

Court No. - 93

Case :- APPLICATION U/S 482 No. - 43625 of 2023

Applicant :- Vinod Kumar

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

Counsel for Applicant :- Deepak Kumar Jaiswal

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Bajaj,J.

Applicant being accused has approached this Court through this application under Section 482 Code of Criminal Procedure seeking quashing of the Complaint Case No.425 of 2018, titled P.K. Tour & Travels Vs. Vinod Kumar, pending in the court of Special Judicial Magistrate, Mainpuri, under Section 138 of Negotiable Instruments Act, 1881, Police Station Kotwali, District Mainpuri, as well as the summoning order dated 26.07.2018 and proceedings arising out of it including the issuance of non-bailable warrants issued by the trial court to secure his presence.

Learned counsel submits that indeed the cheque in question was given by the applicant to the complainant but the same was not given for discharging any liability and was only a security against a financial help which was to be received from the complainant. He submits that the complainant did not advance any loan to the accused, but he presented the cheque for clearance and upon dishonour, the impugned complaint has

been filed. He submits that the impugned complaint is misuse of the process of law as the complainant has betrayed the trust of his friend.

Learned counsel next submits that there is material discrepancy in claim set up by the complainant as according to him the cheque amount was a liability incurred by the accused for having utilized the taxi provided by complainant over a period of two years but while referring to the statutory notice it is pointed out that this amount was accumulated within a period of three years. Learned counsel prays that the prosecution launched by him may be quashed, in the interest of justice.

During the course of hearing, it is not disputed by the learned counsel that the statutory notice issued by the complainant was responded to by filing a reply dated 28th February, 2018, wherein the applicant specifically mentioned that the Cheque Number 856862 dated 3rd February, 2018 was given to the complainant as security. However, according to learned counsel the cheque was presented by the complainant on the same date and while handing over the cheque, the loan as agreed by complainant, was not given to the accused.

After hearing the learned counsel and considering his submissions, this Court finds that the entire case instituted by the accused is based upon his defence. Since the instrument in question which is the subject

of this complaint carries a presumption that the cheque was issued by the accused towards discharge of his liability, therefore, the ground set up by the accused seeking quashing of the impugned complaint and the proceedings cannot be appreciated in the absence of any evidence on record.

Further, it would not be appropriate for this Court to comment upon the defence set up by the accused as complainant is yet to be cross- examined. Therefore, this Court does not find it to be a fit case for exercise of inherent powers under Section 482 Cr.P.C.

At this stage, learned counsel submits that alternatively the applicant be granted concession of bail as the Court has issued non- bailable warrants against him to secure his presence.

Upon considering the second submission, this Court does not find any reason to entertain it in the absence of any effort by the applicant to join the proceedings pending before the trial court for a long time after issuance of process on 26th July, 2018. The applicant is diligent enough to respond to the statutory notice by complainant, therefore, it cannot be believed that he did not acquire the knowledge of the pendency of the complaint and the issuance of summons by the trial court time and again. Since he failed to appear, so in these compelling circumstances non- bailable warrants were issued

against him. Even if, it is assumed that he was prevented by sufficient reason or was not aware of it, alternatively he can raise this issue before the trial court.

This application is dismissed.

Order Date :- 29.11.2023

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