

Court No. - 92

Case :- APPLICATION U/S 482 No. - 14155 of 2017

Applicant :- Pradeep Kumar Asthana

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

Counsel for Applicant :- Om Prakash Rai

Counsel for Opposite Party :- G.A., Shiva Kant Srivastava

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Om Prakash Rai, learned counsel for the applicant, Sri Shiva Kant Srivastava, learned counsel for opposite party no.2 and Sri Prashant Saxena, learned AGA appearing for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the cognizance/summoning order dated 25.09.2023 as well as the entire proceeding of Complaint Case No. 22 of 2013 (Santosh Kumar Jaiswal vs. Pradeep Kumar Asthana), under Section 138 Negotiable Instrument Act, P.S. Rani Ki Sarai, District Azamgarh, pending before the Chief Judicial Magistrate, Court No. 21, Azamgarh.

3. Learned counsel for the applicant submits that from the plain reading of the complaint filed under Section 138 Negotiable Instrument Act (hereinafter referred to as 'N.I. Act') by the opposite party no.2, it is apparent that the cheque for Rs. 2 lacs was issued on 20.01.2012 and the said cheque was presented on 19.11.2012 after the expiry of its validity period. Therefore, no offence under Section 138 N.I. Act can be attracted towards the cheque of Rs. 2 lacs dated 20.01.2012. Learned counsel for the applicant further submits that so far as the cheque of Rs. 3 lacs is concerned though, the same was presented within the validity period and was dishonoured. However, from the reading of the entire complaint, it is apparent that there is no averment with regard to issuance of any demand notice by the opposite party no.2 demanding the cheque amount from the applicant herein. Therefore, for want of such notice and expiry of the notice period, the offence under Section 138 N.I. Act will not be constituted in terms of Section 138 of N.I. Act.

4. From the plain reading of the complaint under Section 138 N.I. Act as filed by the opposite party no.2, no offence under Section 138 N.I. Act is made out against the applicant herein as the offence under Section 138 N.I. Act itself has not been constituted. Therefore, learned counsel for the applicant has

prayed for quashing of summoning order as well as the entire proceeding of the said complaint case against the applicant herein.

5. Per contra, learned counsel for the State submits that though there is no mention of issuance of any legal notice however, in the statement under Section 200 Cr.P.C., the opposite party no. 2 has stated with regard to issuance of notice and when no reply was received, the instant complaint was filed by the opposite party no.2, therefore, it cannot be said that the offence under Section 138 N.I.Act is not made out. Learned counsel for the State also submits that from the plain reading of the complaint under Section 138 N.I.Act as filed by the opposite party no.2, the ingredients of Section 138 N.I.Act are not fulfilled, therefore, no offence under Section 138 N.I. Act is constituted as neither there is any reference to any demand notice or failure of the applicant to comply with the demand notice is made in the instant complaint case. Therefore, learned counsel for the State also submits that the instant application deserves to be allowed as no offence under Section 138 N.I. Act is constituted.

6. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully gone through the record of the case. The complaint under Section 138 N.I. Act as filed by the opposite party no.2 is reproduced as under:

" वाद पत्र अन्तर्गत धारा 138 निगो० शिएबुल इन्स्ट्रुमेण्ट ऐक्ट मिनजानिब परिवादी निम्नलिखित है-

1.यह कि परिवादी निवासी मुहल्ला-शाहमुहम्मदपुर, थाना-मुबारकपुर जिला-आजमगढ़। पेशा व्यवसाय है।

2. यह कि परिवादी व अभियुक्त के बीच बहुत घनिष्ठ संबंध दोस्ताना लगाव था।

3. यह कि अभियुक्त ने अपने आवश्यक जरूरीयात की पूर्ति के लिए हम परिवादी से मुव० 500000/- पाँच लाख रुपया उधार मांगा और अभियोगी ने अभियुक्त पर विश्वास करके एक साल के अन्दर व किशतों यथा दिनांक 15.4.09 को मुव० 70,000/- रु०, दिनांक 13.6.09 को मुव० 50,000/- रु०- दिनांक 30.7.09 मुव० 40,000/- रु०, व दिनांक 20.09.09 को 60,000/- रु०, दिनांक 28.10.09 को मुव० 80,000/- रु०, दिनांक 27.11.09 को 1,00,000/- रु०-, दिनांक 29.12.09 को मुव० 40,000/- रु०, दिनांक 27.1.10 को मुव० 30,000/-रु०, व दिनांक 20.2.10 को 30,000/- मुव० 5,00,000/- रुपया अभियुक्त को उधार दिया।

4. यह कि अभियुक्त ने उक्त कुल धनराशि मुव० 5,00,000/- रु० सन् 2010 के अन्त तक वापस करने का वादा भी किया।

5. यह कि हम परिवादी ने जब अपने द्वारा अभियुक्त को दिये गये उधार रुपये

की मांग किया तो अभियुक्त हीला हवाली करने लगा और अन्ततः उसने उधार में ली गयी सम्पूर्ण रकम की वापसी जरिया चेक दो बार में भुगतान करने की बात किया और आश्वासन दिया और अपने आश्वासन के मुताबिक अभियुक्त के मुव० 2,00,000/- रु० का एकाउन्ट पेई चेक सं० 083003 दिनांक 20.1.2012 भारतीय स्टेट बैंक आजमगढ़ को दिया और कहा कि परिवादी अभी कुछ समय बाद जब मैं बताऊंगा तब चेक अपने खाते में जमा करेगा।

