

Court No. - 12

Case :- APPLICATION U/S 482 No. - 9863 of 2023

Applicant :- Vijay Kumar Mishra

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

Counsel for Applicant :- S.P. Singh Somvanshi, Shailesh
Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh, J.

1. Heard learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.

2. The present application has been filed for quashing the summoning order dated 15.09.2022 as well as proceeding in Case No.9784 of 2019 pending before learned Additional Court No.9, Civil Court, Lucknow by which concerned court summoned the applicants U/s 138 of Negotiable Instruments Act, 1881.

3. Learned counsel for the applicant submits that applicant and private respondent are business partners. He further submits that a sum of Rs.58,50,000/- was given to private respondent by applicant in different modes of payment on different dates i.e. 04.10.2016, 22.08.2016, 05.11.2016, 30.01.2016. It is further submitted that private respondent gave assurance to applicant that he would return the aforesaid amount and also asked the account number of applicant. It is further submitted that bonafidely, applicant provided private respondent one cheque in question from his cheque book. In this connection, after filing amount of Rs.36 lakhs in favour of private respondent, the cheque was presented in the bank which was dishonoured with the endorsement 'referred to drawer'. It is further submitted that complaint in question was filed after two days of delay.

4. Learned counsel for the applicant relies on the decisions of Hon'ble Apex Court in the following cases:-

"(i) *Dashrathbhai Trikambhai Patel vs. Hitesh Mahendrabhai Patel & another* reported in (2023) 1 SCC 578,

(ii) *Vijay vs. Laxman and another* reported in (2013) *LawSuit(SC)* 124 and

(iii) *M.P. Ramani vs. State of Kerala and another* reported in (2022) LawSuit (SC) 944.

5. Submission of learned counsel for the applicant is that the signatures were examined by experts and the report of experts dated 21.09.2023 in relation to the cheque in question does not belong to applicant. It is, thus, submitted that indulgence of this Court is necessary.

6. Learned A.G.A. opposes the prayer of applicant and submits that all these points can be raised before trial court and defense cannot be considered at this stage.

7. Considering the submissions of learned counsel for the applicant, learned A.G.A. and going through the contents of application as well as other relevant documents; it is evident that there is a dispute on the cheque in question regarding the signature but at the time of dishonouring the said cheque, the bank has not reported that the signature on the cheque is not matching with the signature of account holder and rest of the arguments raised before this Court can also be raised before trial court.

8. After passing the above order, learned counsel for the applicant submits that opportunity may be given for moving objection application through counsel before trial court.

9. Accordingly, the present application is **disposed of** with the direction that in case, applicant files objection through counsel before trial court within four weeks from today then the same shall be considered and decided in accordance with law by a reasoned and speaking order.

10. Till the disposal of above-mentioned objection, no coercive steps be taken against the applicant.

Order Date :- 12.10.2023

Arpan