

Court No. - 86

Case :- APPLICATION U/S 482 No. - 39120 of 2023

Applicant :- Ankit Awasthi

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

Counsel for Applicant :- Shashank Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1. Heard learned counsel for the applicant, learned A.G.A. and perused the record.
2. The instant application under section 482 Cr.P.C. has been filed to quash the impugned summoning order dated 03.08.2023 passed by the court of learned Metropolitan Magistrate-II, Kanpur Nagar in Complaint Case No. 142253 of 2022 (Anil Kumar Pal Vs. Ankit Awasthi), under section 138 N.I. Act, Police Station Chakeri, District Kanpur Nagar as well as the entire proceeding of case No. 142253 of 2022 (Anil Kumar Pal Vs. Ankit Awasthi), under section 138 N.I. Act, Police Station Chakeri, District Kanpur Nagar pending in the court of Metropolitan Magistrate-II, Kanpur Nagar.
3. As per the allegation made in the complaint, it is alleged that the applicant had issued a cheque No. 418170 dated 21.04.2022 for a sum of Rs. one lac to the opposite party no. 2. However, on presentation of the said cheque, the same was dis-honoured by the bank and returned back.
4. After the dis-honour of the cheque, a legal notice was sent to the applicant to make good the payment of cheque amount, however, despite being noticed the due amount was not paid by the applicant and as such the instant complaint case under section 138 N.I. Act was instituted against the applicant.
5. Learned Magistrate on the basis of the allegation made in the complaint and after making the requisite enquiry under

sections 200 and 202 Cr.P.C. have summoned the applicant to face trial under section 138 N.I. Act vide impugned order dated 03.08.2023.

6. Being aggrieved and dis-satisfied by the said impugned order, the present application under section 482 Cr.P.C. has been filed.

7. Learned counsel for the applicant has submitted that the cheque in question has been issued by the firm and, therefore, payment of said cheque was not his individual liability. He has further submitted that under section 141 of the N.I. Act if a person commits an offence under section 138 of the N.I. Act then without impleading the firm the proceedings under section 138 N.I. Act can not be drawn against him. In order to buttress his argument, learned counsel for the applicant has placed reliance upon two cases **Dilip Hariramani Vs. State of Baroda reported in 2022 SCC Online SC 579** and **Anil Gupta Vs. Star India (Pvt.) Limited and another 2014 (10) SCC 373**. Learned counsel for the applicant has further submitted that the cheque in question was given as a security to the O.P. No. 2 and has been misused by him as such proceeding under section 138 N.I. Act can not be drawn against him.

8. Per contra, learned A.G.A. has vehemently opposed the prayer of the learned counsel for the applicant and has supported the impugned order. He has further submitted, that the cheque in question, which has been enclosed **as Annexure-1** to the application has been issued in individual capacity by the applicant who is in fact the sole proprietor of Shradha Travels and is not a partner in any firm, and no documents showing him to be partner of any firm has been brought on record, therefore, the provision contained under section 141 N.I. Act would not be applicable to him and there is no question of there being any vicarious liability upon the applicant to honour the cheque in question, and therefore, the proceeding under section 138 N.I. Act has rightly been instituted against him.

9. He has further submitted that even the second argument, of the learned counsel for the applicant that the cheque in question was issued as a security and mis-used by the applicant, therefore, no proceeding under section 138 of N.I. Act could be drawn against him is also untenable and is not worth consideration in view of the settled law laid down by

the Apex Court in this regard. It is further submitted that even where the cheque in question has been issued as the security then too the proceeding under section 138 N.I. Act can be drawn against him and it can not be said that the cheque in question has been mis-used by the applicant. He has further submitted that in the back drop of the said circumstances the impugned order dated 03.08.2023 passed by the court below is just, proper and legal and do not call for any interference and the instant application is liable to be dismissed.

10. Having considered the rival submissions made by both the parties and taking into consideration the allegation made in the complaint as well as in the statement of the witnesses recorded under sections 200 and 202 Cr.P.C. and material brought on record, prima facie offence under section 138 N.I. Act is clearly made out against the applicant. Further, since the cheque in question has been issued by the applicant, being his individual liability and being sole proprietor, therefore, the question of vicarious liability as envisaged under section 141 N.I. Act would not be applicable in the instant case. The contrary assertion made by the counsel for the applicant, therefore is wholly untenable and liable to be discarded. Moreover the applicant has not brought any document on record to show that the cheque in question has been issued on behalf of Shradha Travels which is a partnership firm, and of which the applicant is one of the partner. In the absence of which the case law cited by the counsel for the applicant is clearly distinguishable on facts which primarily deals with provision of vicarious liability of a company under the Negotiable Instruments Act. Further, the applicant firm's registration with Registrar Firm, Kanpur Nagar has also not been brought on record. Further more the submission of the applicant that the cheque in question was issued as a security and has been mis-used by the O.P. No. 2, therefore, proceedings under section 138 of the N.I. Act could not be drawn against him is also not tenable at all. It is well settled principle of law laid down by the several decisions of the apex court that wherever the cheque has been given as a security and dishonoured, the proceeding under section 138 N.I. Act can well be drawn against the drawer. In view thereof, there is no illegality or error in law in summoning the applicant to face the trial under section 138 N.I. Act.

11. In view of the foregoing discussions, I am of the considered opinion that the entire proceedings based on the complaint under section 138 N.I. Act and the impugned order dated 03.08.2023 passed by the court below 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 in exercise of inherent power of this court under section 482 Cr.P.C.

12. The applicant may raise all disputed question of facts before the court below, which can not be gone into at this stage, in exercise of power under section 482 Cr.P.C.

13. The instant application under section 482 Cr.P.C is, therefore, devoid of merits and is accordingly dismissed.

Order Date :- 8.12.2023

RPD