

Court No. - 92

Case :- APPLICATION U/S 482 No. - 42072 of 2023

Applicant :- M/S Dynamic Aura Llp And 4 Others

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

Counsel for Applicant :- Shambhavi Nandan

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Shambhavi Nandan, learned counsel for the applicants and Sri Pankaj Srivastava, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the summoning/cognizance order dated 17.01.2023 in Complaint Case No. 16191 of 2022 u/S 138 of Negotiable Instrument Act (hereinafter referred as '*the N.I. Act*'), P.S.- Sector 20, District- Noida, Gautam Buddh Nagar, pending in the court of learned Additional Chief Judicial Magistrate-II, Gautam Buddh Nagar.

3. Learned counsel for the applicants submits that as per the agreement dated 02.02.2021, two post-dated cheques were issued by the applicants in favour of the opposite party no.2, in terms of the agreement dated 02.02.2021. Subsequently, the opposite party no.2 has presented it for encashment which were dishonored for the reason "*Account Closed*". Thereafter, a demand notice was made by the opposite party no.2 and despite that when no payment was made in pursuance of the demand notice, a complaint u/S 138 of the N.I. Act, has been filed against the applicants herein and the Additional Chief Judicial Magistrate- II, Gautam Buddh Nagar, vide order dated 17.01.2023, after recording the statements of witnesses u/S 200 and 202 Cr.P.C., having found the prima facie case made out against the applicants, has summoned the applicants herein for trial. Applicants herein have challenged the said order dated 17.01.2023, by way of instant application.

4. Learned counsel for the applicants further submits that in similar situation, the Co-ordinate Bench of this Court, on the submissions made by the applicants with regard to the applicability of Section 87 of the N.I. Act, has issued notice in the matter and granted interim protection for the other cheque issued by the applicants in favour of the opposite party no.2, in Application u/S 482 No. 42079 of 2023 (M/S Dynamic Aura

Llp and 4 Ors. vs. State of U.P. and Another). Learned counsel for the applicants has also relied upon the judgment of Bombay High Court in ***M/s Pinak Bharat and Company vs. Shri Anil Ramrao Naik (Criminal Appeal No. 1630 of 2011) decided on 02.12.2022***, whereupon he submits that at the time of execution of the agreement between the parties, the applicants have given the undated cheques and not the post-dated cheques. Therefore, the opposite party no.2, by putting a date and amount on the said cheques, has presented the said cheques without the consent of the applicants herein. Therefore, the said alteration by the opposite party no.2 without the consent of the applicants is hit by Section 87 of the N.I. Act. Therefore, he has prayed for quashing of the summoning order dated 17.01.2023 as well as the entire proceedings of the Complaint Case No. 16191 of 2022.

5. Per contra, learned A.G.A. for the State submits that from the perusal of the agreement dated 02.02.2021, it is apparent that the applicants have issued the cheques in question as the post dated cheques in terms of Annexure '2' to the said agreement and from the agreement it is not apparent that the said cheques were undated cheques, rather, it were the post-dated cheques. Learned A.G.A. for the State further submits that Para '8' of the complaint u/S 138 of the N.I. Act, filed by the opposite party no.2, it has been categorically stated by the opposite party no.2 that the said cheques were presented after taking consent of the applicants herein and despite the said consent granted by the applicants the said cheques were presented and the cheques have been dishonored for the reason "*Account Closed*". Therefore, the reason for dishonor of cheques being "*Account Closed*", categorically disclose the dishonest intentions of the applicants. Learned A.G.A., further submits in view of the presumption u/S 139 of the N.I. Act, it is to be presumed that the holder of the cheques in due course has received the cheques for legally existing liability and all the ingredients of Section 138 of the N.I. Act, are fulfilled. Therefore, prima facie case has been found by the learned Magistrate and the summons have been issued against the applicants. Learned A.G.A. for the State further submits that the submissions, which are made by learned counsel for the applicants, are the defences of the applicants, which can be very well taken by the applicants during the trial. In view thereof, learned A.G.A for the State has prayed for dismissal of the instant application.

6. At this stage, learned counsel for the applicants seeks to withdraw the instant application.

7. The instant application is ***dismissed as withdrawn*** with liberty to the applicants to raise all his defences during the trial,

in accordance with law.

Order Date :- 1.12.2023
Shubham Arya