

Court No. - 89

Case :- APPLICATION U/S 482 No. - 38920 of 2023

Applicant :- Tarun Gupta And Another

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

Counsel for Applicant :- Sumit Daga

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma,J.

1. Heard Sri Sumit Daga, learned counsel for the applicants and the learned AGA for the State.

2. The present 482 Cr.P.C. application has been filed to quash the summoning order dated 19.11.2022 as well as the entire proceedings of Complaint Case No. 4836 of 2022 (Jai Kumar Vs. M/s Royalty Builders & others), under Sections- 138 of the Negotiable Instruments Act, 1881, Police Station- Modinagar, District- Ghaziabad, pending in the court of learned Additional Chief Judicial Magistrate, Court No. 5, Ghaziabad.

3. It is submitted by the learned counsel for the applicants that although in the complaint, company for which cheque in question has been issued, has been arrayed as an accused, but the Magistrate concerned while passing the summoning order dated 19.11.2022 did not summon the company. Until and unless company is prosecuted and punished, Directors and Signatories cannot be prosecuted or punished. At this juncture, learned counsel for the applicants has referred to the provisions of Negotiable Instruments Act applicable in the present matter and placing reliance on the following decisions argued that in similar circumstances, proceedings of the complaint case in these cases have been quashed :

1. *Aneeta Hada Versus Godfather Travels and Tours Private Limited, (2012) 3 Supreme Court Cases (Cri) 241.*

2. *N. Harihara Krishnan Versus J. Thomas, AIR 2017 Supreme Court 4125.*

4. Learned A.G.A. argued that although company has not been summoned, yet the person whose name finds place in the summoning order can be prosecuted. There is no illegality or

infirmity in the impugned summoning order dated 19.11.2022.

5. I have considered the rival submissions advanced by the learned counsel for the parties and perused the record.

6. Having regard to the facts and circumstances of the case, keeping in view the name of the persons summoned vide order dated 19.11.2022 and also the parties added in the complaint, when cheque in question has been issued on behalf of the company and company was not summoned, thus proceedings of the aforesaid complaint case in view of the law laid down in Aneeta Hada (supra) and N. Harihara Krishnan (supra) cases, cannot be permitted to continue. Until and unless company is prosecuted and punished, Directors and Signatories cannot be prosecuted and punished.

7. In view of the above discussions, the application under section 482 Cr.P.C. is **allowed**. Summoning order dated 19.11.2022 is hereby quashed.

8. Matter is remanded back to trial Court for passing fresh summoning order maximum within a period of four weeks from the date of production of certified copy of this order.

Order Date :- 4.12.2023

Aditya