

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 9730 of 2023

Petitioner :- Alok Kumar Tyagi

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Aditya Prasad Mishra

Counsel for Respondent :- G.A.,Arvind Kumar

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Aditya Prasad Mishra, learned counsel for the petitioner, Sri Arvind Kumar, learned counsel for the respondent and learned A.G.A. for the State are present.

2. This miscellaneous petition under Article 227 of Constitution of India has been filed by the petitioner Alok Kumar, challenging the order dated 08.02.2021, passed by the court of A.C.J.M. in Complaint Case No. 13996 of 2020 by which, the accused (the petitioner herein) was summoned to face the trial under section 138 of Negotiable Instruments Act and the order dated 19.08.2023 passed in Criminal Revision No. 104 of 2022, by which the order of summon was affirmed.

3. The submissions of the petitioner are that the evidence produced by the prosecution was self-contradictory and the Magistrate while summoning the petitioner, did not apply his mind. The mandatory requirements of the Negotiable Instruments Act were not fulfilled. The other submission in essence is that no illegally enforceable debt was due on the accused.

4. On the other hand, it has been submitted by the respondent (the complainant herein) that the petitioner has failed to show any illegality which could compel this Court to interfere in the order. It is pointed out that the petitioner has not filed even the copies of the cheque in question, the return memo and the demand notices etc. to show any defect in them. All the requisite ingredients of offence under section 138 N.I. Act were there. My attention has been drawn to Pg-17, which is a copy of the affidavit given as evidence under section 200 Cr.P.C in support of above contention.

5. I went through the material on record, the petitioner could not point out any defect whether factual or legal which could show that *prima facie* no offence under section 138 N.I. Act is made out. As far as the contention of the petitioner that no amount was due on him at the time of issuance of cheque is concerned, the same cannot be dealt with at this stage in view of the provisions of section 139 of N.I. Act.

6. I find no good reason to interfere in the impugned orders, the petition lacks merit and therefore, is **dismissed**.

Order Date :- 6.12.2023

Sumit Kumar