

Court No. - 92

Case :- APPLICATION U/S 482 No. - 37692 of 2023

Applicant :- Sandeep Verma

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

Counsel for Applicant :- Anil Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Shri Anil Kumar Tiwari, 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 summoning order dated 7.1.2022 as well as entire proceedings of Complaint Case No. 1097 of 2021 (Girish Singh Vs. Sandeep Verma) under section 138 Negotiable Instruments Act police station Kotwali pending in the court of Judicial Magistrate, Court No. 33, Shahjahanpur.

3. Learned counsel for the applicant submits that in the instant case a complaint under section 138 of Negotiable Instruments Act has been filed by Girish Singh against the applicant herein whereas the cheque in question was issued by Katayin Trading Company in favour of J.P. Sarees. Learned counsel for the applicant submits that he has neither issued the cheque in favour of J.P. Sarees nor he is the proprietor of Katayin Trading Company which has issued the cheque in favour of J.P. Sarees. Learned counsel for the applicant submits that he was an employee of Katayin Trading Company and the complaint has been filed against him without making Katayin Trading Company as a party in the complaint case. Therefore, learned counsel for the applicant submits that the complaint against him is not maintainable in law as the applicant herein is not the proprietor nor issued cheque in favour of J.P. Sarees, therefore, he cannot be held liable for dis-honour of the cheque issued by some other person. Therefore, he has prayed for quashing of the entire proceedings of the complaint case as well as the summoning order.

4. On the other hand learned A.G.A. submits that all the aforesaid submissions can be made by the applicant herein before the trial court itself and the trial court after considering these facts may take appropriate view in the said complaint case.

5. Having heard the learned counsel for the parties this court has

carefully gone through the records of the case and from perusal of the records it is apparent that the cheque was issued by Katayin Trading Company in favour of J.P. Sarees on 29.7.2021 and both the aforesaid firms are the proprietorship firms as has been admitted by the learned counsel for the applicant. The question for determination is that who was the proprietor of the Katayin Trading Company on the date of issuance of the cheque. Learned counsel for the applicant has annexed the bank statement of Katayin Trading Company from 17.5.2020 to 17.6.2020 wherein the proprietor of said Katayin Trading Company is stated to be Ms. Kavita Rani Bisit, therefore, the question is who was the proprietor of Katayin Trading Company on the date of issuance of cheque is a relevant question which has to be determined by leading appropriate evidence before the trial court concerned.

6. In view of the aforesaid, the instant application is **disposed of** with a direction to the applicant herein to move an appropriate application alongwith certified copy of this order within four weeks from today before the trial court concerned for discharge raising all his contentions, which shall be considered by the trial court in accordance with law. However, the trial court is directed to take all his endeavor to decide such application of the applicant herein as expeditiously as possible after granting opportunity of hearing to all the parties concerned.

7. Till the application for discharge is disposed of by the trial court no coercive steps shall be taken against the applicant herein in the aforesaid case.

8. In case the applicant fails to move discharge application, as directed above, within the stipulated period, the interim relief granted by this order shall automatically stand vacated.

Order Date :- 24.11.2023

o.k.