

Court No. - 15

Case :- APPLICATION U/S 482 No. - 12085 of 2023

Applicant :- Sanjay Kumar

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

Counsel for Applicant :- Jitendra Upadhyay

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed,J.

The instant Application under Section 482 Cr.P.C. has been moved by the applicant, namely, Sanjay Kumar with a prayer to quash the order dated 01.02.2023 passed by learned Civil Judge-VIII (J.D.), Gonda in Complaint Case No.112 of 2022, under Section 138 of N.I. Act, Police Station Nababganj, District Gonda.

Learned counsel for the applicant has submitted that as per the complaint filed by respondent no.2, he has failed to establish that the applicant is liable for payment of any amount. Learned counsel appearing on behalf of the applicant further submitted that as per Section 138 of the Negotiable Instrument Act, it casts a criminal liability punishable with imprisonment or fine or with both on a person who issues a cheque towards discharge of a debt or liability as a whole or in part and the cheque is dishonoured by the bank on presentation but in the instant case the opposite party measurably failed to establish any liability to pay the cheque amount.

It has also been submitted that in absence of amount of levy, neither respondent no.2 could make the payment of the cheque nor the applicant is responsible in any manner. Learned counsel for the applicant further submits that respondent no.2 is trying to take undue advantage of the statutory provisions with malice intention to avail extra money from the applicant. Learned counsel for the applicant further submits that no case under section 138 of the Negotiable Instrument Act is made out and the summoning order passed by the court below is illegal, contrary to law and is gross misuse of the process of the Court.

Per contra, learned counsel for the State has vehemently opposed the submissions made by the learned counsel for the applicant. It has been submitted that no case is made out for quashing the proceedings under the Negotiable Instrument Act. It has been submitted that the trial court after considering the

entirety of the matter and also on perusal of evidence has summoned the applicant. The cheques of Rs.7,00,000/- were issued by the applicant to the respondent no.2. It has also been submitted that the contentions made in the application under Section 482 Cr.P.C. as well as the submissions advanced by the learned counsel for the applicant is totally factual and it can only be adjudicated by the court below. The court below has, prima facie, satisfied with the allegations made in the complaint and therefore, issued summons.

I have heard learned counsel for the parties and perused the record.

The issue raised by the applicant in the present application under Section 482 Cr.P.C. cannot be appreciated at this stage as the same can only be adjudicated at the time of trial.

The averments made by the complainant in his complaint prima facie satisfy the ingredients of Section 138 of the Negotiable Instruments Act, 1881. But the truth and veracity of the said averments cannot be adjudged at this stage. Therefore, to say that the applicant had issued cheque for payment of any liability/dues, which can be best appreciated at the time of trial and not in exercise of inherent jurisdiction of this court under Section 482 Cr.P.C. The applicant may have a good defence to ultimately succeed in the said complaint case but at this stage, the court has to prima facie consider the averments made in the complaint. Nothing specific explicating the allegations has been put forth by the applicant for the purpose of handing over the said cheques to respondent no.2.

It is well settled that for the purpose of quashing of a complaint, the High Court cannot look into the defence of the accused. The Court is only required to see whether on the basis of the averments made in the complaint and the relevant particulars produced by the Complainant, there are grounds for proceeding against the accused. Inherent power of quashing criminal proceedings should be exercised very sparingly and with great circumspection. It does not confer on the court to act arbitrarily as per its own whims and caprice. At this stage, the Courts could not have gone into the merits and reached a conclusion that there are no existing debt or liability and quash the complaint. Therefore, the basic law is that the complaint under Section 138 of Negotiable Instrument Act cannot be quashed by High Court by taking recourse to Section 482 Cr.P.C, if disputed questions of facts are involved which need to be adjudicated after respective evidence is led by the parties before the trial court

Under these circumstances, it cannot be said that the learned trial Court has committed any error and / or illegality in issuing summons for offence under Section 138 of the Negotiable Instruments Act, 1881, or the same deserves to be quashed and set aside by this Court in exercise of powers under Section 482 of the Code of Criminal Procedure.

For the reasons stated above, the present application under Section 482 Cr.P.C. being devoid of any merits deserves to be dismissed and therefore, the same is accordingly **dismissed**.

However, in the facts and circumstances of the case the lower court concerned is directed to expedite and conclude the proceedings of the aforesaid case expeditiously, preferably within a period of six months without granting any unnecessary adjournment to either of the parties from the date of receiving of copy of this order, unless there is some legal impediment or unless there is any order passed by the higher court staying the proceedings of the case.

Office is directed to communicate this order to the learned court below concerned immediately.

Order Date :- 13.12.2023

Saurabh