

Court No. - 46

Case :- CRIMINAL MISC. WRIT PETITION No. - 18283 of 2023

Petitioner :- Ravi Kumar

Respondent :- State of U.P. and Another

Counsel for Petitioner :- In Person

Counsel for Respondent :- G.A.

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Syed Aftab Husain Rizvi,J.

1. This writ petition has been filed with the prayer to quash the Complaint Case No.374 of 2022 under Section 138 N.I. Act, Police Station-Sector 20 NOIDA, District-Gautam Buddh Nagar.

2. Record reveals that an application under Section 482 Cr.P.C. No.40811 of 2023 filed with the same prayer has already been dismissed by learned Single Judge of this Court on 6.11.2023 vide following orders:

"1. Heard applicant in person and learned AGA for the State.

2. The present 482 Cr.P.C. application has been filed to quash the impugned order dated 28.09.2023 as well as entire proceeding of Complaint Case No.374 of 2022 (Shivani vs. Rami Kumar), under section 138 Negotiable Instrument Act, Police Station Sector 20 Noida, District Gautam Buddh Nagar, pending before the court of Special Judicial Magistrate, Gautam Buddh Nagar.

3. Applicant is accused in the proceeding under section 138 Negotiable Instrument Act. Applicant has challenged the order dated 28.09.2023 by which the trial court has issued non-bailable warrant as well as proceeding under sections 82 & 83 Cr.P.C. against the applicant. Applicant submits that prosecution witness-Manager of State Bank of India was examined and General Manager, State Bank of India has produced record of the Bank from 01.02.2019 to 20.05.2019 whereas the dispute is in regard of the year 2017 and statement of the Bank Manager as well as evidence produced by the Bank Manager has no concerned with the present dispute. He next submitted that all the proceeding against the applicant is abuse of the process of the Court and Section 138 Negotiable Instrument Act cannot be proceeded against the applicant.

4. Per contra, learned A.G.A. vehemently opposed the contention of the applicant and submitted that all the submission raised by applicant are disputed question of fact and non-bailable warrant as well as Sections 82 & 83 Cr.P.C. proceedings has been issued against the applicant.

5. Considered the arguments raised by the applicant and perused the entire record. From perusal the record, it is apparent that applicant earlier approached this Hon'ble Court by way of Application u/s 482 No.7469 of 2023 and Hon'ble Court by order dated 28.02.2023 observed that the case is at the stage of recording statement of the accused under section 313 Cr.P.C. Applicant deliberately did not appear before the court below and moved an exemption application, which was rejected by the trial court and bailable warrant has been issued against the applicant.

6. In view of the above, as well as, applicant has not appeared before trial court, non-bailable warrant has been issued and proceeding u/s 82 & 83 Cr.P.C. has been started, this Court does not find any ground to interfere at this stage. The present 482 application is dismissed with the aforesaid observation."

3. The prayer made in the writ petition to direct retrial after the petitioner's bail is considered or to direct the trial to be conducted by the High Court itself is wholly misconceived.

4. The petition is, accordingly, dismissed.

Order Date :- 7.12.2023

LN Tripathi