

Court No. - 11

Case :- APPLICATION U/S 482 No. - 8216 of 2022

Applicant :- Gyanendra Jaiswal

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.
And Another

Counsel for Applicant :- Upendra Prakash Pathak

Counsel for Opposite Party :- G.A.,Dileep Kumar Yadav

Hon'ble Saurabh Lavania,J.

Heard learned counsel for the applicant and learned A.G.A.

Despite the name of the counsel of opposite party No.2-M/s Rajput Engineering Works shown in the cause list, no one appeared to oppose the present application.

The present application under Section 482 CrPC of Code of Criminal Procedure (in short "CrPC) has been preferred seeking following reliefs:-

"Wherefore, it is most respectfully prayed that this Hon'ble Court may become pleased to prevent the abuse of process of law and secure the ends of justice.

It is further prayed that this Hon'ble Court may become pleased to quash the summoning order dated 05.10.2018, (annexure no.1) and B.W. Order dated 08.06.2022 (annexure no.2) and also quash the entire proceeding of the Complaint Case No. 122 of 2018 lodged Under Section 138 of N.I.Act, Police Station- Kotwali Nagar, District-Barabanki (Ms. Rajput Engineering Vs Durga Krishi Yanta, Gyanendra Jaiswal) pending in the court of Learned Additional Chief Judicial Magistrate court no.11, Barabanki.

And also prays to stay the entire proceeding of the Complaint Case No. 122 of 2018 lodged Under Section- 138 of N.I.Act, Police Station- Kotwali Nagar, District-Barabanki (Ms. Rajput Engineering Vs Durga Krishi Yanta, Gyanendra Jaiswal) pending in the court of Learned Additional Chief Judicial Magistrate court no.11, Barabanki, during pendency of this petition."

The relief as quoted above indicates that the applicant has prayed for quashing of summoning order dated 05.10.2018 as also the entire proceedings of Complaint Case No.122 of 2018, (M/s. Rajput Engineering vs. Durga Krishi Yantra, Gyanendra Jaiswal), under Section 138 of Negotiable Instruments Act (in short "NI Act"), Police Station-Kotwali Nagar, District-Barabanki.

The prayer aforesaid has been sought mainly on the grounds to the effect that:-

(i) The applicant is not a signatory/ drawer of the cheque in issue.

(ii) The applicant is not the proprietor of the firm namely, M/s. Durga Krishi Yantra.

(iii) In fact, Shashwat Jaiswal is the proprietor of the firm namely, M/s. Durga Krishi Yantra and he is the signatory/drawer of the cheque in issue.

In support of aforesaid, the reference has been made to the annexure No.4, (a copy of registration certificate of the firm namely M/s. Durga Krishi Yantra issued under Rule 10 of G.S.T. Rules), wherefrom it is apparent that M/s Durga Krishi Yantra is a proprietorship firm and proprietor is one Shashwat Jaiswal, and annexure No.5 (copy of cheque in issue), which indicates the drawer of the cheque is Shaswat Jaiswal and also to relevant paras of the present application, which are extracted hereinunder:-

"8. That it is relevant to mention here that the Learned Court of Additional Chief Judicial Magistrate court no.11, Barabanki has considered the version of the petitioner and issued summons without considering this fact that the neither the petitioner is the proprietor of the Firm Durga Krishi Yantra and nor he has issued any cheque to the opposite party no.2 and it is also relevant to mention that the learned court has also not perused the copy of the cheque annexed with memo of complaint in which the signature of the present applicant is not available and from the plain reading it shows that the same was signed by Shaswat Jaiswal even then the Learned Court of Additonal Chief Judicial Magistrate court no.11, Barabanki has issued summons against the petitioner.

9. That it is further necessary to submit here that the petitioner is neither the proprietor of the Firm Durga Krishi Yantra and nor he has issued any cheque to the opposite party no. 2 and for perusal of this court the petitioner has obtained the copy of the Firm Registration Certificate under the GST Scheme and which clearly shows that the Firm named as M/s Durga Krishi Yantra is belongs to Shaswat Jaiswal and the petitioner is not the proprietor of the said firm. The Photo copy of the Firm Registration Certificate is being annexed herewith as Annexure no. 4 to this petition.

