

Court No. - 93

Case :- APPLICATION U/S 482 No. - 43748 of 2023

Applicant :- Rashi Mittal

Opposite Party :- State Of U.P.And Another

Counsel for Applicant :- Anil Kumar Mishra,Neeraj Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Bajaj,J.

Applicant-Accused through this application under Section 482 Code of Criminal Procedure is seeking the quashing of the proceedings of Complaint Case No. 13824 of 2022, titled Raj Traders through its proprietor Ram Kumar Goyal vs. Sri Banke Bihari Enterprises, under Section 138 Negotiable Instruments Act, 1881 filed by opposite party no. 2, as well as the summoning order dated 17.9.2022 passed by Judicial Magistrate/Civil Judge (J.D.)/F.T.C., Meerut.

Learned counsel for the applicant submits that as per complainant the material was supplied by him to the applicant on credit basis and to discharge the liability amounting to Rs. 3,95,000/- the subject cheque was issued by the applicant in favour of the complainant. He further submits that infact the cheque was given as security to the complainant, which has been misused by him without the consent of the applicant, therefore, the complaint is not maintainable. He has drawn the attention of the Court to the legal notice dated 16.7.2022 sent on his behalf to the complainant, wherein it is intimated that the cheque no. 00018 be returned and be not misused.

Learned counsel further pointed out that the cheque was not dishonoured on account of "insufficient funds" but on the instructions of the applicant intimating the bank to stop the payment. He prays that the impugned complaint and the impugned summoning order be set aside.

Upon hearing learned counsel for the applicant and considering his submissions, this Court finds that as

far as the instrument in question is concerned, it is not disputed that it belongs to the account maintained by the applicant in the bank and the same was dishonoured on 13.7.2022 by the bank with remarks "insufficient funds". Thus the stand of the applicant that he had sent a legal notice to the complainant cannot be attached any credibility, which was issued three days after the dishonour of the cheque. Besides the cheque in question carries a presumption that it was issued towards discharge of the liability and the issues and grounds raised by the applicant are required to be proved by way of defence evidence.

Thus, this Court is not inclined to exercise the inherent powers under Section 482 Code of Criminal Procedure as the impugned order passed by the trial court is based upon proper appreciation of material on record and with the observation that the complainant has *prima-facie* made out a case for issuance of process.

Consequently, without expressing any opinion on the merits of the case, the petition is dismissed.

Order Date :- 6.12.2023

Faridul