

Court No. - 86

Case :- APPLICATION U/S 482 No. - 38381 of 2023

Applicant :- Abhilash Kumar Jha

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

Counsel for Applicant :- Reena Tiwari, Sagar Mishra, Shubham Yadav

Counsel for Opposite Party :- G.A., Kuldeep Kumar Gupta

Hon'ble Rajiv Gupta, J.

1. Learned counsel for the applicant has filed a supplementary affidavit today in Court, which is taken on record.

2. Heard learned counsel for the applicant, learned A.G.A. for the State, Shri Swapnil Sinha, learned counsel holding brief of Shri Kuldeep Kumar Gupta, learned counsel for opposite party no.2 and perused the record.

3. This application under Section 482 Cr.P.C. has been filed by the applicant for quashing summoning order dated 15.11.2022 the entire proceedings of Complaint Case No. 612 of 2022 (Dharmendra Kumar Singh Vs. Abhilash Kumar Jha), under Section 138 of N.I. Act, P.S. Shivkuti, District Prayagraj, pending in the court of Additional Civil Judge (Junior Division), Court No.21, Allahabad (Prayagraj).

4. As per the allegations made in the complaint, it is alleged that the applicant had issued Cheque Nos.000015 for an amount of Rs.5,00,000/- dated 13.12.2021 and 664246 for an amount of Rs.3,00,000/- dated 25.12.2022 in favour of Opposite Party No.2, however, on presentation of the said cheques, the same were dishonoured by the bank. After the dishonour of the cheques, a notice was sent to the applicant to make good the payment however, despite being noticed the due amount was not paid as such, the present complaint u/s 138 of N.I. Act has been filed.

5. On the basis of the said complaint, learned Magistrate has recorded the statements of the witnesses and after making the requisite enquiry under Sections 200 and 202 CrPC has summoned the applicant to face trial under Section 138 of

Negotiable Instrument Act vide order dated 15.11.2022.

6. Learned counsel for the applicant has submitted that cheque has been issued by the applicant as a "security", as such, the proceedings under Section 138 of N.I. Act cannot be drawn against him.

7. Learned counsel for the applicant has next submitted that even no due debt or liability exists as against the drawer, therefore, proceedings u/s 138 of N.I. Act cannot be drawn against the applicant, as such, the entire proceedings based on the complaint are liable to be quashed.

8. Per contra, learned A.G.A. as well as learned counsel for opposite party no.2 have supported the summoning order dated 15.11.2022 and have submitted that learned Magistrate on the basis of allegation made in the complaint and after making the requisite enquiry under Sections 200 and 202 CrPC has rightly summoned the applicant to face trial under Section 138 of Negotiable Instrument Act. He has further submitted that even if the cheque has been issued as a "security", the offence under Section 138 of N.I. Act would be clearly attracted and the applicant has rightly been summoned to face trial u/s 138 of N.I. Act and as such, entire proceedings cannot be quashed against the applicant.

9. Learned AGA as well as learned counsel for opposite party no.2 have next submitted that the disputed question of existence of due debt or liability against the drawer cannot be considered at this stage when the evidence is yet to come and have further pointed out that there is a legal rebuttable presumption under Section 139 of the N.I. Act against the applicant, as such, the summoning order dated 05.11.2019 is just, proper and legal and do not call for any interference by this Court. There is absolutely no illegality or infirmity in the impugned order.

10. Having considered the rival submissions made by the counsel for the parties and taking into consideration that the learned Magistrate on the basis of allegation made in the complaint and the statements recorded under Sections 200 and 202 Cr.P.C, has summoned the applicant to face trial, there cannot be said to be any illegality or error of law in summoning the applicant to face trial u/s 138 of N.I. Act. Moreover, disputed question of existence of due debt or liability as against the drawer cannot be considered at this

stage when the evidence is yet to come and there is a legal rebuttable presumption u/s 139 of the N.I. Act in favour of the holder of the cheque. Furthermore, it has been repeatedly held by the Hon'ble Apex Court that even where the cheque has been given as a security, then too proceedings under Section 138 of the N.I. Act can well be drawn against the applicant, as such, at this stage, there is no legal ground to quash the entire proceedings based on the complaint case.

11. In view of the foregoing discussion, I am of the considered view that no ground for interference at this stage in exercise of power u/s 482 Cr.P.C. is made out to quash the proceedings.

12. The present application under Section 482 is devoid of merits and is accordingly dismissed.

Order Date :- 30.11.2023

Subham