10. That it is also necessary to submit here that the learned court has also not perused the copy of the cheque annexed with memo of complaint the cheque is issued by Punjab National Bank and cheque No. is 067089 which is same as averred in para-3 of the memo of complaint and on the cheque at the place of issuer the signature of the present applicant is not available and from the plain reading it shows that the same was signed by Shaswat Jaiswal. The Photo copy of the cheque dated 25.11.2017 and bank slip is being annexed herewith as Annexure no. 5 to this petition.

11. That in this case the Learned court of Additonal Chief Judicial Magistrate court no.11, Barabanki without appreciating this fact that, the petitioner/applicant has no concern with the alleged Firm and cheque issued in favour of the opposite party no.2 was not issued by the petitioner even then the present illegal summoning order was passed."

Taking note of the aforesaid aspect of the case, this Court protected the interest of the applicant vide order dated 16.11.2022 and directed to issue notice to opposite party No.2-M/s. Rajput Engineering Works.

In response, counter affidavit sworn in by one Jaspal Singh, proprietor of the firm-Rajput Engineering Works has been filed.

From a perusal of the counter affidavit filed by the opposite party no.2 indicates that the averments made in the above quoted paras of the present application under Section 482 have not been denied specifically, as required under the law, as would appear from paras 14 to 19 of the counter affidavit, which are extracted hereinunder:-

"14. That in reply to the contents of para-4, 5 & 6 of petition, it is submitted that the petitioner used to purchase the goods from the firm of opposite party no.2 while the petitioner is father of Shaswat Jaiswal, who used to make business transaction showing him the proprietor of said firm M/s Durga Krishi Yantra, believing him on the clearance of earlier cheques and cash amount against earlier purchase the opposite party no.2 could not verify that as he used to say that he is also proprietor of said firm. More so the opposite party no. 2 is father of cheque drawer / Shaswat Jaiwal which has been totally suppressed by the petitioner.

It is also necessary to mention here that the petitioner has committed forgery and usurped the cheque amount which is against the law and is liable to be punished.

15. That the contents of para-7 of petition is highly false, incorrect hence denied. In reply thereto the legal notice was served.

16. That the contents of para-8 & 9 of petition is false, wrong and incorrect as stated hence denied. In reply thereto, it is submitted that the petitioner has committed the fraud with the opposite party no.2 now he is trying from judicial proceedings.

17. That in reply to the contents of para-10, 11 & 12 of petition, it is submitted that the cheque has been given by the petitioner but due to incompetency and believing the opposite party no.2 has not made the party to Shaswat Jaiswal who is father of petitioner, therefore the petitioner is liable to be punished rather than it was a case for non payment but now it has been noted as fraud and forgery warrants to section- 406, 419, 420, 467, 468 & 471 I.P.C. and other sections.

18. That the contents of para-13 to 15 of petition is false, wrong and incorrect as stated hence denied. In reply thereto, it is submitted that the petitioner has committed the fraud with the opposite party no.2 now he is

trying from judicial proceedings.

19. That in reply to the contents of para-16 to 19, it is submitted that the petitioner has also committed the fraud and forgery with the opposite party no.2 as he was in connection of business transaction with the name of Shaswat Jaiswal who is son of petitioner."

Thus, the undisputed facts are that the applicant is neither the owner/proprietor of the firm namely Ms. Durga Krishi Yanta nor the signatory/drawer of the cheque in issue.

Considering the undisputed facts as also the observations made by the Hon'ble Apex Court in the judgment dated 01.08.2022 passed in **SLP (Crl.) No.10396 of 2019 (Sunita Palita and others vs. M/s Panchami Stone Quarry)** and the judgment dated 01.07.2013 passed in **Criminal Appeal No.813 of 2023 (Mrs. Aparna A. Shah vs. M/s Sheth Developers Pvt. Ltd and another)**, this Court finds that indulgence in the matter is required.

Accordingly, the application is **allowed**. The summoning order dated 05.10.2018 as well as B.W. Order dated 08.06.2022 as also the entire proceeding of the Complaint Case No. 122 of 2018 lodged Under Section 138 of N.I.Act, Police Station- Kotwali Nagar, District-Barabanki (Ms. Rajput Engineering Vs Durga Krishi Yanta, Gyanendra Jaiswal) pending in the court of Learned Additional Chief Judicial Magistrate court no.11, Barabanki are hereby quashed.

Order Date :- 21.11.2023

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