

**Court No. - 91**

**Case :-** APPLICATION U/S 482 No. - 42300 of 2023

**Applicant :-** Smt. Neha Sarswat

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

**Counsel for Applicant :-** Ramesh Chandra Upadhyay

**Counsel for Opposite Party :-** G.A.

**Hon'ble Gajendra Kumar,J.**

1. Heard learned counsel for the applicant and learned AGA for the State.
2. The present application u/s 482 Cr.P.C. has been filed by the applicant with the prayer to quash the impugned order dated 20.10.2023 and order dated 27.10.2018 as well as the entire proceeding of Complaint Case No.2106 of 2018, under Sections 138 of N.I. Act, P.S. Malpura, District Agra.
3. Learned counsel for the applicant submits that in compliance of the direction given vide order dated 09.04.2019, an application was moved before the trial court, which was decided in a mechanical way without application of mind vide order dated 20.10.2023. Further submission is that the direction given in the order dated 09.04.2019 for specific as to the criminal liability whether the applicant cannot be summoned only for the reason that she is wife of Praveen Kumar Sarswat as the cheque issued is regarding the joint account but was not signed by the applicant but this point has not been considered by the trial court and the order has been passed in a mechanical way. Further submission is that initiation and continuation of the aforesaid proceeding is nothing but an abuse of process of court.
4. On the other hand, learned AGA has opposed the prayer but could not dispute the aforesaid fact.
5. The co-ordinate Bench of this Court vide order dated 09.04.2019, passed the following order:-

*"Heard learned counsel for the applicant and learned A.G.A. for the State.*

*This application under Section 482 Cr.P.C. has been filed for quashment of the*

*impugned order dated 27.10.2018 passed by the Addl. Judicial Magistrate, 3rd Agra in Complaint Case No. 2106 of 2018, under Section 138 N.I. Act, Mukesh Pachauri vs. Praveen Kumar Sarawat and another, P.S. Malpura, District-Agra pending in the Court of Additional Judicial Magistrate, 3rd Agra.*

*Contention is that the Praveen Kumar Sarawat- husband of the applicant has issued the cheque in question to the tune of Rs.6,20,000/- in favour of the respondent no.2 and the applicant has done nothing and the entire summoning order dated 27.10.2018 is silent about the complicity and role of the applicant in the episode necessitating her involvement in the case.*

*In such type of cases, the Hon'ble Apex Court has laid down the law that the drawer of the cheque alone should normally be prosecuted as has been averred under Paragraph no. 22 of the judgment of Hon'ble Apex Court in case of Mrs. Aparna A. Shah v. M/s. Sheth Developers Pvt. Ltd. and Anr. reported in AIR 2013 SUPREME COURT 3210.*

*He also read out para 22 of the aforesaid judgment, which is extracted as herein below:-*

*"In the light of the above discussion, we hold that under Section 138 of the Act, it is only the drawer of the cheque who can be prosecuted. In the case on hand, admittedly, the appellant is not a drawer of the cheque and she has not signed the same. A copy of the cheque was brought to our notice, though it contains name of the appellant and her husband, the fact remains that her husband alone put his signature. In addition to the same, a bare reading of the complaint as also the affidavit of examination-in-chief of the complainant and a bare look at the cheque would show that the appellant has not signed the cheque."*

*The case of the applicant appears to be genuine, if there is no any other material against the applicant then the proceeding against Smt. Neha Sarawat ipso-facto cannot go on merely on account of her being wife of Praveen Kumar Sarawat, the drawer of the cheque in question. However proceeding against Praveen Kumar Sarawat may go on but the proceeding under Smt. Neha Sarawat cannot be allowed to proceed further from this stage onward unless and until specific involvement and role of the applicant is not established. She being wife of Praveen Kumar Sarawat*

*cannot be prosecuted as such, if she has not played any role in the issuance of cheque and she is not the drawer of the cheque.*

*Applicant is expected to appear before the court below within 30 days from today and in case she appears, she may move appropriate application before the court below pursuant to the observations made in the body of this order and the court below is to take notice of the same and dispose of the application after affording opportunity of hearing to respondent no.2 at the earliest.*

*Till disposal no coercive proceeding shall be taken against Smt. Neha Sarawat- wife of Praveen Kumar Sarawat.*

*However, case against Praveen Kumar Sarawat in the meanwhile may go on.*

*With the above direction, the instant application under Section 482 Cr.P.C. is disposed of."*

6. In pursuance of the aforesaid order, the applicant moved an application before the court, which was decided vide order dated 20.10.2023.

7. From the perusal of impugned order, it is apparent that the same has not been passed in compliance of the direction in the order by the court dated 09.04.2019.

8. Keeping in view the entire facts and circumstances of the case and the manner in which proceeding carried out by the trial court, it is apparent that the order is passed without application of mind and against the principles of law, which is not sustainable in the eye of law and the impugned order is set aside with the direction to the court concerned to decide the matter afresh within a period of two months. For a period of two months from today, no coercive action shall be taken against the applicant.

9. In view of the such facts, the impugned order dated 20.10.2023 is here by set aside.

10. Accordingly, the instant application stands **disposed off**.

**Order Date :- 20.11.2023//Sanjeet**