

Court No. - 86

Case :- APPLICATION U/S 482 No. - 35177 of 2023

Applicant :- Dharmendra Singh

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

Counsel for Applicant :- Pankaj Kumar Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

2. The present application under Section 482 Cr.P.C. has been filed for quashing the summoning order dated 22.4.2022 as well as entire criminal proceedings of Complaint Case No. 1109 of 2021 (Anuj Tiwari Vs. Dharmendra Singh), under Section 138 of N.I. Act, P.S. Civil Lines, District- Allahabad, pending in the court of Judicial Magistrate, Court No. 4, Allahabad.

3. As per the allegations made in the complaint, it is alleged that the applicant had issued two cheques being Cheque No. 00024 dated 10.2.2021 for a sum of Rs. 9 lakh and Cheque No. 00025 dated 25.3.2021 for a sum of Rs. 9 lakh to Opposite Party No.2, however, on presentation of the said cheques, the same were dishonoured by the bank and returned back. 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 instituted against the applicant.

4. On the basis of allegation made in the complaint, learned Magistrate recorded the statement of the complainant under Section 200 Cr.P.C. and that of his witnesses under Section 202 Cr.P.C. and after making the requisite enquiry and taking into consideration the legal notice sent by the registered post, original cheques etc., the learned Magistrate had rejected the said complaint under Section 138 of the Negotiable Instruments Act vide order dated 27.10.2021, on the ground that the requisite notice u/s 138 (1) b of the N.I. Act was beyond time.

5. Being aggrieved and dissatisfied by the said order, opposite party No. 2 preferred a criminal revision before the Court of

Sessions Judge, Allahabad, who vide his order dated 6.4.2022 allowed the said revision and remanded back the matter for passing fresh order in light of the observations made in the judgment in accordance with law by holding that vide order dated March 8, 2021 passed in **Suo Motu Writ Petition No. (c) No. 3 of 2020 IN RE: cognizance for Extension of Limitation** in para 2 and 3 it has been enumerated by the Hon'ble Apex Court that:

"2.In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021 notwithstanding the actual balance period of limitation remaining , all papers shall have a limitation period of 90 days from 15.03.2021. In the even the actual balance period of limitation remaining, with effect from 15.03.2021 is greater than 90 days, that longer period shall apply"

3.The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under section 23(4) and 29A of the Arbitration and Coniliation Act 1996. Section 12A of the Commercial Courts Act 2015 and provios (b) and (c) of Section 138 of Negotiable Instruments Act 1881 and any other laws, which prescribe priod(s) of limitation for instituting proceedings, other limits (within which the court or tribunal can condone delay) and termination of proceedings."

In the light of above principles laid down by the Hon'ble Supreme Court, there is no delay in sending the legal notice by the complainant to the O.P.

6. Pursuant to the said order dated 6.4.2022, the Judicial Magistrate, Court No. 4, Allahabad passed a fresh order summoning the applicant under Section 138 of Negotiable Instruments Act.

7. Being aggrieved and dissatisfied by the said order, the present application u/s 138 of N.I. Act has been filed.

8. Learned counsel for the applicant has submitted that while passing the impugned order, the court below without making requisite enquiry under Section 202 Cr.P.C. has summoned the applicant to face trial, He has further submitted that in respect of the dishonour of the said cheques, a first information report has also been lodged by the opposite party No. 2 against the applicant under Sections 419, 420, 467, 468, 471, 406, 506 IPC also, in which, the applicant has also been summoned to face trial. He has further submitted that the legal notice sent by the opposite party No. 2 was beyond time, therefore, proceedings under Section 138

of the N.I. Act could not have been drawn against him and the entire proceedings is liable to be quashed.

9. Per contra, learned A.G.A. has submitted that the learned Magistrate on the basis of allegation made in the complaint and after making the requisite enquiry under Section 200 and 202 Cr.P.C, had summoned the applicant to face trial u/s 138 of N.I. Act vide impugned order dated 22.4.2022. He has further submitted that the complainant in his statement u/s 200 Cr.P.C. and the witnesses under Section 202 Cr.P.C. has fully supported the prosecution case and apart from the said statements, the relevant documents i.e. legal notice, original cheques, receipt of the registered post and other relevant documents have been brought on record, on the basis of which, learned Magistrate has taken cognizance and, therefore, there is no illegality or error in passing the said order. He has further submitted that the question regarding delay in sending the legal notice has already been dealt by the revisional court relying upon the decision of the Hon'ble Apex Court and, therefore, the said question cannot again be raised. The impugned order passed by the court below summoning the applicant to face trial under Section 138 of N.I. Act is just, proper and legal and do not call for any interference by this Court.

10. Having considered the rival submissions made by the counsel for the parties and on perusal of the record, it is evident that lodging of the first information report by the opposite party No. 2 against the applicant under Sections 419, 420, 467, 468, 471, 406, 506 IPC would not preclude the opposite party No. 2 to institute the complaint case under Section 138 of the Negotiable Instruments Act for dishonour of the cheques. Both these cases operate in different fields and, therefore, by lodging of the said report, the opposite party No. 2 will not be precluded from filing the complaint under Section 138 of the Negotiable Instruments Act. Further, the question of delay in sending the legal notice has already been dealt by the revisional court relying upon the decision of the Hon'ble Apex Court, which has extended the period of limitation, therefore, the said submission of the applicant is also untenable. Moreover, learned Magistrate on filing of the complaint has recorded the statement of the complainant and witnesses under Sections 200 and 202 Cr.P.C. and after making the requisite enquiry has summoned the applicant to face trial, therefore, it cannot be said that learned Magistrate without making any enquiry under Section 202(1) Cr.P.C. has summoned the applicant to face trial. The learned Magistrate after following the due procedure of law as prescribed in Section 138 of N.I. Act has summoned the applicant

to face trial, which order do not suffer from any illegality or error of law and as such cannot be quashed in exercise of power under Section 482 Cr.P.C.

11. The present application u/s 482 Cr.P.C. is devoid of merit and is accordingly dismissed.

Order Date :- 18.10.2023

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