

**Court No. - 86**

**Case :- APPLICATION U/S 482 No. - 36164 of 2023**

**Applicant :- Manoj Sharma**

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

**Counsel for Applicant :- Nitin Chopra**

**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 cognizance order dated 18.5.2022 and non bailable warrant dated 23.8.2023 as well as entire criminal proceedings of Case No. 521 of 2020, under Section 138 of N.I. Act, P.S. Attarsuiya, District- Prayagraj, pending in the court of Addl. Chief Judicial Magistrate-7, Prayagraj.

3. As per the allegations made in the complaint, it is alleged that the applicant had issued a four cheques being Cheque No. 081813 dated 25.6.2020 for a sum of Rs. 7 lakh, Cheque No. 081814 dated 2.6.2020 for a sum of Rs. 7 lakh, Cheque No. 081815 dated 20.6.2020 for a sum of Rs. 7 lakh and Cheque No. 081816 dated 25.6.2020 for a sum of Rs. 7,20,000/- 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. Learned Magistrate on the basis of allegation made in the complaint and after making the requisite enquiry under Sections 200 and 202 CrPC, has summoned the applicant to face trial under Section 138 of Negotiable Instrument Act vide order dated 18.5.2022.

5. Learned counsel for the applicant has submitted that cheques in question have forcibly been taken on gun point and no due debt or liability exists, therefore proceeding under Section 138 of N.I. Act cannot be initiated against him.

6. Per contra, learned A.G.A. has submitted that the learned Magistrate after taking into consideration the allegations made in the complaint and the statement of the witnesses recorded under Section 200 and 202 Cr.P.C, had summoned the applicant to face trial. The factum of cheques been forcibly taken on gun point and as such no due debt or liability exists, cannot be determined at this stage when the evidence is yet to come.

7. Learned AGA has further pointed out that there is a legal rebuttable presumption under Section 139 of the N.I. Act against the applicant, as such impugned summoning order is just, proper and legal and do not call for any interference by this Court. There is absolutely no illegality or infirmity in the impugned order.

8. Having considered the rival submissions made by the counsel for the parties and taking into consideration that the learned Magistrate on the basis of allegation made in the complaint and the statements recorded under Sections 200 and 202 Cr.P.C, has summoned the applicant to face trial, there cannot be said to be any illegality or error of law in summoning the applicant to face trial u/s 138 of N.I. Act. The factum of cheques been forcibly taken on gun point cannot be decided at this stage when the evidence is yet to come. Moreover, disputed question of existence of due debt or liability cannot be considered at this stage when the evidence is yet to come and there is a legal rebuttable presumption u/s 139 of the N.I. Act in favour of the holder of the cheques. In view thereof, I am of the considered opinion that the impugned order is just, proper and legal and do not call for any interference at this stage.

9. The present application u/s 482 Cr.P.C. is wholly misconceived and is accordingly dismissed.

**Order Date :- 16.10.2023**

**KU**