

Court No. - 92

Case :- APPLICATION U/S 482 No. - 37693 of 2023

Applicant :- Ramnath @ Bhagwandas

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

Counsel for Applicant :- Hari Shankar Chaurasia

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Shri Hari Shankar Chaurasia, learned counsel for the applicant and Shri Brijesh Kumar Dwivedi, learned A.G.A. for the State.

2. The instant application under section 482 Cr.P.C. has been filed seeking quashing of the N.B.W. order dated 11.9.2023 as well as the summoning order dated 16.11.2019 and the entire proceedings of Complaint Case No. 1889 of 2019 (Vinod Kumar Yadav Vs. Ramnath @ Bhagwandas) under section 138 Negotiable Instruments Act police station Nautanwa District Mahrajganj pending before the Judicial Officer village Court Nautanwa (Tehsil Nautanwa) Mahrajganj.

3. Learned counsel for the applicant submits that the complaint under section 138 of N.I. Act has been filed by the opposite party no. 2 against the applicant herein for dishonour of cheque on 10.12.2018 due to mismatch of signature on the cheque. Learned counsel for the applicant submits that no legal notice was received by him and the learned trial court has passed the summoning order without recording the statement under section 200 Cr.P.C. Learned counsel for the applicant further submits that the opposite party no. 2 is the relative of the applicant who was frequently visiting the house of the applicant and has stolen the cheque. However, on a query being made by the court as to whether any report has been made by the applicant in this regard, the answer is in negative. Learned counsel for the applicant submits that the opposite party no. 2 is having various criminal antecedents against him. Learned counsel for the applicant has prayed for quashing of the entire proceedings against him in the aforesaid case.

4. On the other hand learned A.G.A. submits that the cheque was alleged to have been issued by the applicant and the same was presented for encashment before the Bank, which was dishonoured by the Bank on the ground of mismatch of the signature. Learned A.G.A. relying upon section 139 of N.I. Act submits that the

opposite party was the holder of the cheque for its discharge, whole or part of any debt. Therefore, there is a presumption that the said cheque was issued by the drawee of the cheque for discharge of legally possible debt. The said presumption can be presented by the applicant during trial by leading proper evidence before the trial court and no interference is required by this Court in the instant application. It is further submitted that the summoning order has been passed by the trial court in the year 2019. However, the instant application has been filed by the applicant after four years when the non bailable warrant has been issued against him. Since for the last four years the applicant was avoiding the process of law therefore he does not deserves any sympathy from this Court.

5. Having heard the rival submissions of the learned counsel for the parties, this court has carefully gone through the records and on careful perusal of the allegations made against the applicant it is apparent that the cheque was issued by the applicant in discharge of debt and the cheque was presented. However, the said cheque was dishonoured for signature mismatch and after giving legal notice for demand of the cheque amount. However, when the cheque amount was not paid by the applicant, the complaint has been lodged by the opposite party no. 2, which is duly supported by the evidence of the opposite party no. 2.

6. The instant application filed by the opposite party no. 2 is duly supported by an affidavit which is sufficient to meet the requirement of section 200 Cr.P.C. as there was no requirement for calling for another affidavit of the same facts. However, in view of the perusal of section 139 of N.I.Act prima facie a case is made out against the applicant herein and the said presumption can be rebutted by the applicant herein during trial by leading cogent evidence. Therefore, in the considered opinion of the Court there is no illegality in the impugned summoning order dated 16.11.2019 passed by the learned Addl. Chief Judicial Magistrate, Maharajganj summoning the applicant herein. However, since 2019 till 2023 the applicant herein is avoiding the process of the court and has approached this Court belatedly after four years, therefore, in the considered opinion of this Court no interference is called for in the instant application under section 482 Cr.P.C.

7. For the aforesaid reason, the instant application is devoid of merit and is accordingly **dismissed**.

Order Date :- 24.11.2023

o.k.