

**Court No. - 93**

**Case :-** APPLICATION U/S 482 No. - 43715 of 2023

**Applicant :-** Jasvinder

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

**Counsel for Applicant :-** Dheeraj Kumar Tiwari

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

**Hon'ble Manoj Bajaj,J.**

Applicant has approached this Court through this application under Section 482 Code of Criminal Procedure for quashing of the complaint case number 3309 of 2021, titled Praveen Kumar Vs. Jasvinder, under Section 138 Negotiable Instrument Act, 1881, Police Station- Narsena, District Bulandshahr as well as the summoning order dated 27.05.2022, passed by Additional Chief Judicial Magistrate, court no.1, Bulandshahr.

Learned counsel for the applicant submits that the impugned complaint was filed on 08.11.2021, wherein the process against the applicant was issued on 27.05.2022 and this complaint has been filed after registration of the first information report bearing case crime number 298 of 2021, under Sections 323, 504, 506, 406 I.P.C. and 66D of I.T. Act, Police Station Narsena, District Bulandshahr which was lodged by the brother of the complainant against applicant and his brothers. He submits that in the said case the applicant is on bail and the first information report contains the allegation of cheating

by the accused persons who caused wrongful loss to the milk vendors. According to him, if the accused is already facing prosecution in the case, there is no question of issuing the cheque to the opposite party no.2, therefore, the impugned complaint and the summoning order is nothing but abuse of the process of law. He prays that the complaint case and the summoning order be quashed in the interest of justice.

After hearing the learned counsel and considering his submissions, this Court finds that the trial court after considering the complaint and pre summoning evidence passed the order issuing process against the accused and there is nothing to indicate that the said order is not based upon the proper appreciation of the statutory requirement contemplated under Section 138 Negotiable Instrument Act, 1881. Merely because first information report case is pending against the accused and his brother on the basis of the complaint filed by the brother of the opposite party no.2 relating to the wrongful gain allegedly made by the applicant, it cannot be said that the present complaint is an abuse of the process of law. The arguments advanced at best is the defence of the accused and in the absence of any evidence, the said defence in the form of pleadings, cannot be accepted.

Thus, without meaning any expression of opinion on the merits of this case, this Court is not inclined to

exercise the inherent powers under Section 482 Code of Criminal Procedure. However, it shall be open for the applicant accused to raise all these grounds at an appropriate stage before the trial court.

Resultantly, this application is dismissed.

**Order Date :- 30.11.2023**

Raj