want of prosecution in the absence of the complainant. The complaint utmost could have been dismissed for want of prosecution under Section 256 Cr.P.C. Proviso to Section 256 (1) Cr.P.C. clearly denotes where the Magistrate is of the opinion that personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case. The provisions as enunciated under proviso to Section 256 (1) Cr.P.C. is fully applicable in the given circumstances of the present case wherein normal dates with effect from 28.8.2018, were being fixed for the evidence of accused. Learned Trial Court has issued non-bailable warrant against opposite party No.2 and also issued proclamation under Section 82 Cr.P.C. During continuation of the non-bailable warrant against opposite party No.2, the learned Trial Court has proceeded to dismiss the complaint under Section 257 Cr.P.C. However, in my considered opinion, there was no occasion to dismiss the complaint for want of prosecution inasmuch as, normal dates were being fixed for the evidence of the accused, who was throughout absent despite the issuance of non-bailable warrant and proclamation under Section 82 Cr.P.C. In this circumstance, learned Magistrate would have exercised its jurisdiction dispensing with the presence/ attendance of the complainant and proceed with the matter to ensure the presence of the accused for his evidence. Apart from that, in the facts and circumstances of the present case, as averred in the affidavit filed in support of the instant application, present applicant has assigned the cogent reason for his non-appearance on the date of hearing. Therefore, one opportunity should be given to the present applicant to contest the case.

10. In the conspectus as above, in order to secure the ends of justice in exercise of inheriting power u/s 482 Cr.P.C., this Court is of the view that the instant 482

Cr.P.C. application is deserves to be **allowed**. As such, instant application is allowed and the order impugned dated 20.4.2022, passed by the Additional Chief Judicial Magistrate, Court No.3, Meerut, is hereby **quashed**.

11. Complaint No.70937 of 2015, u/s 138 of N.I. Act is hereby restored to its original number and the parties are relegated before the Court below to get the matter decided on merit.

12. Learned Trial Court is hereby directed to decide the matter, expeditiously, as early as possible in accordance with law.

Order Date :- 18.10.2023

Vandana Y.