

Court No. - 93

Case :- APPLICATION U/S 482 No. - 35703 of 2023

Applicant :- Praveen Kumar

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

Counsel for Applicant :- Amit Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Sri Amit Kumar, learned counsel for the applicant and Sri Rajeev Kumar Singh, learned AGA for the State.

2. The present 482 Cr.P.C. application has been filed to quash the summoning order dated 25.03.2021 as well as entire proceedings of Criminal Case No.1996 of 2020, namely, Devendra Singh Vs. Praveen Kumar, under Section-138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the Act, 1881) which is pending before the court of Judicial Magistrate, Gautam Budh Nagar.

3. Sole contention of learned counsel for the applicant is that before bouncing of the cheque in question i.e. on 12.12.2019, applicant had already lodged missing complaint dated 11.04.2018 to the police station about the cheque in question, apart from other cheque. Therefore, present complaint is not maintainable as the same is regarding the bouncing of missing cheque not for the cheque given in discharge of liability.

4. In support of his contention, learned counsel for the applicant has relied upon the judgement passed in **APPLICATION U/S 482 No. - 7631 of 2008 (Bobby Anand @ Yogesh Anand Vs. State of U.P. and Another)** decided on **17.05.2023** by a coordinate Bench

of this Court in which proceeding u/s 138 of the Act, 1881 was quashed on the ground that cheque in question was missing.

5. Hon'ble Supreme Court in the cases of **Shiv Kumar Alias Jawahar Saraf Vs. Ramavtar Agarwal (2020) 12 SCC 500**, observed that once there is no dispute of signature on cheque then presumption u/s 139 of the Act, 1881 arises and any defence against this presumption can be seen at the time of trial not at the time of cognizance because same is question of evidence.

6. So far as the judgement relied upon by the learned counsel for the applicant is *per incuriam* because the Hon'ble Supreme Court has observed in the case of Shiv Kumar (**supra**) that such defence cannot be considered at the time of quashing of proceeding u/s-138 of the Act, 1881 but can be raised during trial by adducing evidence.

7. In view of the above, present application is **dismissed**.

Order Date :- 12.10.2023

S.Chaurasia