

Court No. - 15

Case :- APPLICATION U/S 482 No. - 12042 of 2023

Applicant :- Shiv Nath Singh

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Govt. Civil Sectr. Lko. And 3 Others

Counsel for Applicant :- Anil Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed,J.

1. List of the fresh cases has been revised.
2. No one has put in appearance for the opp. party No. 4.
3. This application has been filed for quashing of the complain-case moved by the opposite party No. 4, being registered as Complaint Case No. 10 of 2019 under Section 138, Negotiable Instrument Act, 1881, P.S. Lalganj, District Raebareli, and also the summoning order dated 2.8.2019 issued by the Addl. Chief Judicial Magistrate in the said case, by which it has been directed by the Court below that if the appellant deposits Rs. 11.34 lacs in the Court, the proceeding shall be dropped against him and in case the said amount is not deposited, the proceeding will go on.

It has been stated in the affidavit filed in support of the application that the summoning order is bad in the eyes of law. It is further stated therein that the opposite party No. 4 had sent legal notice to the applicant on 15.11.2018, but the same was not received. It is also the case of the applicant that that he had given a cheque to the opposite party No. 4 for security purpose to get job in Indian Army and the opposite party No. 4 had assured that he will get the job and only after his selection the cheque shall be deposited in the Bank for encashment.

4. It is further stated in the affidavit that the opposite party No. 4 failed to give job to the applicant in the Indian Army. Thereafter, the applicant put pressure on the opposite party No. 4 for return of his cheque, but he did not return the same, rather he presented the said cheque before the Bank and when cheque was bounced, the opposite party No. 4 filed the present complaint case and the entire story narrated in the complaint case is false and fabricated. No such thing, as has been stated in the complainat-case, has ever happened and the applicant has been falsely implicated in the present case by the opposite party No. 4 and he is totally unaware about the facts stated in the complaint case, thus, he submits that the present proceeding

initiated by the opposite party No. 4 by way of the complaint case as well as the summoning order dated 2.8.2019 deserves to be quashed and the present application is liable to be allowed.

5. Sri Susheel Kumar Pandey, learned A.G.A. has submitted that whatever the averment has been made in the instant application are totally false and against the record available. He has submitted that nowhere in the affidavit or the application itself it has been denied that the applicant is not the signatory of the said cheque or he had not issued the said cheque to the opposite party No. 4.

It is an admitted case of the applicant that the cheque of Rs. 11.34 lacs has been issued by him to the opposite party No. 4 and when the same was presented before the Bank, that was bounced, as there was no sufficient fund, thus, the case under Section 138, Negotiable Instruments Act, 1881, is attracted against the applicant and the applicant is liable to pay the said amount and the court below has rightly passed the summoning order by way of the impugned order dated 2.8.2019 that in case the applicant deposits the total amount of Rs. 11.34 lacs before the court, the proceedings would be quashed. There is no any illegality or infirmity in the impugned order. The impugned order is justified and convincing. The applicant was rightly been summoned by the court below to face the trial, thus, no interference is required by this Court and this application is nothing, but has been filed only to delay the proceedings of the court below. Accordingly, the application deserves to be quashed.

6. After considering the arguments as advanced by Sri Susheel Kumar Pandey, learned A.G.A. as also by the learned counsel for the applicant and perusing the averments made in the application and in the affidavit filed in support thereof, this Court finds that there is no denial by the applicant that the cheque has not been issued by him or he is not the signatory of the said cheque, thus, Section 138, Negotiable Instruments Act, 1881 shall play against the applicant, as the cheque which was presented by the opposite party No. 4 in the Bank was bounced due to insufficiency of fund. The court below has rightly passed a conditional order that in case the applicant deposits the amount of Rs. 11.34 lacs in the court, the proceedings shall be dropped, otherwise he has to face the trial, so I do not find any illegality or infirmity in the impugned order. The impugned order is convincing and justified. No interference therein is required. Accordingly, this application is **dismissed**.

7. The court below is directed to conclude the proceeding within a period of 6 months, without granting any unnecessary

adjournments to either of the parties, unless there is any legal impediment or stay by the higher court.

(Shamim Ahmed, J.)

Order Date :- 12.12.2023

A.Nigam