

Court No. - 92

Case :- APPLICATION U/S 482 No. - 40565 of 2023

Applicant :- Ravindra Yadav

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

Counsel for Applicant :- Amit Prakash Upadhyay

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Amit Prakash Upadhyay, learned counsel for the applicant and Sri Prem Prakash Tiwari, learned A.G.A. for the State.

2. The instant application has been filed seeking quashing of order dated 10.10.2023 passed by learned Sessions Judge, Azamgarh in Criminal Revision No.133 of 2023 (Ravindra Yadav Vs. State of U.P. & another) and order dated 27.02.2023 passed by learned Additional Chief Judicial Magistrate, Court No.11, Azamgarh in Complaint Case No.177 of 2022 (Ajay Prakash Yadav Vs. Ravindra Yadav alias Ravindra Ranjeet Yadav), under Section 138 Negotiable Instruments Act, Police Station Mehnagar, District Azamgarh.

3. Learned counsel for the applicant submits that in connection with the business transaction a blank cheque was handed over to opposite party no.2, which was produced for encashment without intimation to the applicant herein and the said cheque was presented without any authorization of opposite party no.2 and the same has been dishonoured, for which the instant complaint case has been lodged by the opposite party no.2 against the applicant herein, therefore, learned counsel for the applicant has prayed for quashing of the said complaint case.

4. Per contra, learned A.G.A. for the State submits that the applicant herein has not denied the issuance of cheque or his signature on the cheque, therefore, the opposite party no.2 is the holder of cheque and the same was presented for encashment in the bank which was dishonoured due to insufficiency of fund. Therefore, a notice was given for non-payment of the cheque given by the applicant herein and after the notice period, the instant complaint has been filed under Section 138 of Negotiable Instruments Act. In view of the transaction, a *prima facie* case is

made out against the applicant herein, therefore, learned A.G.A. for the State submits that no interference is called for in the summoning order as well as the revisional order passed by the Sessions Judge, in criminal revision.

5. Having heard the submissions made by learned counsel for the parties, this Court has carefully perused the record of the case and from perusal of record it is apparent that the Cheque No.044571 dated 08.11.2021 was issued by the applicant in favour of the opposite party no.2 which was presented for encashment in the bank and the same was dishonoured, thereafter, the opposite party no.2 has given legal notice to the applicant herein and despite the said notice the applicant has failed to make the payment of cheque amount to the opposite party no.2, therefore on 04.12.2021, the opposite party no.2 has filed a complaint case under Section 138 of N.I. Act against the applicant herein.

6. Submission of learned counsel for the applicant that the said cheque was given as a security to the opposite party no.2, is the defence, which has to be proved during the trial. However, in view of transaction under Section 138 of N.I. Act, opposite party no.2 was a holder of the cheque, in due course. The legal liability in his favour for the cheque was given which was dishonoured, demand notice was made and applicant herein has failed to make the payment, therefore, having found a *prima facie* case against the applicant herein, learned Additional Chief Judicial Magistrate, Court No.11, Azamgarh vide order dated 27.02.2023 has summoned the applicant herein. It is further apparent from the record that the applicant herein has filed a Criminal Revision No.133 of 2023 against the order dated 27.02.2023 passed by learned Additional Chief Judicial Magistrate, Court No.11, Azamgarh. The said revision has also been dismissed vide order dated 10.10.2023 by the Sessions Judge, Azamgarh.

7. Since a *prima facie* case has been made out against the applicant and further in view of the presumption in favour of opposite party no.2 under Section 139 Cr.P.C. no case for interference in the summoning order against the applicant herein is made out, therefore, the instant application is devoid of merit and is hereby **dismissed**.

Order Date :- 6.12.2023

Atul