

Court No. - 83

Case :- APPLICATION U/S 483 No. - 1495 of 2023

Applicant :- Gyan Prakash Yadav

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

Counsel for Applicant :- Akhila Nand Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Surendra Singh-I,J.

1. Heard Shri Akhila Nand Pandey, learned counsel for the applicant, learned A.G.A. for the State and perused the material available on record.

2. The applicant has filed this application under Section 483 Cr.P.C. seeking a direction to the court concerned to decide the Complaint Case No. 2081 of 2021, (Gyan Prakash Yadav Vs. Rakesh Kumar Yadav) under Section 138 N.I. Act, pending before the Additional Chief Judicial Magistrate, Court No. 10, Azamgarh expeditiously.

3. From perusal of the order sheet, it transpires that the complainant has instituted the case on 29.07.2021. The trial court vide order dated 9.03.2022 has summoned the Rakesh Kumar Yadav, opposite party no. 2 to face the trial under Section 138 Negotiable Instruments Act. On several occasions opposite party no. 2 did not turn up, therefore, on 12.07.2022 bailable warrant was issued against him. The accused Rakesh Kumar surrendered before the trial court on 20.09.2022, and, on being moved application for bail, he was released on bail.

4. It is submitted that the statement chart of the accused was recorded and the case is pending for complainant evidence since 20.12.2022. More than 2 years and 3 months lapsed and the trial under section 138 N.I. Act has not been concluded.

5. Looking to the nature of the order that this Court proposes to pass, issue of notice to opposite party No. 2 is being dispensed with inasmuch as rights of parties are not being determined here in any manner.

6. It appears that the trial of the case is not progressing with the speed as mandated by Section 143 (2) and (3) of the Negotiable Instruments Act, 1881. The proceedings under Section 138 N.I. Act are summary remedy in aid of commercial transactions. The

purpose of the remedy is to provide expeditious realization of the proceeds of a cheque that is dishonored. In its nature, it ought to be dealt with swiftly. The court should be vigilant to preclude adjournment of the case on flimsy grounds.

7. The provisions of Section 143 (2) and (3) of the Negotiable Instruments Act, 1881 provides for expeditious disposal of case which are as follows :

143. Power of Court to try cases summarily-

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

8. The Apex Court in "**Re: Expeditious Trial of Cases under Section 138 N.I. Act, 1881**" **Suo Motu Writ Petition (Crl.) No. 02 of 2020** has issued guidelines to the Magistrate for expeditious disposal of cases under Section 138 N.I. Act, 1881.

9. Considering the facts and circumstances of the case and the aforesaid provisions of Section 143 (2) and (3) of the Negotiable Instruments Act, 1881, the guidelines of the Apex Court in the aforesaid case, the Additional Chief Judicial Magistrate, Court No. 10, Azamgarh is directed to decide the aforesaid complaint case expeditiously, preferably within a period of five months without granting unnecessary adjournments to either of the parties, if there is no legal impediment.

10. In view of the aforesaid directions, the application is **disposed of**.

11. It is made clear that anything said in this order shall not affect the rights of both parties either way and the trial court shall be free to decide the complaint in accordance with law and the evidence led by parties unaffected by anything said in this order.

Order Date :- 7.12.2023
SFH