Court No. - 86

Case :- APPLICATION U/S 482 No. - 38562 of 2023

Applicant :- Sameer Raza
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Vikrant Gupta
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 summoning order dated 11.8.2022 passed by learned Additional Chief Judicial Magistrate, Court No. 3, Rampur, in Complaint Case No. 228 of 2022 (Haseeb Ahmad v. Sameer Raza) under Section 138 of N.I. Act, P.S. Civil Line, District Rampur, as well as order dated 30.11.2022 passed by learned Session Judge in Criminal Revision No. 97 of 2022 (Sameer Raza v. State of U.P.) affirming the impugned order dated 11.08.2022 passed by learned Magistrate on the ground that the revision is barred by limitation.

3. As per the allegations made in the complaint, it is alleged that applicant had issued a Cheque No. 000022 dated 30.4.2022 for a sum of Rs. 6,87,500/- to Opposite Party No.2, however, on presentation of the said cheque, the same was dishonoured by the bank and returned back. After the dishonour of the cheque, 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 applicants to face trial under Section 138 of Negotiable Instrument Act vide order dated 11.8.2022.

5. Learned counsel for the applicant has submitted that the

cheque in question was misplaced and has infact been misused by the applicant, therefore, the proceedings u/s 138 of the N.I. Act cannot be drawn against him.

6. Learned counsel for the applicant has further submitted that reason for the dishonour of the cheque as reported by the bank is "stop payment", as such also, proceedings under Section 138 of the Negotiable Instruments Act cannot be drawn against the applicant. He has further submitted that no due debt or liability exists as against the drawee, therefore, proceedings under Section 138 of N.I. Act can also not be drawn against him and the entire proceedings is therefore liable to be quashed.

7. Per contra, learned A.G.A. has submitted that learned Magistrate on the basis of allegations made in the complaint and after making requisite enquiry, has summoned the applicant to face trial under Section 138 of Negotiable Instrument Act vide order dated 11.8.2022.

8. Learned AGA has further pointed out that there is a legal presumption under Sections 118 and 139 of the N.I. Act against the applicant and as such, impugned summoning order is just, proper and legal and do not call for any interference by this Court. He has further submitted that there is absolutely no illegality or infirmity in the impugned summoning order, calling for any interference in exercise of inherent power under Section 482 CrPC.

9. Learned AGA has further submitted that even in the case of misplaced cheque as claimed by the applicant, proceedings under section 138 of N.I. Act can always be drawn against him. He has further submitted that where dishonour of the cheque has been made for the reason of stop payment , then too offence under Section 138 of N.I. Act is clearly made out against the applicant. He has further submitted that in order to determine the question where the cheque has been dishonoured on the ground of stop payment, the proviso contained in Section 138 of Negotiable Instruments Act is required to be noticed, which reads as under :-

138. ***Dishonour of cheque for insufficiency, etc., of funds in the account.--*** *Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole*

or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for 19 [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, 20 [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation. For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.]

10. While interpreting the said provision in the case of ***Laxmi Dyechem Vs. State of Gujarat reported in 2012 (13) SCC 375,*** the Hon'ble Supreme Court has held that :

"*From the above, it is manifest that a dishonour would constitute an offence only if the cheque is retuned by the bank 'unpaid' either because the amount of money standing to the credit of the drawer's account is insufficient to honour the cheque or that the amount exceeds the amount arranged to be paid from that account by an agreement with that bank. The High Court was of the view and so was the submission made on behalf of the respondent before us that the dishonour would constitute an offence only in the two contingencies referred to in Section 138 and none else. The contention was that Section 138 being a penal provision has to be construed strictly. When so construed, the dishonour must necessarily be for one of the two reasons stipulated under Section 138 & none else. The argument no doubt sounds attractive on the first blush but does not survive closer scrutiny. At any rate, there is nothing new or ingenious about the submission, for the same has been noticed in several cases and repelled in numerous decisions delivered by this Court over the past more than a decade."*

11. The contention of learned counsel for the applicant is

that dishonour would constitute an offence only in the two contingencies referred to in Section 138 of N.I. Act and none else. It is further contended by him that Section 138 of N.I. Act being a penal provision has to be construed strictly. When so construed, the dishonour must necessarily be for one of the two reasons stipulated under Section 138 of N.I. Act and none else. Thus, the argument raised by learned counsel for the applicant though no doubt sounds attractive on the first blush but does not survive closer scrutiny. Moreover, the said submission has been noticed in several cases and repelled in numerous decisions delivered by the Court over the past more than a decade.

12. Furthermore, the submission of the applicant's counsel that the cheque in question has been stolen and was being misused by the opposite party no.2 and as such, proceedings under Section 138 of N.I. Act cannot be drawn against the applicant has already been repelled by the Hon'ble Apex Court in the case of ***Rangappa Vs. Sri Mohan reported in (2010) 11 SCC 441.***

13. The third contention of learned counsel for the applicant that no due debt or liability exists as against the applicant, therefore, proceedings under Section 138 of the N.I. Act can not be drawn against the applicant, is wholly untenable and is liable to be rejected in view of the fact that the disputed question of existing due debt and liability can only be decided during trial on the basis of evidence adduced.

14. Moreover, under Section 118 of N.I. Act, there is a presumption that until contrary is proved, every negotiable instrument was drawn/ endorsed for consideration. Even under Section 139 of the Act, it is specifically stated that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 of the N.I. Act for discharge, in whole or in part of any debt or other liability, as such, the disputed question if the debt or any other liability exists against the applicant in respect of the cheque in question can not be determined at this stage, when the evidence is yet to come.

15. It is well settled principle of law that while exercising jurisdiction under Section 482 CrPC, it is not permissible for this Court to conduct a mini trial and quash the proceedings at this stage.

16. Thus, all the three contentions raised by learned counsel for the applicants on the basis of which, the proceedings under Section 138 of N.I. Act cannot be drawn against the applicants, has been repelled by the Hon'ble Apex Court.

17. The revisional court while rejecting the application u/s 5 of the Limitation Act has clearly held that no reasonable ground for condoning the delay has been stated in the delay condonation application, nor any documents explaining the grounds for delay has been stated in the delay condonation application, as such, the application u/s 5 of the Limitation Act has been rejected by the revisional court, consequent thereto, the revision has also been dismissed, which order do not suffer from any illegality. More so, when the impugned order, against which, the revision has been filed does not suffer from any illegality or error in law.

18. In view of the aforesaid discussion, I am of the considered opinion that the impugned summoning order dated 11.08.2022 and revisional order dated 30.11.2022 passed by the courts below is just, proper and legal and do not call for any interference and as such, the entire proceedings based on the complaint cannot be quashed.

19. The present application under Section 482 Cr.P.C. is devoid of merits and is accordingly **dismissed**.

Order Date :- 1.12.2023
A.P. Pandey

Digitally signed by :-
ANAND PRAKASH PANDEY
High Court of Judicature at Allahabad