

Court No. - 92

Case :- APPLICATION U/S 482 No. - 34077 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 19-01-2023 as well as entire proceedings of Complaint Case No. 400 of 2022, Dinesh Vs. Ashok, under Section 138 of N.I. Act, P.S. Chandapa, district Hathras, pending before the learned Additional Civil Judge (S.D.) Hathras.

3. Learned counsel for the applicant submits that in the instant case though there is no illegality in the impugned order *per se*, however, since the applicant herein is a differently abled person, the opposite party no.2 used to assist the applicant herein for travelling to his native place and has stolen the said cheque and by misappropriating the same, the instant case has been lodged by the opposite party no.2 against the applicant.

4. Learned A.G.A. for the State submits that the averments which has been made by the learned counsel for the applicant are the defence of the applicant, which can very well be taken during trial which has to be proved during the trial and in view of the presumption of Section 139 of the N.I. Act, the holder of cheque shall be presumed to have received the cheque in discharge of its legal liability by the accused persons.

5. Having heard the rival submissions made by the learned counsel for the parties and this Court has carefully perused the record of the case and from perusal of the record, complaint, statement under Section 200 Cr.P.C., cheque, dishonour memo and legal notice issued to the applicant etc., there is no illegality in the impugned order dated 19-01-2023. The other submissions made by the learned counsel for the applicant is the defence of the applicant which can be taken by the applicant during the trial, for which a detailed proof is required. So far as the prima facie case against the

applicant is concerned, in view of the presumption under Section 139 of the N.I. Act, the prima facie case is made out against the applicant, therefore, the application is devoid of merits and is hereby **dismissed**.

Order Date :- 18.10.2023

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