

Court No. - 86

Case :- APPLICATION U/S 482 No. - 39098 of 2023

Applicant :- Rajiv Kumar

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

Counsel for Applicant :- Puneet Bhadauria

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1. Heard learned counsel for the applicant, learned AGA for the State and perused the record.
2. By means of this application under Section 482 Cr.P.C., the applicant has challenged the order dated 12.12.2022 passed by Additional Chief Judicial Magistrate, Court No.1, Etawah rejecting the complaint of the applicant under Section 203 CrPC and the order dated 11.09.2023 passed by Additional Sessions Judge, Court No.7, Etawah in Criminal Revision No. 44 of 2023 affirming the said order.
3. Brief facts giving rise to this application are that applicant has filed a complaint against opposite party no.2 alleging therein that he and the opposite party no.2 were known to each other and opposite party no.2 was in need of some funds, who came in Kasba Bharthana, District Etawah and asked the applicant to lend him some money. On his request, the applicant has transferred a sum of Rs.2,00,000/- in the bank account of opposite party no.2.
4. After passage of time, the applicant asked the opposite party no.2 to return back his money, consequent to which, the opposite party no.2 returned back a sum of Rs.60,000/- to the applicant and asked for further time to pay the balance amount, however, despite time being granted to the opposite party no.2 by the applicant to pay the balance amount, he failed to repay the balance amount and has swindled the said balance amount.
5. On the basis of the said allegations, applicant had filed a complaint dated 29.11.2021, on the basis of which, the instant case has been instituted. On the basis of the said

complaint, learned Magistrate directed the applicant to get his statement recorded under Sections 200 CrPC and that of his witnesses under Section 202 CrPC, however, after recording of their statement, the court below rejected the said complaint under Section 203 CrPC vide order dated 12.12.2022 by holding that a sum of Rs.2,00,000/- was lent by the applicant to the opposite party and out of the said amount, a sum of Rs.60,000/- was returned back to the applicant, thus, from the said circumstances, it is evident that dispute arose out of the loan transaction between the parties and there has not been any entrustment of money or there is nothing on record to show that from the very inception, opposite party had any intention to cheat the applicant and as such, no criminal offence is disclosed against the opposite party.

6. Being aggrieved and dissatisfied by the said order dated 12.12.2022, the applicant had preferred a criminal revision before the revisional court, however, the revisional court also upheld the order dated 12.12.2022 passed by the court below by holding that from the facts and circumstances enumerated in the complaint as well as statement of the witnesses recorded during the course of inquiry, no offence is disclosed against the opposite party and the matter appears to be a civil dispute between the parties, which has illegally been tried to be dragged in criminal court. The revisional court has further held by relying upon a decision of the Hon'ble Apex Court that summoning of accused in a criminal case is serious matter and such power should not be exercised in a mechanical and casual manner.

7. Learned counsel for the applicant has challenged the validity of both the orders and has submitted that by passing the impugned orders, the courts below has not considered the criminal intent of the opposite party no.2 and has further submitted that civil proceedings as well as criminal proceedings can go together and therefore, the impugned orders passed by the courts below are bad in law and are liable to be set aside.

8. Per contra, learned AGA has submitted that from the

allegations made in the complaint as well as statement of the witnesses recorded under Sections 200 and 202 CrPC, no offence, complained of, is disclosed against the opposite party no.2. Admittedly, the applicant had extended the loan of Rs.2,00,000/- to the opposite party no.2 and out of the said amount, a sum of Rs.60,000/- was even returned back to the applicant, thus it can not be said that from the very inception, the opposite party no.2 had any intention to cheat the applicant.

9. Furthermore, in the instant case, there is no entrustment of money, rather it is merely loan transaction between the parties and there is absolutely no criminal intent in the said transaction and as such, there is no illegality, impropriety or jurisdictional error in the impugned orders passed by the courts below.

10. Having considered the rival submission made by learned counsel for the parties and taking into consideration the fact that the applicant very well knew the opposite party no.2 before lending the loan, which by no stretch of imagination can be said to be entrustment of money as the law clearly recognizes difference between payment of money on credit and entrustment of money. A mere breach of promise, agreement or a contract does not *ipso facto* constitute offence of criminal breach of trust under Section 405 IPC without there being clear case of entrustment.

11. In this context, it is further germane to point out here that there is nothing either in the complaint or the material before the court, that any property was entrusted to the applicant at all, which he dishonestly converted for his own use so as to satisfy the ingredients of Section 405 IPC punishable under Section 406 IPC.

12. Further, mere breach of promise to pay and cheating would depend upon the fraudulent inducement and mensrea. Admittedly, the opposite party no.2 was in economical crisis and therefore, he had approached the applicant to ameliorate the situation of the crisis.

13. Moreover, mere inability of the opposite party no.2 to return back the loan amount can not give rise to the criminal

prosecution for cheating unless fraudulent or dishonest intention shown is right at the beginning of the transaction, as it is thus the mensrea, which is the crux of the offence. Even taking the entire allegations made in the complaint and the material collected during the course of inquiry, taken on their face value, no such dishonest representation or the inducement could be found or inferred.

14. It is well settled principle of law that criminal proceedings are not to be instituted for recovery of disputed money, there may be breach of trust but no criminal breach of trust. The recovery of money due to the applicant to be paid by opposite party could be made by filing an appropriate suit before the competent court of law, instead of giving it a colour of criminal proceedings.

15. Thus, in view of the foregoing discussions, the impugned orders passed by the learned Magistrate as well as revisional court are just, proper and legal and do not call for any interference by this Court in exercise of power under Section 482 CrPC.

16. The present application under Section 482 CrPC is devoid of merit and is accordingly **dismissed**.

Order Date :- 1.11.2023

Nadim