

Court No. - 88

Case :- APPLICATION U/S 482 No. - 28961 of 2023

Applicant :- Prashant Sharma

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

Counsel for Applicant :- Deepak Rana

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

1-Heard Mr. Sandeep Shukla, learned Advocate appearing on behalf of Mr. Deepak Rana, learned counsel for the applicant and Mr. Prashant Kumar Singh, learned Brief Holder for the State of U.P./opposite party no.1.

2-This application under Section 482 Cr.P.C. has been filed by the applicant with a prayer to quash the summoning order dated 16.05.2023 as well as proceedings of Case No. 415 of 2023 (*Dinesh Kumar Maurya vs. Prashant Sharma*), under Section 138 N.I. Act, Police Station Chandausi, District Sambhal, pending in the court of Civil Judge (J.D.)/Judicial Magistrate, Sambhal at Chandausi.

3-Brief facts of the case which are required to be stated are that the complainant / opposite party no.2-Dinesh Kumar Maurya filed a complaint dated 27.04.2023 against the applicant-Prashant Sharma, for the alleged offence under Section 138 of Negotiable Instrument Act alleging inter-alia that in the year 2018, accused-Prashant Sharma had taken rupees eight lac from him in four installments on the pretext of making available a land to him but he, even after receiving said amount, neither arranged a land for him as per his assurance nor returned his money. On mounting pressure, he gave a cheque bearing no. "000084" dated 28.03.2023 amounting to Rs. 8,00,000/- of HDFC bank to him on 10.02.2023 but on presenting the said cheque on 28.03.2023 in the bank, the same got dishonored on 29.03.2023 due to insufficient fund in the account of the accused-applicant. The complainant gave information about the same to the applicant by his mobile phone but he refused to return his money. Thereafter on 08.04.2023, complainant sent a

statutory notice to the accused-applicant by registered post, which has been received to the accused, even then he neither replied nor made payment.

4-Learned magistrate after taking cognizance of the offence and considering the affidavit of the complainant, summoned the applicant vide order dated 16.05.2023 to face trial for the offence under Section 138 of Negotiable Instrument Act, which is the subject matter of challenge in the present case.

5-The first and foremost submission of learned counsel for the applicant is that the complainant in paragraph no. 3 of his complaint has mentioned that after dishonour of the said cheque, he sent a notice dated 08.04.2023 by a registered post to the accused-applicant, which has been received to him but no specific date of service of notice has been mentioned, therefore, in view of Section 138 (b) and (c) of Negotiable Instruments Act, the complaint dated 27.04.2023 is not maintainable, hence, impugned summoning order as well as criminal proceedings on the basis of said complaint dated 24.04.2023 against the applicant are liable to be quashed in the light of judgment of the Apex Court in the case of **Ashok Shewakramani & Ors. vs. State of Andhra Pradesh & Anr.**, (2023) 8 SCC 473. No other submission has been raised.

6-Per contra, Mr. Prashant Kumar Singh, learned Brief Holder for the State of U.P. refuting the submissions advanced on behalf of the applicant submitted that :-

(i) from Section 27 of the General Clauses Act, 1897 and Section 114 of the Evidence Act, 1872, it is clear that once notice is sent by a registered post by correctly addressing to the drawer of the cheque, the service of notice is deemed to have been effected. Then requirements under proviso (b) of Section 138 stand complied, if notice is sent in the prescribed manner. However, the drawer is at liberty to rebut this presumption in the trial.

(ii) considering the allegations made in the complaint as well as statement of the complainant and witnesses under Sections 200 and 202 Cr.P.C. respectively, the cognizable offence against the applicant is made out, therefore, the

criminal proceedings against the applicant cannot be said to be abuse of the process of the Court. Hence this application is liable to be dismissed.

(iii) Mr. Prashant Kumar Singh, in support of his submissions, placed reliance upon the judgment of the Apex Court in the case of **V. Raja Kumari vs. P. Subbarama Naidu**, (2004) 8 SCC 774, **C. C. Alavi Haji vs. Palapetty Muhammed and Another**, (2007) 6 SCC 555 and **M/s Ajeet Seeds Ltd. vs. K. Gopala Krishnaiah**, (2014) 12 SCC 685.

7-Before delving into the issue, it would be appropriate to reproduce Section 138 of the Negotiable Instrument Act.

"138. Dishonour of cheque for insufficiency, etc. of funds in the account. Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless

(a) The cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) The payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation. For the purposes of this section "debt or other liability" means a legally enforceable debt or other liability."

