

Neutral Citation No. - 2024:AHC-LKO:16836

RESERVED

Case :- APPLICATION U/S 482 No. - 1530 of 2016

Applicant :- Shailesh Asthana

Opposite Party :- The State And Others

Counsel for Applicant :- Anurag Kumar Singh

Counsel for Opposite Party :- Govt. Advocate, Anand Kumar Sharma, Avdhesh Kumar Singh Yadav, Shobhit Kant, Vaibhav Sharma

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Abhishek Singh, learned counsel for the petitioner, Sri Nirmal Kumar Pandey, learned Additional Government Advocate for the State and Sri Vaibhav Sharma, learned counsel for the opposite party Nos.2 & 3.

2. By means of this petition filed under Section 482 Cr.P.C., the petitioner has prayed for the following reliefs:-

"(i) Wherefore, it is most respectfully prayed that this Hon'ble Court may very graciously be pleased to set aside/ quash the proceedings of the Complaint Case No.1434 of 2013 (Manvinder Pal Singh vs. Shailesh Asthana) pending in the court of learned Additional Chief Judicial Magistrate, Court No.25, Lucknow.

(ii) This Hon'ble Court may kindly also be pleased to set aside/ quash the impugned order dated 22.12.2015 passed by the learned Additional District and Sessions Judge, Court No.11, Lucknow in Criminal Revision No.0000088 of 2015 and quash the impugned order dated 04.12.2014 passed by the learned Additional Chief Judicial Magistrate, Court No.25, Lucknow, as contained in Annexure Nos.1 & 2 to the petition, in the interest of justice.

(iii) The Hon'ble Court may further be pleased to direct the opposite parties No. 2 & 3 to produce the sanctioned map of building constructed on House No.12/29, Cantt. Road, Purana Quila, Hussainganj, Lucknow.

(iv) Any other order or direction which this Hon'ble Court may deem fit, proper and just in the facts and circumstances of the case, may kindly also be passed."

3. The proceedings under Section 138 of Negotiable Instruments Act, 1881 (here-in-after referred to as the Act) are summary proceedings. The complaint under Section 138 of the Act is pending consideration since 07/10.05.2013 bearing Case No.1434 of 2013. As per Section 143 (3) of the Act, such proceedings should be conducted and concluded within a period of six months but these proceedings are pending for the last more than ten years.

4. This Court vide order dated 18.03.2016 granted an interim order, which reads as under:-

"Heard Sri Ragvendra Kumar Singh Senior Advocate assisted by Sri Anurag Kumar Singh appearing on behalf of applicant and the learned AGA for the State.

It has been contended by the learned counsel that the petitioner entered into an agreement with opposite parties nos.2 and 3 for purchase a flat and in pursuance of the agreement he paid a sum of Rs.10,00,000/- as advance to the opposite parties nos. 2 and 3. It was aggrieved between them that the opposite parties nos.2 and 3 shall provided a copy of the approved map to the petitioner so that, the petitioner may apply for bank loan but since the opposite parties nos.2 and 3 did not provide the sanctioned map to the petitioner, the bank rejected there prayer for loan. It has further been contended that since the petitioner was bona fide purchaser and was also in possession of the flat, therefore, by way of security he handed over a cheque of Rs.16,00,000/- towards the remaining amount of sale consideration to the opposite parties nos.2 and 3 but the opposite parties nos. 2 and 3 instead of providing the sanctioned map to the petitioner, presented the cheque for payment. Since the opposite parties nos.2 and 3 did not honour the terms of the agreement, the petitioner instructed the bank to stop the payment. The opposite parties nos.2 and 3 then filed a complaint under section 138 of Negotiable Instruments Act in which the learned Magistrate passed an order taking cognizance and the summoning the petitioner to face trial.

When the petitioner appeared before the Magistrate in the proceedings under section 138 of Negotiable Instruments Act, he moved an application that the opposite parties nos.2

and 3 be directed to provide sanctioned map to the petitioner but the said application was rejected by the Magistrate. Feeling aggrieved by the aforesaid order the petitioner preferred criminal revision before the Sessions Judge, Lucknow which was also dismissed on 22.12.2015. It has been contended by the learned Senior Advocate that the dispute between the parties is of purely civil nature but in order to harass the petitioner and in order to escape the liability, the opposite parties nos. 2 and 3 have filed complaint under section 138 of Negotiable Instruments Act.

Issue notice to the opposite party nos. 2 and 3, returnable at an early date.

List after service of notice.

