

Court No. - 93

Case :- APPLICATION U/S 482 No. - 33406 of 2023

Applicant :- Vijay Prakash Pandey

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

Counsel for Applicant :- Hari Narayan Singh

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Sri Hari Narayan Singh, learned counsel for the applicant and Sri Uday Bhan, learned AGA for the State.

2. The present 482 Cr.P.C. application has been filed to quash the entire proceedings of Complaint Case No.3739 of 2019 (Raghvendra Kumar Singh Vs. Vijay Prakash Pandey), under Section- 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the Act, 1881) Police Station-Cantt, District-Gorakhpur, including summoning order dated 01.11.2021 pending in the court of learned Additional Chief Judicial Magistrate, 1st Gorakhpur.

3. Contention of learned counsel for the applicant is that the impugned proceeding is malicious and cheque was not given in discharge of legally enforceable liability and cheque itself was submitted before the bank after expiry of 30 days. This court is of the view that from the perusal of impugned order itself as well as from the complaint, it is very clear that cheque was dishonoured due to insufficiency of funds in the account of the applicant and the complaint was also filed after 15 days of service of notice. Even otherwise, once the signature is admitted on the cheque then presumption under Section-139 of the Act, 1881 arises and that can be rebutted by the applicant during trial by adducing evidence.

4. In view of the above, present application is **rejected**. However, it is open to the applicant to move discharge application at the appropriate stage. If any application is filed by the applicant, the same shall be considered by the court below, in accordance with law.

Order Date :- 16.10.2023

S.Chaurasia