

**Court No. - 86**

**Case :-** APPLICATION U/S 482 No. - 39366 of 2023

**Applicant :-** Balmukund Mishra

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

**Counsel for Applicant :-** Amarnath Tripathi

**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. This application under Section 482 Cr.P.C has been filed by the applicant for quashing the impugned order dated 7.7.2023, passed by Additional Court, Varanasi, in complaint case no. 216 of 2022, Dr. Kundan Kumar Vs. Balmukund Mishra, under Section 138 of Negotiable Instruments Act.
3. As per the allegations made in the complaint, it is alleged that the applicant had issued a cheque bearing no. 978216 dated 2.7.2021 in favour of the Opposite Party No.2 for an amount of Rs.9.00 lacs. On presentation of the said cheque before the Bank, it was dishonoured and returned back.
4. After dishonour of the cheque, a legal notice was sent to the applicant to make good the payment of the cheque amount, however, despite being noticed, the applicant has not made good the payment of the cheque amount, as such, a complaint under Section 138 of Negotiable Instruments Act has been filed by the Opposite Party No.2 against the applicant.

5. On the basis of the said complaint, learned Magistrate, after considering the allegations made in the complaint and making requisite enquiry under Sections 200 CrPC and 202 CrPC, has summoned the applicant to face trial under Section 138 of the Negotiable Instruments Act vide order dated 7.7.2023.

6. Learned counsel for the applicant has submitted that the cheque in question was stolen by the Opposite Party No.2 from the applicant and no due debt or liability exists, as such, proceedings under Section 138 of Negotiable Instruments Act can not be drawn against him.

7. Per contra, learned AGA has supported the impugned summoning order and has submitted that learned Magistrate, on the basis of the allegations made in the complaint and the statements recorded under Sections 200 and 202 CrPC, has summoned the applicant.

8. Learned AGA has further submitted that disputed question of existence of due debt or liability cannot be considered at this stage, when the evidence is yet to come. Moreover, it is well settled principle of law laid down by the Hon'ble Apex Court in the case of ***Rangappa Vs. Sri Mohan (2010)11 SCC 441*** "Even where it is alleged that the cheque in question has been lost and was being misused by the complainant proceedings u/s 138 of the N.I. Act can be drawn 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 and the application is liable to be dismissed.

9. Having considered the rival submissions made by learned counsel for the parties and taking into consideration that the learned Magistrate, on the basis of the allegations made in the complaint and the statements recorded under Sections 200 and 202 CrPC, has summoned the applicant to face trial, there can not be said to be any illegality or error of law in summoning the applicant to face trial under section 138 of N.I. Act. Moreover, disputed question of existence of due debt or liability cannot be considered at this stage, when the evidence is yet to come. There is a legal presumption under section 139 of N.I. Act that the holder of a cheque received the cheque of the nature required to in section 138 N.I. Act. for the discharge, in whole or in part of any debt or other liability. Moreover, in view of law laid down by the Hon'ble Apex Court in the case of ***Rangappa Vs. Sri Mohan (2010)11 SCC 441*** "Even where it is alleged that the cheque in question has been lost and was being misused by the complainant proceeding u/s 138 of N.I. Act. can be drawn against the applicant".

10. In view thereof, I am of the considered opinion that the impugned summoning order does not suffer from any illegality or infirmity and do not call for any

interference by this Court at this stage.

11. Present application under Section 482 CrPC is devoid of merit and it is accordingly dismissed.

**Order Date :- 9.11.2023**

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