

Court No. - 92

Case :- APPLICATION U/S 482 No. - 40363 of 2023

Applicant :- Subhash Chauhan

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

Counsel for Applicant :- Ram Shiromani Shukla, Abhinav Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Anubha Shukla, Advocate holding brief of Sri Abhinav Shukla, learned counsel for the applicant and Sri Brijesh Kumar Dwivedi, 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. 10253 of 2020 (Maksudan Chauhan Vs. Subhash Chauhan) filed u/S 138 of N.I. Act and also the summoning order dated 08.12.2020, P.S. Robertsganj, District- Sonbhadra, pending in the court of learned Chief Judicial Magistrate, Sonbhadra. The application further seeks quashing of an order dated 15.07.2023 passed by the Sub-Judicial Magistrate to Sonbhadra in the aforesaid complaint case number on an application u/S 143-A of the N.I. of Act, whereby the applicant herein has been directed to deposit Rs. 55,000/- being 20% of the cheque amount.

3. Learned counsel for the applicant submits that from the perusal of the complaint there is no legally existing debt against the applicant, therefore, the proceedings u/S 138 of N.I. Act, are not maintainable. Learned counsel for the applicant further disputes the service of legal notice issued by the opposite party no.2 for dishonor of cheque and demand notice for the cheque amount. Learned counsel for the applicant further submits that the provisions of Section 143A of N.I. Act, would apply only when the applicant pleads not guilty and before that, the application u/S 143A of N.I. Act, is not maintainable. Learned counsel for the applicant has relied upon the judgement of the Apex Court in ***Pawan Bhasin vs. State of U.P. and Anr.: 2023 LiveLaw (SC)537***, wherein the Apex Court has held that the learned Magistrate can pass the orders u/S 143A of N.I. Act, only when the accused pleads not guilty of the offence.

4. Learned counsel for State submits that in pursuance to the summoning order dated 08.12.2020, the applicant herein has

already appeared before the Court and has continuously contested the case. Therefore, he cannot be permitted to question the summoning order off late, after a gap of about three years. Therefore, neither the proceedings nor the summoning order can be quashed at such belated stage. Learned counsel for State further submits the applicant has already filed his reply to the application moved u/S 143A of N.I.Act, by the opposite party no.2 wherein he has already pleaded not guilty of the offence. Therefore, learned Magistrate has not erred in passing the order u/S 143A of N.I.Act. Therefore, there is no illegality in the order dated 15.07.2023, passed by the learned Magistrate directing the deposit of 20% of the cheque amount in terms of Section 143A of N.I.Act. From the aforesaid judgement relied upon by the applicant, it is apparent that once the accused pleads not guilty then the Magistrate is competent enough to pass the order u/S 143A of N.I.Act and in his reply to the application u/S 143A of N.I.Act, the applicant herein has categorically stated that he is not guilty of the offence u/S 143A of N.I.Act, Therefore, there is no illegality in the order passed by the learned Magistrate u/S 143 of N.I.Act.

5. Having considered the rival submissions made by learned counsels for the parties, this Court has carefully perused the record of the case. From the perusal of the complaint, it is categorically clear that the parties have entered into a settlement and after a settlement, the applicant herein admitted the amount due, and therefore, he has issued a cheque of Rs. 2,75,000/- in favour of the opposite party no.2. Therefore, from the perusal of the complaint itself the cheque amount is issued by the applicant herein against the admitted liability by him. Therefore, he cannot be permitted to raise the question of there being no liability. Section 139 of the N.I Act, raises a presumption in favour of the holder of the cheque in due course. The applicant has not denied the issuance of the cheque. Therefore, the opposite party no.2 is the holder in due course of the cheque. Therefore, there is a presumption in favour that the said cheque was issued for the admitted liability by the applicant herein in favour of the opposite party no.2. Therefore, there is no ground so far as the other issue with regard to service of demand notice is concerned. The said notice was apparently sent through the registered post, which raises a presumption in favour of its delivery to the addressee concerned and the same issue can be contested by the applicant during the trial, if he so desires. With regard to the submissions regarding the order passed u/S 143A of N.I.Act, directing the applicant to deposit 20% of the cheque amount, in terms of Section 143A of N.I.Act. From the perusal of the order it appears that the applicant herein has filed the reply to the said application

moved by the opposite party no.2 and in the said reply he disputed his liability, thereby, he has pleaded not guilty. Therefore, the learned Magistrate has not erred in the considered opinion of this Court while directing the applicant to deposit the amount in terms of Section 143A of N.I. Act.

6. Therefore, the instant application lacks merit and is hereby ***dismissed.***

Order Date :- 22.11.2023

Shubham Arya