

Court No. - 89

Case :- APPLICATION U/S 482 No. - 40833 of 2023

Applicant :- Arvind Singh

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

Counsel for Applicant :- Vipul Kumar Singh, Amit Daga

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma, J.

1. Heard learned counsel for the applicant and learned AGA for the State.
2. The present 482 Cr.P.C. application has been filed to quash the impugned summoning order dated 21.09.2019, order dated 19.08.2023 passed by Additional District & Sessions Judge- Ist, Hapur as well as entire proceedings of Misc. Case No.261 of 2022 (Arvind Singh vs. Anil Kumar), under Section 138 Negotiable Instrument Act, PS Babugarh, District Hapur, (arising out of Criminal Complaint Case No.465 of 2020), initially numbered as Complaint Case No.2100 of 2019 (Anil Kumar vs. Arvind Singh) and also direct the revisional court to decide criminal revision preferred by applicant.
3. Learned counsel for the applicant submits that opposite party no.2 initiated proceeding under section 138 Negotiable Instrument Act against the applicant and applicant challenged the summoning order before revisional court with Section 5 Delay Condonation Application. Revisional Court by order dated 19.08.2023 rejected Application No.3 Kha Delay Condonation Application which was filed with revision. Counsel for the applicant states that delay was not intentional and should be condoned and revision should be decided on merits. Learned counsel for the applicant has placed reliance upon Apex Court judgment in ***Keki Hormusji Gharda and others vs. Mehervan Rustom Irani and another: (2009) 6 Supreme Court Cases, 475*** and has placed reliance upon Para-20 of the judgment. The same is being quoted below:-

"20. Indisputably, there might have been some delay on the part of the appellants in approaching the High Court but while adjusting equity the High Court was required to take into consideration the fact that in a case of this nature the appellants would face harassment although the allegations contained in the complaint petition even assuming to be correct were trivial in nature. The High Court furthermore has failed to take into consideration the fact that in the first information report no allegation in regard to acts of common intention or common object on the part of the appellants was made out. The appellants were not named as accused therein. It is, therefore, really difficult to appreciate as to on what basis the complaint petition was filed."

4. Learned A.G.A. has vehemently opposed the contention raised by learned counsel for the applicant.

5. In view of the Apex Court judgment, the order passed by revisional court dated 19.08.2023 passed in Delay Condonation Application is set aside with the direction to revisional court to hear the revision on merit after giving proper opportunity of hearing to opposite party no.2-informant and decide the same within a month from the date of production of certified copy of this order.,

6. The application u/s 482 Cr.P.C. is, accordingly, **disposed of.**

Order Date :- 6.11.2023

SKD