

Court No. - 92

Case :- APPLICATION U/S 482 No. - 34065 of 2023

Applicant :- Ashok

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

Counsel for Applicant :- Prashant Sharma, Pankaj Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Abhishek Mishra, advocate holding brief of Sri Pankaj Sharma, learned counsel for the applicant and Sri Sandeep Choudhary, learned A.G.A. for the State.

2. The instant application has been filed seeking quashing of the summoning order dated 09-11-2022 as well as the entire proceedings of Complaint Case No. 399 of 2022, (Dinesh Vs. Ashok), under Section 138 N.I. Act, P.S. Chandpa, district Hathras, pending before the learned Civil Judge (S.D.), Hathras.

3. Learned counsel for the applicant submits that in the instant case as per the allegation in a complaint filed by the opposite party no.2 is that after the cheque was dishonoured, a legal notice was sent by the opposite party no.2 demanding the cheque amount on 03-02-2022. Learned counsel for the applicant further submit that as per the tracking report of the said post office, the said notice was served on the applicant herein on 04-02-2022, therefore, the offence under Section 138 will be constituted after expiry of the 15 days from the service of notice, however, the instant complaint has been filed on 14-02-2022 by the complainant and the learned Magistrate has taken cognizance in the matter in a mechanical manner without satisfying himself whether the offence under Section 138 has been constituted on the date of filing of the complaint, therefore, prima facie it appears that the impugned order dated 09-11-2022 passed by the learned Additional Civil Judge (S.D.), Hathras is without application of mind and without satisfying himself as to whether the offence under Section 138 has been constituted on the date of filing of the complaint under Section 138 of the N.I. Act before the learned Magistrate.

4. From a plain reading of the certified copy of the complaint filed before the learned trial court it is apparent that no offence under Section 138 of the N.I. act is constituted on the date of filing of the complaint, therefore, the impugned order dated 09-11-2022 passed by the learned Civil Judge (S.D.), Hathras in Complaint Case No.

399 of 2022, (Dinesh Vs. Ashok), under Section 138 N.I. Act, P.S. Chandpa, district Hathras is hereby **set aside** and the learned trial court is directed to pass a fresh order in accordance with law.

5. With the aforesaid observations, the instant application stands disposed of.

Order Date :- 18.10.2023

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