

Neutral Citation No. - 2023:AHC:223890

RESERVED

Court No. - 5

Case :- APPLICATION U/S 482 No. - 37196 of 2023

Applicant :- Vinay Kumar

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

Counsel for Applicant :- Ashok Kumar Singh, Pratibha Singh

Counsel for Opposite Party :- G.A., Nitinjay Pandey

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Shri Ashok Kumar Singh, along with Ms. Pratibha Singh, learned counsel for the petitioner, learned AGA for the State and Shri Nitinjay Pandey, learned counsel for the opposite party no. 2.
2. This application under Section 482 Cr.P.C. has been filed for quashing of the order dated 19.07.2023 passed in Criminal Appeal No. 42/2023 arising out of the Complaint Case No. 5175/2022 under section 138 of the Negotiable Instrument Act, Police Station - Kotwali Nagar, District - Etah, to the extent by which the court below has directed the appellant to deposit 20% of the fine amount imposed on him by the lower court within 60 days from the date of order.
3. The brief facts of the case are that the applicant and opposite party no. 2 were doing the business of skimmed milk powder. The opposite party no. 2 lodged a complaint on 03.08.2019 on the ground of non-payment of balance amount of Rs. 24,50,000/- by the applicant, in which the applicant was summoned by the Magistrate. The court below, vide order dated 27.06.2023, has convicted the applicant to undergo simple imprisonment for a period of one year along with fine. Against the order of conviction, the applicant preferred an appeal under section 389(3) Cr.P.C. before the court below. The Sessions Judge, vide impugned order dated 19.07.2023 admitted the appeal and

summon the lower court record and partly allowed the application 7-B by which the court below has directed the appellant to deposit 20% of the fine amount imposed on him by the lower court within 60 days from the date of order. Hence, this application.

4. Learned counsel for the applicant submits that the court below has imposed the condition vide impugned order without considering the amended section of 148 of the Act. He further submits that no reason has been given in the impugned order for imposing the condition. In support of his submission, he has placed reliance on the judgements of the Apex Court in ***Surinder Singh Deswal @ Co. S.S. Deswal & Others Vs. Virender Gandhi & Another*** [2020 Supreme (SC) 14] and ***Jamboo Bhandari Vs. M.P. State Industrial Development Corporation Limited & Others*** [Criminal Appeal No. 2741/2023, decided on 04.09.2023]. He prays for allowing the 482 application.
5. Learned counsel for the opposite party no. 2 has opposed the submissions made by learned counsel for the applicant. He submits that the applicant, instead of depositing the amount, moved an application (14-B) praying for further time and thereafter, moved an adjournment application (15-B). Thereafter, he again moved an application for extension of the time. Thereafter, again an adjournment application was moved, in which the court below, vide order dated 12.10.2023, passed an order fixing 19.10.2023 as the next date fixed. He further submits that perusal of the order dated 12.10.2023 shows that the time of depositing the amount as directed vide impugned order has not been extended by the court below. He further submits that the applicant has not given any reason for non-compliance of the directions issued vide impugned order, either in the memo of appeal or in any of the applications moved before the court below. He further submits that the applicant is adopting delaying tactics, which is causing injustice to the opposite party as he has spent

considerable resources to realize the value of the cheque. He further submits that non-compliance of the directions issued vide impugned order is sufficient to declare suspension of sentence as having been vacated.

6. Heard learned counsel for the parties and perused the record.
7. From the perusal of the records, it transpires that pursuant to the order dated 19.07.2023, the accused – applicant made repeated applications for extension of the time to deposit 20% fine, which were allowed, but the applicant failed to deposit the amount within time. Thereafter, on 12.10.2023, an application was moved before the court below that the applicant has failed to deposit the 20% fine amount as directed vide order dated 19.07.2023 and therefore, he may be taken into custody. On 12.10.2023 itself, the applicant moved an application for adjournment, but the court below while fixing the date for 19.10.2023, did not extend the time for depositing 20% of the fine amount. The applicant has not given any plausible reasons for not complying the condition of depositing the requisite amount of 20% fine as per section 148 of the NI Act, either the memo of appeal or in this 482 application and therefore, the argument that the impugned order has been passed without assigning any reason is not tenable in the eyes of law.
8. In view of the aforesaid facts & circumstances of the case, no good ground is made out for interference by this Court in the impugned order.
9. Accordingly, application u/s 482 Cr.P.C. is dismissed.

Order Date :-28/11/2023

Amit Mishra