

Court No. - 88

Case :- APPLICATION U/S 482 No. - 33744 of 2023

Applicant :- Hazarat Ismail Khan Urf Guddu

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

Counsel for Applicant :- Rabindra Bahadur Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

1-Heard learned counsel for the applicant, learned Additional Government Advocate for the State of U.P./opposite party no.1 and perused the record.

2-This application under Section 482 Cr.P.C. has been filed by the applicant to quash the summoning order dated 13.01.2022 passed by Chief Judicial Magistrate, Sonbhadra and proceedings of Complaint Case No.4111 of 2021 (Om Karuna Prasad Vs. Ismail Khan Urf Guddu), under Section 138 of Negotiable Instrument Act, Police Station-Robertsganj, District-Sonbhadra.

3-As per the prosecution case in brief, the applicant had taken loan of Rs. 10 lac from the complainant/opposite party no.2 in the month of April, 2019 and the said amount was transferred by the opposite party no.2 in the account Royal Construction of the applicant by R.T.G.S. through Cheque No. 120270, but the applicant did not return the said amount. On mounting pressure upon the applicant and making demand by the complainant, the applicant had given a Cheque bearing Cheque No. 097454 dated 09.02.2021 amounting Rs. 5 lac to the complainant/opposite party no.2, but on presenting the same in the Bank, same was dishonoured due to insufficient amount. The statutory notice with demand was also sent to the applicant by the opposite party no.2, but applicant did not pay the cheque amount, thereafter complaint under Section 138 N.I. Act has been filed by the opposite party no.2 against the applicant, on which the applicant has been summoned vide summoning order dated 13.01.2022.

4-Main substratum of argument of learned counsel for the applicant that the applicant and complainant both were business partners. A sum of Rs. 10 lac was taken by the complainant for the purpose of business and not as a loan but due to illegal Act of R.S. Associates and financial crisis in business, the applicant could not pay the amount in question to the opposite party no.2. The applicant at the time of taking Rs. 10 lac from the opposite party no.2 had given two cheques of Rs. 5 lac each to the complainant as security, but the same has been misused by the complainant. It is also submitted that the applicant has lodged F.I.R. against Suresh K. Verma-Proprietor of R.S. Associates. Hence, no offence is made out against the applicant.

5-Per contra, learned Additional Government Advocate for the State refuting the submissions advanced on behalf of the applicant submitted that considering the allegations made in the complaint, the cognizable offence against the applicant is made out. 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.

6-After having heard the submissions of the learned counsel for the parties and perusing the entire record, I find that in this case the applicant has been summoned on 13.01.2022. The trial of the applicant has proceeded and the same is at the stage of recording the statement of the accused. The grounds taken in the application reveal that many of them relate to disputed question of fact. Genuineness or otherwise of the allegations cannot be even determined at the stage of summoning the accused.

7-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 to an end to the process of trial provided under the law which is at the advance stage. It is also settled by the Apex Court in catena of judgments that the power under Section 482 Cr.P.C. at pre-trial stage should not be

used in a routine manner but it has to be used sparingly, only in such an appropriate cases, where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceedings or where allegations made in complaint and the materials relied in support of same, on taking their face value and accepting in their entirety do not disclose the commission of any offence against the accused. Power under Section 482 of the Code of Criminal Procedure cannot be exercised where the allegations are required to be proved in court of law. The disputed questions of facts and defence of the accused cannot be taken into consideration at this pre-trial stage, which can be more appropriately gone into by the trial court at the appropriate stage.

8-The impugned criminal proceeding under the facts of this case cannot be said to be abuse of the process of the Court. There is no good ground to invoke inherent power under Section 482 Cr.P.C. by this Court.

9-The relief as sought by the applicant through the instant application is hereby refused.

10-This application under Section 482 Cr.P.C. lacks merit and is, accordingly, ***dismissed***.

11-However, it is made clear that in case, the applicant is willing to settle the dispute, he may move an appropriate application before the trial Court and this order shall not come in the way of considering the settlement between the parties concerned.

Order Date :- 19.10.2023

Kashifa