8-A bare reading of Section 138 of the N.I. Act indicates that the purport of Section 138 is to prevent and punish the dishonest drawers of cheques, who evade and avoid their liability. As explained in clause (b) of the proviso, the payee or the holder of the cheque in due course is necessarily required to serve a written notice on the drawer of the cheque within fifteen days from the date of intimation received from the bank about dishonor. It is explicitly made clear under clause (c) of Section 138 of the N.I. Act, that this gives an opportunity to a drawer of the cheque to make payment within fifteen days of receipt of such notice sent by the drawee. It is manifest that the object of providing clause (c) is to avoid unnecessary hardship. Even if the drawer has failed to make payment within fifteen days of receipt of such notice as provided under clause (c), the drawer shall be deemed to have committed an offence under the Negotiable Instrument Act and thereafter the drawee would be competent to file complaint against the drawer by following the procedure prescribed under Section 142 of the Negotiable Instrument Act.

9-It is well settled and a recognized rule of interpretation of statutes that expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature. If an expression is susceptible of a narrow or technical meaning, as well as a popular meaning, the Court would be justified in assuming that the Legislature used the expression in the sense which would carry out its object and reject that which renders the exercise of its power invalid.

10-Considering the relevant provisions of N.I. Act, it is clear that the offence under Section 138 N.I. Act are completed in following steps:

"(i) Drawing of the cheque by a person on an account maintained by him with a banker, for payment to another person from out of that account for discharge in whole/part any debt or liability.

(ii) Presentation of the cheque by the payee or the holder in

due course to the bank.

(iii) Returning the cheque unpaid by the drawee bank for want of sufficient funds to the credit of the drawer or any arrangement with the banker to pay the sum covered by the cheque.

(iv) Giving notice in writing to the drawer of the cheque within 15 days of the receipt of information by the payee from the bank regarding the return of the cheque as unpaid demanding payment of the cheque amount, and

(v) Failure to the drawer to make payment to the payee or the holder in due course of the cheque of the amount covered by the cheque within 15 days of the receipt of the notice."

11-So far as judgment of **Ashok Shewakramani (Supra)** relied upon by learned counsel for the applicant is concerned, there is no dispute about the proposition of law laid down by the Apex Court in the said judgment but I find that the same is not helpful to the applicant in this case because the facts of that case is distinguishable from the facts of the case in hand. In that case, it was admitted fact by the complainant in his complaint and affidavit filed in support the complaint that the statutory notice of demand was not served on the accused and the same was returned unserved, whereas in the present case, it is the case of the complainant in paragraph nos. 2 and 3 of the complaint that after dishonour of the cheque in question on 29.03.2023, he gave information about dishonour of cheque to the accused-applicant by his mobile phone but he refused to return amount in question to him. Thereafter on 08.04.2023 complainant sent a statutory notice to the accused-applicant by registered post, which has been received to the accused but he neither replied not made payment of the amount in question. This Court is of the view that each case turns on its own facts. A little difference between the facts of two cases may alter the entire aspect of the matter and may make a big difference in the conclusion of the two cases.

12-Here it would also be relevant to discuss the judgments cited on behalf of the State, which are as under:-

(i) The Apex Court in case of **V. Raja Kumari vs. P.**

Subbarama Naidu (Supra) has held that even non-service of notice cannot be a ground for rejecting the complaint. Relevant extract of the above judgment is reproduced herein below:-

"8. On the part of the payee he has to make a demand by "giving a notice" in writing. If that was the only requirement to complete the offence on the failure of the drawer to pay the cheque amount within 15 days from the date of such "giving", the travails of the prosecution would have been very much lessened. But the legislature says that failure on the part of the drawer to pay the amount should be within 15 days "of the receipt" of the said notice. It is, therefore, clear that "giving notice" in the context is not the same as receipt of notice. Giving is a process of which receipt is the accomplishment. It is for the payee to perform the former process by sending the notice to the drawer at the correct address.

9. In Black's Law Dictionary "giving of notice" is distinguished from receiving of the notice.

" a person notifies or gives notice to another by taking such steps as may be reasonably required to inform the other in the ordinary course, whether or not such other actually comes to know of it. A person "receives" as notice when it is duly delivered to him or at the place of his business.

10. If a strict interpretation is given that the drawer should have actually received the notice for the period of 15 days to start running no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape from the legal consequences of Section 138 of the Act. It must be borne in mind that the court should not adopt an interpretation which helps a dishonest evader, and clips an honest payee as that would defeat the very legislative measure

11. In Maxwell's Interpretation of Statutes, the learned author has emphasized that "provisions relating, to giving of notice often receive liberal interpretation". The context envisaged in Section 138 of the Act invites a liberal interpretation for the person who has the statutory obligation to give notice because he is presumed to be the loser in the transaction and it is for his interest the very provision is made by the legislature. The words in clause (b) of the proviso to Section 138 of the Act show that the

payee has the statutory obligation to "make a demand" by giving notice. The thrust in the clause is on the need to "make a demand". It is only the mode for making such demand which the legislature has prescribed. A payee can send the notice for doing his part for giving the notice. Once, it is dispatched his part is over and the next depends on what the sendee does."

