

Court No. - 29

Case :- APPLICATION U/S 482 No. - 2714 of 2024

Applicant :- Amit Kumar Singh

Opposite Party :- State Of U.P. Thru. Addl. Secy. Prin. Secy. Lko

Counsel for Applicant :- Akshat Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Ajay Bhanot,J.

The applicant has assailed the order dated 02.12.2021 passed by the learned Court of Judicial Magistrate-II, Lucknow whereby the complaint of the applicant filed under Section 138 of the Negotiable Instruments Act has been dismissed for non prosecution.

The impugned order has rejected the compliant filed by the applicant on the footing that the applicant as well as his counsel has remained absent from the proceedings for the past number of dates.

Shri Shantanu Sharma, learned counsel holding brief of Shri Akshat Kumar, learned counsel for the applicant contends that the absence of the applicant was on account of false assurance given by his counsel and also dereliction of duty of his counsel who failed to attend the trial proceedings on the appointed dates.

Shri S. P. Tiwari, learned AGA for the State contends that the impugned order has been passed under Section 203

Cr.P.C. and is amenable to appeal. Rejoining the issue, learned counsel for the applicant contends that the order is not relatable to Section 203 Cr.P.C., inasmuch as, the ingredients therein are not disclosed.

Heard learned counsels for the parties.

The impugned order dated 02.12.2021 passed by the learned trial court records that the applicant and his counsel were not present when the matter was called out. The impugned order thereafter notices the absence of the counsel and the applicant on various dates since 03.12.2019. The impugned order finds that the applicant is not interested in prosecuting the matter any further. On this footing the complaint was dismissed.

The provision of Section 203 Cr.P.C. are extracted hereinunder:

"203. Dismissal of complaint.—If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing."

The provision contemplates the dismissal of the complaint after consideration of the statements on oath, if any, of the complainant and of the witnesses and the result of the inquiry or investigation if any under Section 202 Cr.P.C. This provision also envisages that upon consideration of the aforesaid materials, the Magistrate has to be of the opinion that there are sufficient grounds for proceeding

further. Further the order is also not relatable to Section 249 of the Cr.P.C. inasmuch as, the learned trial court has discharged the accused on the absence of the complainant. In wake of the preceding discussion, I find that the Application 482 is maintainable.

It is pertinent to notice at this stage that the opposite party in the complaint has not been noticed by the learned trial court till date. Perusal of the order shows that the complaint has been dismissed for non prosecution and there is no consideration of merits of the case.

This Court in **Shiv Kumar Pandey Vs. State of U.P. and others** rendered in **Special Appeal Defective No. 417 of 2021** has held that penal consequences should not visit the litigant for dereliction of duty on the part of the counsel.

From a perusal of the pleadings which are not seriously disputed by the learned AGA, this Court finds that the trial court ought to have examined the issue whether the absence was on account of dereliction of duties of the counsel or the complainant was himself not diligent in prosecuting his case. Ordinarily in our judicial system the litigants are often dependant and place exclusive reliance on the status of the case which is given by the counsel or the office of the latter in the trial courts.

Considering these aspects of the matter the impugned order dated 02.12.2021 passed by the learned Court of

Judicial Magistrate-II, Lucknow is liable to be set aside and is set aside.

In the facts of the case the applicant is directed to appear before the learned trial court personally on all dates fixed. In case the applicant does not cooperate in the trial or adopts dilatory tactics, the learned trial court shall record a finding to this effect and dismiss the compliant of the applicant.

In wake of the aforesaid, the Application U/S 482 is allowed.

Order Date :- 20.3.2024

Dhananjai