

Court No. - 86

Case :- APPLICATION U/S 482 No. - 41936 of 2023

Applicant :- Gautam Kumar

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

Counsel for Applicant :- Rajesh Kumar Pandey

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 present application under Section 482 Cr.P.C. has been filed for quashing the summoning order dated 18.8.2023 as well as entire criminal proceedings of Complaint Case No. 871 of 2023, Ka.Pa.Sa- 9920/2023 (Pintu Yadav Vs. Gautam Kumar), under Section 138 of N.I. Act, P.S.-Kotwali Nagar, District-Bulandshahr, pending in the court of Addl. Civil Judge (Junior Division)/Judicial Magistrate, Court No. 1, Bulandshahr.

3. As per the allegations made in the complaint, it is alleged that the applicant had issued a Cheque No. 764672 dated 20.4.2023 for an amount of Rs. 3,00,000/- to Opposite Party No.2, however, on presentation of the said cheque, the same was dishonoured by the bank and returned back. 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 u/s 138 of N.I. Act has been instituted against the applicant.

4. Learned Magistrate on the basis of allegation made in the complaint and after making the requisite enquiry under Sections 200 and 202 CrPC, has summoned the applicant to face trial under Section 138 of Negotiable Instrument Act vide order dated 18.8.2023.

5. Learned counsel for the applicant has submitted that cheque in question has been stolen and misused. Learned counsel for the applicant has next submitted that he had given an instruction for stop-payment of the cheque, therefore proceeding under Section 138 of N.I. Act cannot be drawn against him. It is further submitted that no due debt or liability exists against the opposite

party No. 2 for the payment of the cheque amount, therefore proceedings under Section 138 of N.I. Act can also be drawn against him.

6. Per contra, learned A.G.A. has submitted that the learned Magistrate after taking into consideration the allegations made in the complaint and the statement of the witnesses recorded under Section 200 and 202 Cr.P.C, had summoned the applicant to face trial. The disputed question of cheque been stolen and misused cannot be determined at this stage when the evidence is yet to come. Moreover, there is a legal rebuttal presumption in favour of the holder of the cheque, therefore the question whether the due debt and liability exists against the applicant can also not be determined in exercise of power u/s 482 Cr.P.C. He has next submitted that even where the payment of cheque is stopped on the instructions of the drawer, proceeding under Section 138 of N.I. Act can well be drawn against the applicant.

7. Learned AGA has further submitted that in the backdrop of the said circumstances, the impugned summoning order is just, proper and legal and do not call for any interference by this Court. There is absolutely no illegality or infirmity in the impugned order.

8. Having considered the rival submissions made by the counsel for the parties and taking into consideration that the learned Magistrate on the basis of allegation made in the complaint and the statements recorded under Sections 200 and 202 Cr.P.C, has summoned the applicant to face trial, there cannot be said to be any illegality or error in law in summoning the applicant to face trial u/s 138 of N.I. Act. The factum of cheque been stolen and misused cannot be decided at this stage when the evidence is yet to come. Moreover, in view of the settled law laid down by the Apex Court in several of its decisions, wherein it has been categorically held that even if the payment of the cheque has been stopped on the instructions of the drawer, the provisions of Section 138 of the Negotiable Instruments Act would be clearly attracted. Moreover, there is always a legal rebuttable presumption u/s 118 and 139 of the N.I. Act in favour of the holder of the cheque. In view thereof, I am of the considered opinion that the impugned order is just, proper and legal and do not call for any interference at this stage.

9. The present application u/s 482 Cr.P.C. is wholly misconceived and is accordingly dismissed.

Order Date :- 11.12.2023

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