

Court No. - 90

Case :- APPLICATION U/S 482 No. - 36112 of 2023

Applicant :- M/S Gaytri Pharma And Another

Opposite Party :- State Of Up Through Principal Secretary And Another

Counsel for Applicant :- Anoop Pandey, Kundan Kumar, Shivendra Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak, J.

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

2. The applicant has invoked the inherent jurisdiction of this Court with the following relief :-

" To quash the entire proceeding of complaint case no. 54547 of 2016 (M/s. Agarwal Medicine Agencies Versus M/s. Gaytri Pharma and Another) under Section 138 Negotiable Instrument Act, Police Station Kidwai Nagar, Kanpur Nagar including non bailable warrant as well as impugned notice under Section 82 Cr.P.C. passed by Special Court N.I. Act, Kanpur Nagar dated 03.06.2023."

3. After due deliberations at length, without addressing on the merits of the case, learned counsel for the applicant submits that due to some unavoidable circumstances, he could not appear before the court in time which led issuance of non-bailable warrant and proclamation under Section 82 Cr.P.C. At present he is ready and willing to cooperate with the court proceeding and also wants to return the money i.e. Rs.90,000/- which is subject matter of proceeding under Section 138 of Negotiable Instrument Act. It is further submitted that some protection may be given to the present applicant so that he may appear before the court below and cooperate with the court proceeding as well as compound the offence as levelled against him in the complaint under Section 138 of Negotiable Instrument Act.

4. Learned A.G.A. has raised objection with respect to the conduct of the present application who has deliberately protracted the litigation and throughout avoiding the court proceeding.

5. In this conspectus as above, no useful purpose would be served

to keep this application pending, therefore, this Court deems it appropriate to decide the instant application finally, without entering into the merits of the case as averred in the instant application, with a direction that, in case, the present applicant appears/surrenders before the court concerned along with a certified copy of this order and move bail application within three weeks from today, same shall be considered and decided by the court concerned within a period of two weeks thereafter. For a period of five weeks or till the disposal of bail application, whichever is earlier, no coercive action shall be taken against the present applicant in Complaint Case no. 54547 of 2016 (M/s. Agarwal Medicine Agencies Versus M/s. Gaytri Pharma and Another) under Section 138 Negotiable Instrument Act, Police Station Kidwai Nagar, Kanpur Nagar including non bailable warrant as well as impugned notice under Section 82 Cr.P.C. passed by Special Court N.I. Act, Kanpur Nagar dated 03.06.2023.

6. Before parting the matter, learned counsel for applicant has shown willingness at the part of the applicant to settle/compound the offence as averred in the complaint. Having considered the submission as advanced by counsel for the applicant is at liberty to move an appropriate application under the ratio decided by the Hon'ble Apex Court in the matter of **Damodar S. Prabhu vs. Sayed Babalal H.** reported in **2010 (5) SCC 663**.

7. With the aforesaid observation/direction, the instant application is finally **disposed off**.

Order Date :- 2.11.2023

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