Till the next date of listing, further proceeding of Complaint Case No.1434 of 2013 pending in the court of Additional Chief Judicial Magistrate, Court No.25, Lucknow shall remain stayed."

5. The aforesaid interim order is still in operation and on account of the aforesaid order, the proceedings of the complaint case in question could not be proceeded further.

6. In order to examine the submissions of learned counsel for the petitioner, which were put-forth at the time of admission of this petition and getting an interim order, the brief facts of the case are required to be considered.

7. Learned counsel for the petitioner has reiterated his arguments, which were placed before this Court at the time of admission of the petition to the effect that the petitioner entered into an agreement with the opposite party Nos.2 and 3 (here-in-after referred to as the private opposite parties) for purchasing a flat and in pursuance of the agreement he paid a sum of Rs.10,000/- as an advance to the private opposite parties. It was agreed between them that the private opposite parties shall provide a copy of approved map to the petitioner so that , the petitioner may apply for bank loan but since the private opposite

parties did not provide the sanctioned map to the petitioner, the bank rejected their prayer for sanction of loan.

8. Learned counsel for the petitioner has further contended that since the petitioner was a bonafide purchaser and was also in possession of the flat inasmuch as the possession of the flat has been given to the petitioner on 24.05.2012 by the private opposite parties, therefore, as a security he handed over a cheque of Rs.16,00,000/- towards the remaining amount of sale consideration to the private opposite parties, but the private opposite parties instead of providing the sanctioned map to the petitioner, presented the said cheque for payment. He has further submitted that since the private opposite parties did not honour the terms of the agreement, the petitioner instructed the bank to stop the payment. The private opposite parties then filed a complaint under Section 138 of the Act in which the learned trial court passed an order taking cognizance and summoning of the petitioner to face the trial.

9. Learned counsel for the petitioner has further contended that when the petitioner appeared before the Magistrate in the proceedings of complaint, he moved an application that the private opposite parties be directed to provide sanctioned map to the petitioner but the said application was rejected by the Magistrate vide order dated 04.12.2014. Feeling aggrieved by the aforesaid order, the petitioner preferred a criminal revision before the learned Sessions Judge, Lucknow, which was also dismissed on 22.12.2015. He has further contended that the dispute between the parties is purely of civil nature, therefore, the complaint under Section 138 of the Act should not be filed by the private opposite parties.

10. Per contra, Sri Vaibhav Sharma, learned counsel for the private opposite parties has stated that the aforesaid submissions of learned counsel for the petitioner are not correct, even those submissions are

not verifiable from the records so enclosed by the petitioner in the present petition.

11. Sri Sharma has stated that the petitioner has referred an agreement entered into between the parties wherein he allegedly said that there was one condition to provide a copy of the approved map to the petitioner but there was no such condition in that agreement. Attention has been drawn towards Annexure No.3 of the petition, which is an unregistered sale agreement entered into between the parties dated 24.05.2012 wherein only this much has been indicated that the total consideration amount of the flat in question would be Rs.26,00,000/-. As an advance of the aforesaid value of the flat the petitioner gave a cheque bearing Cheque No.470179 dated 24.05.2012 to the tune of Rs.10,00,000/- issued from the Indian Overseas Bank, Branch Lucknow and the remaining amount was to be paid by the petitioner to the private opposite parties at the time of registration of the property in question. Second condition is that the petitioner shall make payment of remaining / balance amount to the private opposite parties within a period of four months from the date of agreement dated 24.05.2012. Therefore, the remaining amount of Rs.16,00,000/- should be paid by the petitioner to the private opposite parties on or before 24.09.2012. The condition No.3 says that all expenses of registration shall be borne by the petitioner. The condition No.4 says that if any house tax/electricity bill etc. is pending over the flat in question would be paid by the private opposite parties. The condition No.5 says that the possession of the flat has been handed over to the petitioner on 24.05.2012. The condition No.6, which is a last condition, says that the condition of the aforesaid agreement would be applicable on the parties and their heirs.

12. Sri Sharma, learned counsel for the private opposite parties has stated that in the aforesaid agreement, it has nowhere been indicated that the private opposite parties shall provide the copy of approved

map to the petitioner, therefore, placing such condition wrongly the petitioner obtained interim order dated 18.03.2016.

