

Court No. - 93

Case :- APPLICATION U/S 482 No. - 37956 of 2023

Applicant :- Maneesh Mangal

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

Counsel for Applicant :- Chandra Prakash Garg

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal,J.

Heard Sri C.P. Garg, learned counsel for the applicant and Sri Pushpendra Singh Jadon, learned A.G.A. for the State.

The present application has been filed for quashing the entire proceeding of Complaint Case No. 476/IX/2022 (*Bamdev Global Pvt. Ltd. vs. Maneesh Mangal*), u/s 138 N.I. Act, P.S. Kotwali Nagar, District Banda and its summoning order dated 1.7.2022.

Contention of learned counsel for the applicant is that the applicant had given the cheque in question as security cheque, therefore, bouncing of the same will not amount to offence u/s 138 N.I. Act as the cheque was not given in discharge of any liability.

Hon'ble Supreme Court in the judgement of ***Sripati Singh vs. State of Jharkhand; 2021 SCC OnLine SC 1002*** observed that even if the cheque given for security can be treated as given in discharge of liability, if the amount becomes recoverable. Paragraph No.18 of the above judgement is being quoted as below:-

"18. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as 'security' cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in a proceedings initiated under Section 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that a cheque which is issued as security can never be presented by the drawee of the cheque. If such is the understanding a cheque would also be reduced to an 'on demand promissory note' and in all circumstances, it would only be a civil litigation to

recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation."

In view of the above, this Court does not find any good ground for quashing the impugned proceeding. All the grounds taken by the applicant are his defence and the same can be taken during trial of the case.

Accordingly, the application is **rejected**.

Order Date :- 31.10.2023

Vandana