

Neutral Citation No. - 2024:AHC-LKO:49598

Court No. - 16

Case :- CRIMINAL MISC. WRIT PETITION No. - 26249 of 2020

Petitioner :- Mukesh Patel

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Ganesh Kumar Gupta, Ashok Kumar Singh, Prateek Saxena

Counsel for Respondent :- G.A., Suresh Chandra Verma

Hon'ble Shamim Ahmed, J.

1. Heard Sri Ganesh Kumar Gupta, learned counsel for the petitioner as well as Sri Suresh Chandra Verma, learned counsel for the opposite party No.2 and Sri Ashok Kumar Singh, learned A.G.A. for the State.

2. This writ petition has been filed with the following relief(s):

"1. to set aside quash the judgment and order dated 24.02.2020 passed by the In-charge Session Judge, Lucknow as well as to quash/set aside the order dated 07.01.2011 passed by the Judicial Magistrate-III Lucknow, as contained in Annexure Nos. 1 and 2 respectively to this petition. "

3. Learned counsel for the petitioner submits that the brief facts of the case are that the opposite party no.2 has filed the complaint Case No. 1493 of 2009 (Now the present position the Case No. is 5191 of 2012) against the petitioner (i.e. Mukesh Patel Prabandhak City Modern Academy Alinaar Sunahara Lucknow) U/s 138 of the Negotiable Instrument Act against the dishonor of three cheques bearing Cheque Nos. 176289 dated 23.3.2009 of Rs. 4,35,000/- Cheque No. 176290 dated 29.3.2009 of ICICI Bank Branch Alambagh of Rs.3,75,000/- and Cheque No. 158350 dated 05.04.2009 of Bank of India, Sarojini Nagatr Lucknow of Rs.7,90,000/-. The Cheque No. 176289 dated 23.3.2009 of Rs.4,35,000/-, Cheque No. 176290 dated

29.3.2009 of ICICI Bank Branch Alambagh of Rs. 3,75,000/- was dishonor on the basis of Drawer's Signature incomplete/defer/required and the Cheque No. 158350 dated 05.04.2009 of Bank of India, Sarojini Nagar, Lucknow of Rs.7,90,000/- was dishonor on 11.04.2009 on the basis of insufficient Balance.

4. Learned counsel for the petitioner further submits that as per version of the Complaint as well as complainant, the first two Cheque No. 176289 dated 23.3.2009 of Rs.4,35,000/- and Cheque No. 176290 dated 29.3.2009 of ICICI Bank Branch Alambagh of Rs. 3,75,000/- are signed and issued by the petitioner as the capacity of Prabandhak City Modern Academy Ali Nagar, Sunhara and third Cheque No. 158350 dated 05.04.2009 of Bank of India, Sarojni Nagar, Lucknow of Rs.7,90,000/- has been issued by the Joint Signature of Smt. Sharmila (as the capacity of Treasure) as by the petitioner as the capacity of Manager Mukesh Patl (Petitioner/ applicant), it is pertinent to mention here that Smt. Sharmila was passed away in the year 2007 and as the cheque was present in Bank and dis-honoured on 11.04.2009 after the approximate 2 years of her death.

5. Learned counsel for the petitioner further submits that after dishonored the above mentioned cheques, the opposite party no.2 had issued a notice on 28.04.2009 through their Advocate Rajeev Singh by the Speed Post to the petitioner/ applicant only. It is pertinent to mention here that the opposite party no.2 has issued the notice to the name of petitioner/applicant only and not to the School or Smt. Sharmila also. As the cheques was signed by the petitioner / applicant on the capacity of Manager, City Modern Academy, Alinagar, Sunahara Near Aasha Ram Bapu Ashram, Krishna Nagar Lucknow and the last cheque has been signed by the joint signature of Smt. Sharmila as a capacity of Treasure.

6. Learned counsel for the petitioner further submits that the opposite party no.2 filed the complainant Case No. 5191 of 2012 on the basis of authority letter/ memorandum of the N.K.M. Public Inter College dated 02.05.2009 which was signed by the Adhyaksha Munni Devi, Koshaadhyaksh (Maya Devi), Mantri (Kamlesh Kumar) Sadasya (Seema) and Sadasya (Preeti Singh). The opposite party no.2 had also signed on that Memorandum as the capacity of Manager.