13. Sri Sharma has further submitted that learned counsel for the petitioner has contended before the Court that since the private opposite parties did not honour the terms of agreement, the petitioner instructed the bank to stop the payment, whereas the aforesaid fact is patently incorrect and false inasmuch as when the cheque in question was presented by the private opposite parties to their Banker Merchantile Co-operative Bank, Branch Purana Quila, Lucknow, the said cheque was dishonoured for two reasons, (i) Drawer's signature incomplete and (ii) insufficient funds. Had the aforesaid cheque been stopped by the petitioner, the cheque in question would have been dishonoured for the reason "Payment stopped by the Drawer".

14. Sri Sharma, learned counsel for the private opposite parties has stated that when the petitioner did not pay the remaining amount of Rs.16,00,000/- in terms of agreement dated 24.05.2012 within time stipulated then the private opposite parties sent a registered notice dated 30.11.2012 to the petitioner asking him to pay the remaining sale consideration and to get his sale deed executed within fifteen days, failing which, the appropriate legal action would be taken against him. The aforesaid legal notice was served upon the petitioner on 01.12.2012, thereafter, the petitioner talked with the private opposite parties on telephone, however, the outstanding amount was not paid. Thereafter, on 13.02.2013 the private opposite parties sent a legal notice through registered post asking their outstanding dues, failing which the proceedings for ejectment would be initiated and the petitioner would be liable for damages at the rate of Rs.20,000/- per month with effect from 24.05.2012 till the date of handing over the actual possession of the flat from the private opposite parties. After receiving the aforesaid legal notice, the petitioner having sense of liability for amount of Rs.16,00,000/- lying against him provided a

cheque in favour of the opposite parties bearing Cheque No.590255 dated 10.03.2013 payable at U.P. Cooperative Bank, 2- M.G. Marg, Lucknow. This is the same cheque which has been dishonoured on account of "Drawer's signature incomplete and insufficient funds".

15. Sri Sharma, learned counsel for the private opposite parties has therefore submitted that the contentions of learned counsel for the petitioner to the effect that by way of security he had given a cheque of Rs.16,00,000/- is incorrect inasmuch as had the cheque in question been issued as a security amount, it would have been issued immediately after expiry of stipulated period in terms of agreement or before receiving the two notices dated 30.11.2012 and 13.02.2013 respectively.

16. Therefore, Sri Sharma has stated that all the three submissions of learned counsel for the petitioner before the Court at the time of admission i.e. the private opposite parties were to provide a copy of approved map to the petitioner as per the sale agreement dated 24.05.2012; the petitioner handed over a cheque of Rs.16,00,000/- as a security amount and the petitioner stopped the payment of that cheque for the reasons that the private opposite parties could not provide the copy of approved map to the petitioner in compliance of the sale agreement, are absolutely incorrect, false and misconceived, however, on the basis of the aforesaid submissions of learned counsel for the petitioner, this Court granted interim order on 18.03.2016, which is still in operation, resultant thereof, the summary proceedings of N.I. Act could not proceed further. Hence, he requested that this petition may be dismissed and an interim order may be vacated issuing the direction to the learned trial court to expedite the proceedings.

17. In his rejoinder reply, learned counsel for the petitioner has submitted that though the condition for providing a copy of approved

map has not been indicated in the sale agreement but the parties were verbally agreed to the effect that the private opposite parties would hand over the copy of the approved map so that the petitioner could apply for loan and after getting the loan he could make payment of outstanding amount to the private opposite parties.

18. Sri Abhishek Singh, learned counsel for the petitioner has drawn attention of this Court towards Annexure No.7 of the petition, which is a copy of objection filed by the petitioner before the trial court on 05.07.2014 indicating the fact regarding the loan enclosing therewith the copy of letter dated 16.03.2013 issued by the Chief Manager, Punjab National Bank, Hazratganj Branch, Lucknow whereby the copy of sanctioned map of the flat has been asked from the petitioner. Sri Singh has stated that the petitioner had applied for loan of Rs.18,00,000/- from the Bank but loan could not be sanctioned to him for the reason that he was not having the copy of sanctioned map of the flat in question.

19. Notably, in such objection the petitioner has not indicated the date when he applied for loan and it appears that the petitioner applied for loan in the month of March, 2013. However, before the aforesaid letter dated 16.03.2013 having been issued by the bank the petitioner handed over a cheque dated 10.03.2013 to the private opposite parties which has been dishonoured. Therefore, I do not find any nexus of the letter issued by the bank on 16.03.2013 with the cheque dated 10.03.2013.

20. Sri Singh learned counsel for the petitioner has submitted that in view of the explanation of Section 138 of the Act unless and until there is any legally enforceable debt or liability against the person who has issued the cheque such person may not be prosecuted under Section 138 of the Act. In the present case, there is no legally enforceable liability upon the petitioner to make payment of

Rs.16,00,000/- to the private opposite parties inasmuch as the private opposite parties have breached the condition of sale agreement, therefore, they are not entitled for such payment.

