

Court No. - 86

Case :- APPLICATION U/S 482 No. - 39947 of 2023

Applicant :- Ashish Mishra

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

Counsel for Applicant :- Satyendra Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

2. The instant application under Section 482 Cr.P.C. has been filed by the applicant for quashing the summoning order dated 6.1.2022 as well as entire criminal proceedings of Complaint Case No. 76 of 2021 (Singhal Trademart, Proprietor, Sushil Kumar Vs. M/S Asco Global Exim Pvt. Ltd.), under Section 138 of N.I. Act, P.S.Sector-20, Noida, District- Gautam Budh Nagar, pending in the court of Addl. Chief Judicial Magistrate-Second, Gautam Budh Nagar.

3. As per the allegations made in the complaint, it is alleged that the applicant had issued cheque bearing Cheque No. 000421 dated 6.10.2020 for an amount of Rs. 11 lakh in favour of Opposite Party No.2, however, on presentation of the said cheque, the same was dishonoured by the bank. After the dishonour of the cheque, a notice was sent to the applicant to make good the payment, however, despite being noticed the due amount was not paid as such, the present complaint has been filed.

4. On the basis of the said complaint and on the basis of an affidavit filed by the complainant u/s 200 Cr.P.C., learned Magistrate after making the requisite enquiry under Section 202 CrPC has summoned the applicant to face trial under Section 138 of Negotiable Instrument Act vide order dated 6.1.2022.

5. Being aggrieved and dissatisfied by the aforesaid order dated 6.1.2022, the instant application u/s 482 Cr.P.C. has been filed.

6. Learned counsel for the applicant has submitted that the cheque in

question was forcibly got issued by the opposite party No. 2 by putting him in fear of death and the said cheque has been misused by the opposite party No. 2. The signature of the applicant was forcibly obtained on the cheque and therefore it differs. Learned counsel for the applicant has next submitted that applicant is neither the Managing Director of the M/S Asco Global Exim Pvt. Ltd. nor he is responsible for its day to day working and, therefore, the proceeding u/s 138 of N.I. Act cannot be drawn against him. He has further submitted that the complainant in his complaint has illegally shown him to be the managing director and responsible for day to day working of the company just to drag in criminal proceeding u/s 138 of N.I. Act, which is categorically denied by him and in the backdrop of the above, the proceeding under Section 138 of Negotiable Instruments Act against the applicant is wholly illegal without jurisdiction and liable to be set aside.

7. Per contra, learned A.G.A. has vehemently opposed the said prayer and has supported the impugned order of summoning. He has further submitted that the learned Magistrate on the basis of allegation made in the complaint and after making the requisite enquiry, has summoned the applicant to face trial under Section 138 of Negotiable Instrument Act vide order dated 6.1.2022.

8. Learned AGA has further submitted that in the complaint itself the complainant has categorically stated that the applicant is the Managing Director of the Company in question, who had issued the cheque and is responsible for its day to day working, therefore, the proceeding under section 138 of N.I. Act can well be drawn against him. The contrary assertion that the applicant is neither the managing director nor responsible for the day to day working of the company, is a disputed question of fact, which cannot be gone into in exercise of power under Section 482 Cr.P.C. Furthermore, the factum that the cheque in question was forcibly got signed by the applicant is also a disputed question of fact, which cannot be considered in exercise of power u/s 482 Cr.P.C. He has further submitted that where dishonour of the cheque has been made for the reason, that the signature differs, then too offence under Section 138 of N.I. Act is clearly made out against the applicant. He has further submitted that in order to determine the question, where the cheque has been dishonoured on the ground, that the signature of the drawer differs, the proviso contained in Section 138 of Negotiable Instruments Act are required to be noticed, which reads as under :-

138. Dishonour of cheque for insufficiency, etc., of funds in the account.?Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of

money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for 19 [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless?

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, 20[within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.? For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.]

9. While interpreting the said provision in the case of **Laxmi Dyechem Vs. State of Gujarat reported in 2012 (13) SCC 375**, the Hon'ble Supreme Court has held that -:

"From the above, it is manifest that a dishonour would constitute an offence only if the cheque is returned by the bank 'unpaid' either because the amount of money standing to the credit of the drawer's account is insufficient to honour the cheque or that the amount exceeds the amount arranged to be paid from that account by an agreement with that bank. The High Court was of the view and so was the submission made on behalf of the respondent before us that the dishonour would constitute an offence only in the two contingencies referred to in Section 138 and none else. The contention was that Section 138 being a penal provision has to be construed strictly. When so construed, the dishonour must necessarily be for one of the two reasons stipulated under Section 138 & none else. The argument no doubt sounds attractive on the first blush but does not survive closer

scrutiny. At any rate, there is nothing new or ingenious about the submission, for the same has been noticed in several cases and repelled in numerous decisions delivered by this Court over the past more than a decade."

10. The Hon'ble Apex Court while interpreting the provisions contained in Section 138 of N.I. Act made the following observations :-

"15. A three-Judge Bench of this Court in Rangappa v. Sri Mohan (2010) 11 SCC 441 has approved the above decision and held that failure of the drawer of the cheque to put up a probable defence for rebutting the presumption that arises under Section 139 would justify conviction even when the appellant drawer may have alleged that the cheque in question had been lost and was being misused by the complainant.

16. The above line of decisions leaves no room for holding that the two contingencies envisaged under Section 138 of the Act must be interpreted strictly or literally. We find ourselves in respectful agreement with the decision in Magma case that the expression "amount of money". is insufficient" appearing in Section 138 of the Act is a genus and dishonour for reasons such "as account closed", "payment stopped", "referred to the drawer" are only species of that genus. Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138, so also dishonour on the ground that the "signatures do not match" or that the "image is not found", which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of Section 138 of the Act."

11. Thus having considered the rival submission made by the counsel for the parties and taking into consideration the aforesaid discussion, it is evident that disputed defence of the applicant that the applicant is not the managing director or incharge of the company nor responsible for its day to day working cannot be gone into in exercise of power u/s 482 Cr.P.C. Further the factum that the cheque in question has been forcibly got issued is also a disputed question of fact which cannot be gone into in exercise of power under Section 482 Cr.P.C. Further, the contention raised by the applicant that the signature differs and, therefore, proceeding under Section 138 of N.I. Act cannot be drawn against him is also against the settled principle of law laid down by the Hon'ble Apex Court in the discussion made above, as such is liable to be repelled. The applicant may raise all disputed question of fact before the court below, however on the basis of submissions, the entire proceedings u/s 138 of N.I. Act cannot be quashed

at this stage

12. In view of the aforesaid discussion, I am of the considered opinion that the impugned order dated 6.1.2022 passed by the court below is just, proper and legal and as such, the entire proceedings, based on the complaint, cannot be quashed and nipped in the bud.

13. The present application u/s 482 Cr.P.C. is, therefore, devoid of merits and is accordingly dismissed.

Order Date :- 15.12.2023

KU