(ii) The Apex Court In the case of **C. C. Alavi Haji (Supra)** considering the provisions of Section 27 of General Clauses Act, 1897 has also discussed and settled the issue pertaining to the question of service of notice in terms of Section 138 proviso (b) of the Negotiable Instrument Act. The relevant paragraph no. 15 and 17 of the said judgment are useful for the purpose of this case, which are quoted as under:

"15. Insofar as the question of disclosure of necessary particulars with regard to the issue of notice in terms of proviso (b) of Section 138 of the Act, in order to enable the Court to draw presumption or inference either under Section 27 of the G.C. Act or Section 114 of the Evidence Act, is concerned, there is no material difference between the two provisions. In our opinion, therefore, when the notice is sent by registered post by correctly addressing the drawer of the cheque, the mandatory requirement of issue of notice in terms of Clause (b) of proviso to Section 138 of the Act stands complied with. It is needless to emphasise that the complaint must contain basic facts regarding the mode and manner of the issuance of notice to the drawer of the cheque. It is well settled that at the time of taking cognizance of the complaint under Section 138 of the Act, the Court is required to be prima facie satisfied that a case under the said Section is made out and the aforementioned mandatory statutory procedural requirements have been complied with. It is then for the drawer to rebut the presumption about the service of notice and show that he had no knowledge that the notice was brought to his address or that the address mentioned on the cover was incorrect or that the letter was never tendered or that the report of the postman was incorrect. In our opinion, this interpretation of the provision would effectuate the object and purpose for which proviso to Section 138 was enacted, namely, to avoid unnecessary hardship to an honest drawer of a cheque and to provide him an opportunity to make amends."

"17. It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of

Criminal Law, where there is no stipulation of giving of a notice before filing a complaint. Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in Bhaskarans case (supra), if the giving of notice in the context of Clause (b) of the proviso was the same as the receipt of notice a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of Section 138 of the Act".

(iii) Similarly, the Apex Court in the case of **M/s Ajeet Seeds Ltd. (Supra)** again after wholesome treatment considering the case of C.C. Alavi Haji as well as provisions of Section 114 of the Evidence Act and Section 27 of General Clauses Act, has settled the issue relating to service of notice required under Section 138 of N.I. Act. For the said purpose, the relevant paragraph no. 11 would be useful to quote hereinafter:-

"11. Applying the above conclusions to the facts of this case, it must be held that the High Court clearly erred in quashing the complaint on the ground that there was no recital in the complaint that the notice under Section 138 of the NI Act was served upon the accused. The High Court also erred in quashing the complaint on the ground that there was no proof either that the notice was served or it was returned unserved/unclaimed. That is a matter of evidence. We must mention that in C.C. Alavi Haji, this Court did not deviate from the view taken in Vinod Shivappa, but reiterated the view expressed therein with certain clarification. We have already quoted the relevant paragraphs from Vinod Shivappa where this Court has

held that service of notice is a matter of evidence and proof and it would be premature at the stage of issuance of process to move the High Court for quashing of the proceeding under Section 482 of the Cr.P.C. These observations are squarely attracted to the present case. The High Court's reliance on an order passed by a two-Judge Bench in Shakti Travel & Tours is misplaced. The order in Shakti Travel & Tours does not give any idea about the factual matrix of that case. It does not advert to rival submissions. It cannot be said therefore that it lays down any law. In any case in C.C. Alavi Haji, to which we have made a reference, the three- Judge Bench has conclusively decided the issue. In our opinion, the judgment of the two-Judge Bench in Shakti Travel & Tours does not hold the field any more."

13-On perusal of summoning order dated 16.05.2023, I find that the complainant along with complaint has also filed copy of notice dated 08.04.2023, original receipt of registered post dated 08.04.2023 as well as post track statement but the applicant did not bring on record those documents along with this application, which are relevant documents for the purpose of this case, as such applicant has not come with clean hands. This Court is of the view that the appreciation of evidence is a function of the trial court. This Court in exercise of power under Section 482 Cr.P.C. cannot assume such jurisdiction and put an end to the process of trial provided under the law. Factual submissions and defence of the accused-applicant can be more appropriately gone into by the trial court at the appropriate stage. It is also well settled that at the stage of summoning the accused, the court below is not required to go into the merit and demerit of the case. Genuineness or otherwise of the allegations cannot be even determined at the stage of summoning the accused. As per prosecution case *prima-facie* cognizable offence under Section 138 N.I. Act is made out. The case in hand does not fall in the categories recognized by the Apex Court, which may justified for quashing.

14-As a fallout and consequence of the above discussion and reasons, there is no legal substance in the arguments advanced by the learned counsel for the applicant as noted above and as such same is not liable to be accepted. Under the facts of the case, I do not find any legal justification to

quash the impugned complaint dated 27.04.2023, summoning order dated 16.05.2023 and proceedings of the aforesaid case against the applicant.

15-In view of the above, the relief as claimed by the applicant by means of this application is hereby refused.

16-This application lacks merit and is accordingly, ***dismissed.***

17-Copy of this order be sent to the complainant / opposite party no. 2 as well as to the concerned court below within two weeks' for necessary information.

Order Date :- 21.11.2023

Saurabh