21. On being confronted learned counsel for the petitioner as to whether he is in possession of the property in question since 20.05.2012 and as to whether he has paid any rent to the private opposite parties against such flat, for the reason that the registered sale has yet not been executed in his favour by the private opposite parties, learned counsel for the petitioner has stated that the petitioner is in possession of the flat in question with effect from 24.05.2012 without paying any rent of that flat. He has further submitted that since the petitioner could not get the loan from the bank, therefore, he could not make payment of remaining amount of Rs.16,00,000/-.

22. Learned counsel for the petitioner has submitted that the cheque, which was given to the private opposite parties as security, it should have not been presented before the bank unless the condition of the sale agreement is satisfied.

23. On that, Sri Sharma learned counsel for the private opposite parties has submitted that even if the cheque of Rs.16,00,000/- is treated as security towards the outstanding amount, the same could have been presented before the bank if such liability has not been discharged by the petitioner well in time.

24. In support of his aforesaid arguments, learned counsel for the petitioner has referred para-18 of the dictum of Apex Court rendered in the case in re: **Sripati Singh (Since Deceased) Through His Son Gaurav Singh vs. State of Jharkhand and another** reported in **2021 SCC OnLine SC 1002**, which reads as under:-

“18. When a cheque is issued and is treated as ‘security’ towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such

cheque which is issued as 'security' cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner if the amount of loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in a proceedings initiated under Section 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that a cheque which is issued as security can never be presented by the drawee of the cheque. If such is the understanding a cheque would also be reduced to an 'on demand promissory note' and in all circumstances, it would only be a civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation."

25. Having heard learned counsel for the parties, having perused the material available on record and having regard the dictum of Apex Court in re:**Sripati Singh (supra)**, it is clear that there is no such condition in the sale agreement dated 24.05.2012 to the effect that the private opposite parties shall provide the copy of approved map to the petitioner. It is also clear that the cheque in question has not been dishonoured on account of the reason the payment has been stopped by the Drawer, but the cheque has been dishonoured for the reason "Drawer's signature incomplete and insufficient funds".

26. This is undisputed fact that the petitioner has given a cheque amounting to Rs.16,00,000/- bearing Cheque No.590255 dated 10.03.2013 payable to U.P. Cooperative Bank, 2-M.G. Marg, Lucknow for making payment of outstanding amount of the flat in

question in terms of the aforesaid sale agreement and the aforesaid cheque has been dishonoured for the reasons indicated above. Therefore, the fact of the present case would satisfy the condition of explanation of Section 138 of the Act.

27. Undisputedly, the outstanding amount of the flat in terms of the sale agreement has not been paid to the private opposite parties till date. The application which was filed by the petitioner before the learned Magistrate to the effect that the direction may be issued to the private opposite parties to provide sanctioned map has got no substance as there is no recital to this effect in the sale agreement in question. Therefore, the learned Magistrate has rightly rejected the application of the petitioner on 04.12.2014. The Revisional Court has also rightly rejected the revision of the petitioner vide order dated 22.12.2015 by observing that the agreement between the parties may not be executed invoking the revisional powers. Since the liability to make the outstanding dues of Rs.16,00,000/- has not been discharged by the petitioners, therefore, the private opposite parties have rightly produced the cheque before the Bank, even if it was given as security.

28. In view of what has been considered above, I do not find any infirmity or illegality in the impugned order dated 04.12.2014 passed by the learned Additional Chief Judicial Magistrate, Court No.25, Lucknow and also the order dated 22.12.2015 passed by the learned Additional Session Judge, Court No.11, Lucknow.

29. The next prayer seeking direction to the private opposite parties to produce the sanctioned map of the flat in question may not be granted and the proceedings in question bearing Complaint Case No.1434 of 2013 (Manvinder Pal Singh and another vs. Shailesh Asthana) may not be set-aside / quashed.

30. Accordingly, the instant petition is ***dismissed***.

31. The learned trial court is directed to conduct and conclude the proceedings of the Complaint Case No.1434 of 2013 (Manvider Pal Singh & others vs. Shailesh Asthana), with expedition, by fixing short dates without giving any unnecessary adjournment to the parties concerned, strictly in accordance with law, by affording an ample opportunity of hearing to the parties concerned.

[Rajesh Singh Chauhan,J.]

Order Date :- February 22, 2024.

Suresh/