

Court No. - 88

Case :- APPLICATION U/S 482 No. - 34930 of 2023

Applicant :- Shelendra Kumar Agarwal

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

Counsel for Applicant :- Hitesh Pachori

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

1-Heard learned counsel for the applicant, learned A.G.A. for the State of U.P. and perused the record.

2-The instant application under Section 482 Cr.P.C. has been preferred by the applicant with a prayer to quash the order dated 21.07.2023 where by the trial Court has dismissed the application dated 23.03.2023 of the applicant on the ground that the same is not maintainable as well as criminal proceedings of complaint case No. 15 of 2019 (Sunil Kumar Jain Vs. Shelendra Kumar Agarwal), under Section 138 N.I. Act, Police Station Sikandra, District Agra, pending in the Court of learned Special Court (N.I. Act), Agra.

3-Brief facts of the case which are required to be stated are that the complainant / opposite party no.2- Sunil Kumar Jain filed a complaint dated 21.12.2018 against the applicant-Shelendra Kumar Sharma, for the offence under Section 138 of Negotiable Instrument Act alleging inter alia that accused-applicant had taken Rs. two lakhs fifty thousands but he did not return his money. On mounting pressure he gave a cheque bearing no.044453 dated 18.11.2018 amounting Rs.2,50,000/- of Central bank of India, Agra but on presenting the said cheque on 19.11.2018 in the bank, the same got dishonored on 22.11.2018 due to payment stopped by the applicant-drawer. Thereafter on 24.11.2018 complainant sent a statutory notice to the accused-applicant by registered post, which has been received to the accused on 27.11.2018 but

despite assurance given by the applicant, he did not make payment.

4-Learned Magistrate after taking cognizance of the offence and summoned the applicant vide order dated 25.03.2019 to face trial for the offence under Section 138 of Negotiable Instrument Act, as such trial of the applicant has proceeded. After about four years, applicant moved an application to quash the complainant mainly on the ground that in the complainant firm M/s Sawaria Food Product has not been impleaded as party, therefore, complaint is liable to be quashed, which has been dismissed by the impugned order dated 23.03.2023.

5-The main substratum of argument of learned counsel for the applicant is that the firm M/s Sawaria Food Product has not been impleaded as party, therefore, complaint is not maintainable. The Trial Court has committed error in rejecting the application dated 23.03.2023 of the applicant.

6-On the other hand, learned A.G.A. submits that from the allegation made in the complaint. It is apparently clear that the applicant had taken a sum of Rs. 2,50,000/- from the opposite party no.2/ complainant and in lieu thereof he had issued a cheque in question, but the same has been dishonoured, therefore, the complaint is fully maintainable. The application dated 23.03.2023 was moved by the applicant with a view to linger on the proceedings which is pending since 2019, whereas as per the provisions of Section 143 (3) of N.I. Act, the proceedings under Section 138 N.I. Act is a summary proceeding and it has to be completed within six months.

7-Having heard learned counsel for the parties and perused the record, I find that the cheque in question has been signed by the applicant. The issuance of cheque in question by the applicant under in favour of the complainant / opposite party no.2 and dishonour of the same on presenting the said cheque by the complainant in the Bank has not been disputed, therefore, the proceedings under Section

138 N.I. Act is maintainable. I also find that the complaint was filed on 21.12.2018, in which applicant was summoned vide order dated 25.03.2019 to face trial under Section 138 N.I. Act and in pursuance thereof, trial proceedings against the applicant is going on. The applicant has also not disclosed the present status of the trial which is admittedly four years old. I also find that the application dated 23.03.2023 of the applicant has been rejected by the impugned order dated 21.07.2023 on the ground that the same is not maintainable. As per prosecution case, the applicant had borrowed the amount in question in his personal capacity. This Court is of the view that under the facts of the case, provisions of Section 141(1) of N.I. Act is not attracted. The application of the applicant was not maintainable. The application dated 23.03.2023 of the applicant has been rightly rejected by the trial Court, hence I do not find any good ground to interfere in the impugned order. The applicant has an opportunity to raise his defence at an appropriate stage of the trial.

8-In view of the above, the application lacks merit and is, accordingly, **dismissed**.

9-A copy of this order be communicated to the concerned trial Court for necessary information.

Order Date :- 22.11.2023

Anurag/-