7. Learned counsel for the petitioner further submits that after admission the complaint the Court of Judicial Magistrate IIIrd Lucknow had issued Summon against the petitioner/ applicant on 07.01.2011 under Section 138 of Negotiable Instrument Act as per mechanical way without applying the judicial mind.

8. Learned counsel for the petitioner further submits that after receiving the summon petitioner/applicant furnish the bail before the J.M. IIIrd Lucknow and thereafter the completion of statement of accused under Section 251 Cr.P.C. and the Statement of Complainant U/s 254 Cr.P.C. and thereafter completion of the prosecution and defence evidence/witness, the petitioner/applicant has filed the discharge application before the Additional Court No. 7 Lucknow on the basis of non-joinder of the party but the Court has dismissed the said application.

9. Learned counsel for the petitioner further submits that thereafter petitioner/applicant has moved an application for the verification of the writing of the Cheque as well as the signature of Adhyaksha Smt. Munni Devi through Hand writing Expert, but the Court has again dismissed the said application on 02.08.2019 and thereafter the petitioner has moved the revision petition before the District & Session Judge, Lucknow, against the said order which was also dismissed by the Court on 12.09.2019. Thereafter the petitioner

challenged the said order before the Hon'ble High Court through Writ Petition No. 28881 of 2019 under Article 227 of the Constitution of India, which is now pending before this Hon'ble Court and on the 1st date of hearing/ admission in the presence of the opposite party no.2.

10. Learned counsel for the petitioner further submits that in the meantime, when the petitioner was in Jail in another matter, his father has challenged the cognizance /summoning order dated 07.01.2011 on the basis of irregularity and illegal in the cognizance of and summoning order dated 7.1.2011 by the Revision Petition before the District and Session Judge, Lucknow, with the delay condonation application and in the Revision petition, the petitioner has pointed out that the lower court has not applying his judicial mind to pass the summoning order and passed the summoning order as mechanical way without applying the judicial mind and against the provision of Section of 138 (b) and 141 of the Negotiable Instrument Act also and the Cheque was issued by the School and the cheque was signed by the petitioner as the capacity of Manager only. Out of them, one of Cheque which was signed by the joint signature of petitioner as Manager and Smt. Shrmila as the capacity of Treasure.

11. Learned counsel for the petitioner further submits that the learned Additional Session Court No. 17 Lucknow allow the delay condonation application with the cost of Rs. 10,000/- on 30.01.2020 and the Case was remand before the District and Session Judge Lucknow for admission. Thereafter the revision petition was come before the District & Session Judge for the admission and the Hon'ble District Judge have transferred the all the criminal Case of admission before the learned Additional Session Judge- I as Incharge Session Judge for admission and the revisional court vide order dated 24.02.2020 rejected the revision of the petitioner.

12. Per contra, learned counsel for the State has vehemently opposed the submissions made by the learned counsel for the petitioner. It has been submitted that the trial court after considering the entirety of the matter and also on perusal of evidence has summoned the petitioner. It has also been submitted that the contentions made in this petition as well as the submissions advanced by the learned counsel for the petitioner is totally factual and it can only be adjudicated by the trial court. The court below has, prima facie, satisfied with the allegations made in the complaint and therefore, issued summons.

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

14. It is not in dispute that the petitioner is drawer of the cheque and the petitioner is liable to pay the cheque amount. 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 petitioner had issued cheque for payment of any liability/dues, which can be best appreciated at the time of trial. 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.

15. 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, if disputed questions of facts are involved which need to be adjudicated after respective evidence is led by the parties before the trial court.

16. 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 and this Court does not find any illegality or irregularity in the impugned order dated 24.02.2020 passed by the In-charge Session Judge, Lucknow as well as order dated 07.01.2011 passed by the Judicial Magistrate-III Lucknow.

17. For the reasons stated above, the present petition being devoid of any merits deserves to be dismissed and therefore, the same is accordingly **dismissed**.

18. However, in the facts and circumstances of the case the trial court concerned is directed to expedite and conclude the trial expeditiously, preferably within a period of three 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.

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

Order Date :- 22.7.2024

Arvind