

Court No. - 93

Case :- APPLICATION U/S 482 No. - 44922 of 2023

Applicant :- Mange Ram

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

Counsel for Applicant :- Moeez Uddin

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Bajaj,J.

Petitioner being accused in Complaint Case bearing Number 5326 of 2022, titled Satish Kumar versus Mange Ram, Police Station- Surajpur, District- Gautam Buddha Nagar has filed this application under Section 482 Cr.P.C. for quashing of the complaint dated 04.11.2022, under Section 138 of Negotiable Instruments Act, 1881 as well as the summoning order dated 21.04.2023 passed by Additional, court no.1, Gautam Buddha Nagar.

Learned counsel refers to the impugned complaint brought by opposite party no.2 under Section 138 of Negotiable Instruments Act, 1881 to point out that according to complainant himself the subject instrument was dishonoured on 20th December, 2020 and the notice of demand was issued on 20th January 2021, & finally the complaint was instituted on 04th November, 2022 which is much beyond the prescribed period under Section 142(1)(b), but ignoring the same the court has issued the process against the accused in a mechanical manner. He prays that the impugned order be set aside.

After hearing the learned counsel this Court upon perusal of the impugned order dated 21st April, 2023 finds that the trial court has not at all examined the material on record carefully as the relevant dates relating to the issuance of cheque, dishonour and notice of demand etc. including the filing of the complaint have not been noticed. Time and again the High Courts and the Hon'ble Supreme Court have reminded that issuance of process against an

accused is a serious issue and at that stage the Magistrate is required to look into the material to ascertain that the complainant has made out a prima facie case for issuance of the process.

Reference in this regard can be made to S.W. Palanitkar and others versus State of Bihar and another, (2002) 1 Supreme Court Cases 241. The relevant observations read as under:

"23. Many a times, complaints are filed under Section 200 Cr.P.C. by the parties with an oblique motive or for collateral purposes to harass, to wreck vengeance, pressurize the accused to bring them to their own terms or to enforce the obligations arising out of breach of contract touching commercial transactions instead of approaching civil courts with a view to realize money at the earliest. It is also to be kept in mind that when parties commit a wrongful act constituting a criminal offence satisfying necessary ingredients of an offence, they cannot be allowed to walk away with an impression that no action could be taken against them on criminal side. A wrongful or illegal act such as criminal breach of trust, misappropriation, cheating or defamation may give rise to action both on civil as well as on criminal side when it is clear from the complaint and sworn statements that necessary ingredients of constituting an offence are made out. May be parties are entitled to proceed on civil side only in a given situation in the absence of an act constituting an offence but not to proceed against the accused in a criminal prosecution. Hence before issuing a process a Magistrate has to essentially keep in mind the scheme contained in the provisions of Section 200-203 of Cr.P.C. keeping in mind the position of law stated above and pass an order judiciously and not mechanically or in routine manner."

Considering the above background, the nature of the offence and the order which is being passed this Court is not inclined to issue any notice to the complainant as the order would not result in any prejudice to him.

In view of the above, this Court has no hesitation in holding that the impugned order is not sustainable being non speaking, therefore, the impugned summoning order dated 21.04.2023 passed by presiding officer Additional Court no.1, Gautam Buddh Nagar in Complaint Case Number 5326 of 2022 dated 04.11.2022, titled Satish Kumar versus

Mange Ram, Police Station- Surajpur, District- Gautam Buddh Nagar is set aside and the case is remanded back to the trial court to pass a reasoned and speaking order in accordance with law.

This application is allowed.

Order Date :- 8.12.2023

A Gautam