

Court No. - 92

Case :- APPLICATION U/S 482 No. - 4854 of 2013

Applicant :- Santosh Kumar Singh

Opposite Party :- State Of U.P.And Another

Counsel for Applicant :- Onkar Singh,Ratan Lal Singh

Counsel for Opposite Party :- Govt. Advocate,Manoj Kumar Srivastava,Radheyshyam Shukla

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Onkar Singh, learned counsel for the applicant, Sri K.K. Chaturvedi, learned counsel for opposite party no.2 and Sri Sandeep Chaudhary, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing summoning order dated 09.01.2013 as well as proceedings of Complaint Case No.167/IX of 2011 (Ramanand Dwivedi Vs. Smt. Siya Dulari and another), under Sections 420, 406, 120-B I.P.C., Police Station Karwi, District Chitrakoot, pending in the Court of Chief Judicial Magistrate, Chitrakoot.

3. Learned counsel for the applicant submits that the instant application has been filed by the applicant, who was the Branch Manager of the Bank where a cheque was presented by opposite party no.2 for encashment and since the death of the account holder the payment of said cheque was stopped. The applicant herein is neither the beneficiary out of the transactions nor the dishonour of the cheque and he was only performing his duties in accordance with the settled banking norms. Learned counsel for the applicant further submits that the instant complaint was filed under Section 138 of Negotiable Instruments Act against the applicant herein as well as the wife of drawer of the cheque. It has been admitted by the opposite party no.2 that the drawer of the cheque has expired prior to the presentation of cheque for encashment, therefore, due to death of the account holder/drawer of the cheque the payment of the said cheque could not be made as per the banking norms. However, learned Magistrate on detailed analysis, has found that the offence under Section 138 of Negotiable Instruments Act is not made out against the accused persons named in the complaint under Section 138 of Negotiable Instruments Act, however, merely on the basis that the complainant has alleged that the wife of drawer of the cheque in collusion with the present applicant who was the Bank Manager, has got the payment stopped,

therefore, *prima facie*, offence under Sections 420, 406, 120-B I.P.C. is made out and the applicant herein along with wife of drawer of the cheque and has summoned them for the offence under Sections 420, 406, 120-B I.P.C. He further submits that there cannot be any offence under Section 120-B for non-payment of a cheque due to death of the drawer of the cheque. Since the payment was stopped as per the banking norms no offence under Sections 420, 406, 120-B I.P.C. is made out against the applicant herein.

4. Per contra, learned counsel for opposite party no.2 submits that the opposite party no.2 had paid a sum of Rs.2,40,000/- to the drawer of the cheque and wife of the drawer of cheque after the death of her husband, in collusion with the Branch Manager, who is applicant herein, had got the payment stopped, therefore, the opposite party no.2 has been defrauded by non-payment and dishonour of the cheque, therefore, he has prayed for dismissal of the instant application.

5. Learned A.G.A. for the State submits that since the applicant herein is the bank official and payment of the cheque has been denied due to the death of account holder, therefore, no *mens rea* can be alleged to the Branch Manager of the Bank as the payment was stopped due to the death of the account holder as per the banking norms, therefore, no offence, for which the applicant herein has been summoned, is made out against the applicant herein.

6. Having heard the submissions made by learned counsel for the parties, this Court carefully gone through the record and from perusal of the record it is apparent that a complaint under Section 138 of the Negotiable Instruments Act, was filed by the opposite party no.2 alleging that the drawer of the cheque has taken loan of Rs.2,40,000/- for his treatment as he was suffering from Cancer and he died on 03.10.2010 and after his death, the opposite party no.2 presented the cheque for encashment on 10.11.2010, which was dishonoured and it has been alleged that the wife of the drawer of the cheque in collusion with the applicant herein has got the payment stopped, therefore, the complaint under Section 138 of the Negotiable Instruments Act was filed against the wife of the drawer of the cheque as well as against the applicant herein who was the Branch Manager of Bank at the relevant time. From perusal of the aforesaid complaint, it appears that since the cheque was presented after the death of the drawer of cheque, no offence under Sections 420, 406, 120-B is made out, however, learned Magistrate summoned the applicant herein for the offence under Sections 420, 406, 120-B I.P.C.

7. Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that no offence under Section 420, 406, 120-B I.P.C. is made out against the applicant herein, therefore, the instant application deserves to be allowed in terms of judgment of Apex Court in ***State of Haryana and others Vs. Bhajan Lal and others, 1992 Supp. (1) SCC 335*** and ***M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, AIR 2021 SC 1918*** and is hereby **allowed**.

8. The entire proceedings of the aforesaid Complaint Case No.167/IX of 2011 (Ramanand Dwivedi Vs. Smt. Siya Dulari and another), under Sections 420, 406, 120-B I.P.C., Police Station Karwi, District Chitrakoot, pending in the Court of Chief Judicial Magistrate, Chitrakoot are hereby **quashed**.

Order Date :- 6.12.2023

Atul