

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 11890 of 2022

Petitioner :- Ram Kumar Singh

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Santosh Kumar Tiwari, Kapil Tiwari, Vijay Kumar

Counsel for Respondent :- G.A., Pankaj Dubey, Santosh Kumar Yadav

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Ram Milan Dwivedi, Advocate, holding brief of Sri Kapil Tiwari, learned counsel for the petitioner, Sri Santosh Kumar Yadav, learned counsel for the respondent and Sri Himanshu Kumar, learned A.G.A. for the State.

2. This criminal misc. petition has been filed under Article 227 challenging the order dated 21.05.2022 passed by Civil Judge (Jr. Division)/FTC/Judicial Magistrate in Complaint Case No. 17328 of 2021 (Pratap Singh Vs. Ram Kumar Singh) under section 138 of N.I Act, whereby the accused Ram Kumar Singh (the petitioner herein) was summoned under section 138 N.I. Act. Further challenging the order dated 11.10.2022 passed by Additional Session Judge, in Criminal Revision No. 150 of 2022, affirming the order of the Judicial Magistrate. Further prayer is to quash the entire proceeding of Complaint Case No. 17328 of 2021 under section 138 of N.I. Act.

3. The relevant facts are as below:

The complainant Pratap Singh filed a complaint on the basis of three cheques, issued by the accused Ram Kumar Singh, which were allegedly dishonoured. The learned Magistrate proceeded with the complaint and after appreciation of oral/documentary evidence produced under section 200 and 202 Cr.P.C., summoned the accused to face trial for an offence under section 138 N.I. Act. The aforesaid order passed by the Judicial Magistrate was challenged by the accused before the revisional court. The revisional court dismissed the revision affirming the order of the Judicial Magistrate.

4. In nutshell, it is submitted on behalf of petitioner that the complaint did not disclose important details such as date of bank memo, date of demand notice, cheque numbers or bank account numbers; the mandatory provisions of section 138 read with section 142 N.I. Act, were not considered before passing summoning order; the firm, on whose behalf the cheques were issued, was closed in 2019. The court of revision and the court of Magistrate did not appreciate the above points.

5. The respondent has submitted that as far as the issuance of cheques by the firm are concerned, admittedly, the firm was dissolved in 2019 whereas the cheques were issued in 2021. Section 139 of N.I. Act provides that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138, for the discharge, the whole or in part, of any debt or other liability. This presumption is un rebutted at this stage.

6. Next, it is submitted that the learned trial court as well as revisional court took into consideration all the papers available on record which included the cheques in question, the bank memo, the demand notices. Therefore, this submission is just superfluous that no dates were disclosed.

7. I went through the impugned orders. The orders mention the filing of original cheques, bank memo, the demand notice sent by the complainant. This is quite settled that there is no mandatory requirement that dates should have been mentioned in the complaint itself. If the court finds that relevant papers are on record, and that dates are disclosed from perusal of the papers as well as other evidence on record, nothing pulls back the court from giving a finding as to making out of a *prima facie* case under section 138 N.I. Act. As far as the issue of firm dissolution or existence of liability to discharge are concerned, such issues can only be decided after the evidence is led by both the parties. At this stage, the only requirement is as provided under section 138 read with section 142 N.I. Act.

8. In view of the observations made above, I do not find any good ground to interfere in the orders in exercise of powers under Article 227 of Constitution of India this petition is liable to be dismissed and is therefore, **dismissed**.

Order Date :- 30.10.2023
Sumit Kumar