

Court No. - 12

Case :- APPLICATION U/S 482 No. - 11127 of 2023

Applicant :- Ashish Kumar Shah

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

Counsel for Applicant :- Vivek Tiwari, Ravi Patel, Vivek Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. Present application has been moved by the applicants for quashing the order dated 04.07.2023 passed by A.D.J.-VI, Lucknow in Criminal Appeal No.158/2017 under Section 138 of N.I. Act.
3. Learned counsel for the applicant submitted that on the basis of incorrect facts, complaint was filed under Section 138 of N.I. Act and without proper appreciation, conviction order was passed on 23.05.2017 which was challenged before the Appellate Court as the appeal was admitted but applicant's counsel failed to appear before the trial court, as a result, non-bailable warrant was issued, and thereafter, application for recall was filed but the same was also dismissed for want of prosecution. He further submitted that due to fault of counsel, applicant may not be victimized. He further submitted that applicant is ready to cooperate in the proceeding pending before the Appellate Court and he is also ready to furnish personal bond as well as sureties, therefore, kind indulgence of this Court is necessary.
4. Learned A.G.A. opposed the prayer of applicant and submitted that as the applicant was not cooperating the proceedings as the appeal was being listed for final hearing, as a result, non-bailable warrant was issued, therefore, application is liable to be dismissed.
5. Considering the submissions of learned counsel for the parties, going through the contents of application, as well as other relevant documents, as it is evident from the record that the appeal was admitted by the Appellate Court but due to fault of applicant's counsel, non-bailable warrant was issued, thereafter, application for recall was moved but the same was also dismissed for want of prosecution, as it is well settled by

this Court as well as by Hon'ble Apex Court that due to fault of counsel, his client should not be victimized, therefore, the present application is **disposed of** and impugned order dated 04.07.2023 passed by A.D.J.-VI, Lucknow in Criminal Appeal No.158/2017 under Section 138 of N.I. Act is hereby **set aside**.

6. Trial court is directed to decide the application for recall of the non-bailable warrant, sympathetically within a period of one month from the date of production of certified copy of this order.

7. Till the disposal of aforesaid recall application, no coercive steps shall be taken against the applicant.

Order Date :- 9.11.2023

V. Sinha