6. यह कि परिवादी अभियुक्त के बिश्वास व बताने के अनुसार उक्त चेक को दिनांक 19.11.2012 ओरिएण्टल बैंक आफ कामर्स शाखा मुबारकपुर में अपने खाते में जमा किया जो अपर्याप्त फण्ड के आधार पर हिस आनर हो गया।

7. यह कि परिवादी ने चेक हित आनर होने की बात अभियुक्त को उससे मिलकर व्यक्तिगत तौर पर बताया।

8. यह कि अभियुक्त ने अपने द्वारा दिये गये कर्ज की भरपाई के लिये हम परिवादी को पुनः बैंक आफ महाराष्ट्र सिधारी आजमगढ़ द्वारा जारी चेक सं० 957550 बावत मु० 300000/- तीन लाख रुपया दिनांक 12.09.2012 जारी किया।

9. यह कि हम अभियोगी को अभियुक्त के कथनानुसार विश्वास करके चेक सं० 957550 को ओरिएण्टल बैंक आफ कामर्स शाखा मुबारकपुर में अपने खाते में जमा किया जो भी पर्याप्त निधि के अभाव में वापस हो गया।

10. यह कि हम अभियोगी अभियुक्त के उक्त कृत्य से दुखी एवं क्षुब्ध होकर अभियुक्त से पुनः सम्पर्क किया। और बताया तो उसने कहा कि परिवादी चेक सं० 957550 को पुनः बैंक में जमा कर दे। उसके खाते में 3,500,00/- रु० (तीन लाख पचास हजार रुपये) है, भुगतान हो जायेगा और हम अभियोगी ने अभियुक्त पर विश्वास करके चेक सं० 957550 को पुनः दिनांक 29.11.2012 को अपने खाते में ओरिएण्टल बैंक आफ कामर्स शाखा मुबारकपुर में जमा किया और उक्त चेक दोबारा भी पर्याप्त निधि के अभाव में हित आनर हो गया।

11. यह कि अभियुक्त ने बावजूद तलब कराया अभियोगी के रुपयों को वापस नहीं किया और उसके द्वारा जारी किये गये चेक बावत 2,00,000/- रु० व मु० 3,00,000/-रु० यानी मु० 5,00,000 रु० का दो गुना मुव० 10,00,000 रु० वसूल किया जाना आवश्यक है। अतः श्रीमान से प्रार्थना है कि अभियुक्त को तलबकर उसे दण्डित किया जाय तथा उसके द्वारा कर्ज की अदायगी के लिये जारी किये गये चेक सं० 83003 दिनांक 20.1.2012 बावत मु० 2,00,000/-रु० का दो गुना मुव० 4,00,000/- रु० व चेक सं० 957550 दिनांक 12.9.2012 बावत मु० 3,00,000/- रु० का दो गुना मुव० 6,00,000/- रु० वसूल कर परिवादी को दिये जाने का हुकुम सादिर फरमाया जावे।"

7. From the perusal of said complaint itself, it is admitted by the opposite party no.2 that the cheque of Rs. 02 lacs was issued by the applicant on 20.01.2012 and the said cheque was presented on 19.11.2012, therefore, the said cheque was presented after its

validity period beyond six month. On 19.11.2012, when the said cheque was dishonoured, the said instrument was not a valid instrument for which an offence under Section 138 N.I. Act can be attracted. So far as the cheque of Rs. 03 lacs issued on 12.09.2012 is concerned that was presented within the validity period on 29.11.2012, however, the said cheque was also dishonoured. Therefore, the instant complaint has been filed without making any averment that any demand notice was issued in terms of Section 138 N.I. Act by the opposite party no.2 from the applicant and the applicant has failed to comply with such demand notice. However, along with the complaint, the photocopy of the notice dated 13.12.2012 and the registry receipt dated 13.12.2012 has been annexed. Vide impugned summoning order dated 25.09.2013, the learned Magistrate taking note of the said legal notice and the registry receipt, has issued the summons against the applicant. However, the learned Magistrate has taken cognizance for both the cheque amounts.

8. In the considered opinion of this Court so far as the cheque of Rs. 02 lacs is concerned, the same was presented after its validity period, therefore, that will not attract any offence under Section 138 N.I. Act and so far as the cheque of Rs. 3 lacs is concerned for want of any averments in the complaint under Section 138 N.I. Act regarding demand notice issued by the opposite party no. 2 from the applicant and failure of compliance on behalf of the applicant to the said demand notice, the complaint is improperly filed and from the plain reading of the said complaint as aforequoted, no offence under Section 138 N.I. Act is constituted, therefore, the instant application deserves to be allowed and is hereby **allowed**.

9. The summoning order dated 25.09.2013 and the entire proceedings of the Complaint Case No. 22 of 2013 (Santosh Kumar Jaiswal vs. Pradeep Kumar Asthana), under Section 138 Negotiable Instrument Act, P.S. Rani Ki Sarai, District Azamgarh, are hereby **quashed**.

Order Date :- 3.11.2023

Ashish Pd.