

Court No. - 92

Case :- APPLICATION U/S 482 No. - 39972 of 2023

Applicant :- Mohammad Ubaish

Opposite Party :- State of U.P.

Counsel for Applicant :- Rakesh Kumar Verma

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Shri Rakesh Kumar Verma, learned counsel for the applicant and Shri Raj Bahadur Verma, learned A.G.A. for the State.

2. The instant application under section 482 Cr.P.C. has been filed seeking quashing of the entire proceedings of Complaint Case No. 26065 of 2021 (Mohd. Faiyaz Ali Vs. Neeraj Sharma) under section 138 of Negotiable Instruments Act pending in the court of Learned Presiding Officer, Additional Court, Moradabad including summoning order dated 8.6.2022.

3. Learned counsel for the applicant submits that the instant complaint has been filed on the basis of a cheque which has been misplaced from the possession of the applicant for which a complaint has also been filed by the applicant on 6.8.2021. Learned counsel for the applicant further submits that the complainant/opposite party no. 2 has presented the said misplaced cheque for encashment which was dishonoured. Thereafter the opposite party no. 2 has sent a legal notice to the applicant and filed the instant complaint against the applicant. Therefore, he prayed for quashing of the entire proceedings against the applicant.

4. On the other hand, learned A.G.A. for the State submits that the instant complaint has been filed against the applicant herein for dishonour of the cheque of Rs.4,91,500/- in due course. Thereafter a demand notice was sent by the opposite party no. 2 against the applicant. However, despite the said demand notice the applicant failed to make the payment of the cheque amount, therefore, the instant complaint has been filed against the applicant herein. Therefore, prima facie case is made out against the application under section 138 of the Negotiable Instruments Act, specifically in view of the presumption under section 139 of the N.I.Act against the applicant. So far as the complaint with regard to misplacement of the said cheque from the possession of the applicant, it will be open for the applicant to prove the same during

trial and to rebut the presumption under section 139 of N.I.Act. Therefore, no interference is called for in the instant case.

5. Having heard the learned counsel for the parties the court has perused the record of the case. From the complaint it is clear that the cheque dated 8.8.2021 was issued by the applicant in favour of the opposite party no. 2 which was presented for encashment and was dishonoured due to insufficient fund. A demand notice dated 24.8.2021 was issued by the opposite party no. 2. However, despite service of demand notice the applicant herein has failed to make the payment of the said cheque amount, therefore, the instant application has been filed against the applicant. In view of the presumption under section 139 of N.I. Act it will be presumed that the cheque was issued by the applicant in due course against a legally enforceable debt in favour of the opposite party no. 2 which was dishonoured and despite the demand notice, the applicant has failed to make the payment. Therefore, prima facie a case is made out against the applicant. There is no illegality in the impugned summoning order as well as the complaint made against the applicant specifically in view of the presumption under section 139 of N.I. Act. So far as the fact with regard to misplacement of cheque it is for the applicant to press this issue during the trial to rebut the presumption against him.

6. For the aforesaid reasons, the instant application lacks merit and is accordingly **dismissed**.

Order Date :- 28.11.2023

o.k.