

Court No. - 90

Case :- APPLICATION U/S 482 No. - 23107 of 2023

Applicant :- Kamlesh Yadav

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

Counsel for Applicant :- Mukul Yadav,Rajesh Yadav

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. The present applicant has invoked the inherent power of this Court under Section 482 Cr.P.C. to quash the order dated 09.10.2019 as well as entire proceedings of the Complaint Case No.2901 of 2019 (Kamlesh Kumar Singh Vs. Kamlesh Yadav), under Section 138 of Negotiable of Instrument Act(in brevity "N.I. Act."), Police Station Ranipur, District Mau, pending in the court of learned Additional Chief Judicial Magistrate/F.T.C., Mau.

3. Facts culled out from the record are that the opposite party no.2 has moved a complaint, dated 11.04.2019 under Section 138 of N.I. Act, on the ground that the complainant has paid Rs. 5 lacs to the present applicant for purchasing a tractor, however, at later stage, he has refused to sell the tractor and furnished a cheque bearing Cheque No.075343 dated 18.02.2019 amounting Rs. 5 lacs. However, said cheque, while presented before the bank for encashment, was dishonoured for want of sufficient funds.

4. Having considered the contents of the complaint, learned Magistrate has issued process against the present applicant under Section 138 of N.I. Act, vide order dated 09.10.2019, which is under challenge before this Court.

5. Learned counsel for the applicant has raised objection with respect to the maintainability of the complaint on the ground that the date of dishonour of cheque and date of notice give to the present applicant as well its receiving for payment of sum represented on the cheque in question as required under Sections 138 and 142 of the N.I. Act has not been mentioned, therefore, complaint under Section 138 of N.I. Act itself is not maintainable in the eyes of law. It is further submitted that the learned

Magistrate has miserably failed to consider these aspect of the matter and without recorded its, prima facie, satisfaction with respect to the compliance of essential condition for entertaining the complaint has illegally issued process against the present applicant.

6. Having considered the submissions as raised by learned counsel for the applicant, I am of the considered view that the applicant has still an opportunity to raise all these possible objections before the learned Magistrate with respect to the maintainability of the complaint. Nothing has finally been decided prejudicing the interest of the present applicant. A simple summon has been issued to file his objection before the court below, therefore, in the peculiar facts and circumstances of the present case, wherein compliance of the essential conditions as required under Sections 138 and 142 of N.I. Act have been questioned, present applicant shall file a preliminary objection raising all these questions and till the date of its disposal he should be protected from any legal action against him.

7. In this conspectus, as above, no useful purpose would be served to keep this matter pending, therefore, this Court deems it appropriate to finally dispose of the present application without entering into the merits of the case, with liberty to the present applicant that he shall file a preliminary objection relating to the maintainability of the complaint within a period of two weeks from today, which shall be considered and decided by the court concerned within a period of four weeks thereafter.

8. In the interest of justice, for a period of six weeks or till the decision on the preliminary objection/application moved by the applicant with respect to the maintainability of the complaint under Section 138 of N.I. Act as mentioned above, whichever is earlier, no coercive action shall be taken against the present applicant in Complaint Case No.2901 of 2019 (Kamlesh Kumar Singh Vs. Kamlesh Yadav), under Section 138 of Negotiable of Instrument Act.

9. Accordingly, instant application is **disposed of**.

Order Date :- 11.12.2023

Mini