

Court No. - 86

Case :- APPLICATION U/S 482 No. - 38950 of 2023

Applicant :- Shakeel

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

Counsel for Applicant :- Bindu Kumari

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 the summoning order dated 30.8.2022 as well as entire criminal proceedings of Complaint Case No. 1126 of 2022 (Mohd Tanveer Alam Vs. Shakeel), under Section 138 of N.I. Act, P.S. Sector-49, Noida, District- Gautam Budh Nagar, pending in the court of Addl. Court, Room No. 1, Gautam Budh Nagar.

3. As per the allegations made in the complaint, it is alleged that the applicant had issued a four cheque being Cheque No. 603197 dated 12.1.2022 for a sum of Rs. 1,90,000/- drawn on UCO Bank, branch Simbhauli, Ghaziabad 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 applicant to face trial under Section 138 of Negotiable Instrument Act vide order dated 30.8.2022.

5. Learned counsel for the applicant has submitted that cheque in question has not been issued by the applicant nor the said cheque has been issued from the cheque book of the applicant. Learned counsel for the applicant has further submitted that applicant has no concern with the issuance of the such cheque, neither the said cheque has been signed by him nor the account number, date and

name of the payee has been filled by the applicant.

6. Learned counsel for the applicant has next submitted that the applicant does not hold any bank account in the UCO Bank and, therefore, proceedings under Section 138 of N.I. Act cannot be drawn against him.

7. Per contra, learned A.G.A. has submitted that the learned Magistrate on the basis of allegation made in the complaint and after making the requisite enquiry under Sections 200 and 202 CrPC and on the basis of relevant documents namely, dishonoured cheque, returned memo, registry receipt and photostat copies of the notice sent to the applicant filed under Section 202 Cr.P.C. has taken cognizance of the offence and summoned the applicant to face trial.

8. Learned AGA has further submitted that the question whether the cheque has been issued by the applicant in favour of the opposite party No. 2 is the disputed question of fact, which cannot be decided in exercise of power under Section 482 Cr.P.C. He has further submitted that when a cheque is issued, it is not necessary that the requisite details in the cheque particularly name of the payee, the amount etc. need not necessarily be filled by the drawer. Moreover, in the complaint as well as statement of the witnesses recorded under Section 200 Cr.P.C. and the order of the Magistrate, it is evident that cheque in question has been issued by the applicant and has been signed by him. The contrary assertion in this respect can only be decided by the court below on the basis of the evidence adduced during the course of trial and this Court u/s 482 Cr.P.C. cannot hold a mini trial. The disputed defence of the case cannot be considered at this stage when the entire evidence is yet to come. Learned AGA has further submitted that disputed question of due, debt or liability can also not be determined when the evidence is yet to come and has further pointed out that there is a legal rebuttable presumption under Section 139 of the N.I. Act against the applicant, as such impugned summoning order is just, proper and legal and do not call for any interference by this Court. There is absolutely no illegality or infirmity in the impugned order.

9. Having considered the rival submissions made by the counsel for the parties and taking into consideration that the learned Magistrate on the basis of allegation made in the complaint and the statements of the witnesses recorded under Sections 200 and 202 Cr.P.C, has summoned the applicant to face trial, as such there cannot be said to be any illegality or error of law in summoning the applicant to face trial u/s 138 of N.I. Act. Moreover, disputed

question of fact whether the cheque in question has been issued by the applicant or not and whether the cheque has been signed by the applicant are disputed question of fact, which cannot be determined in exercise of power under Section 482 Cr.P.C.. Moreover from the impugned order passed by the court below, it is evident that cheque in question has been dishonoured on the ground of insufficient fund and not on the ground that the applicant does not have any account in the said bank. The contrary assertion in this respect can only be decided on the basis of evidence adduced and the entire complaint case cannot be nipped in the bud in exercise of power under Section 482 Cr.P.C.

10. In view of the foregoing discussion made above, I am of the view that impugned order passed by the learned Magistrate summoning the applicant to face trial under Section 138 of N.I. Act is just, proper and legal and do not call for any interference at this stage.

11. The present application u/s 482 Cr.P.C. is wholly misconceived and is accordingly dismissed.

Order Date :- 7.11.2023

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