

Court No. - 16

Case :- CRIMINAL MISC. WRIT PETITION No. - 6573 of 2024

Petitioner :- Ajay Kumar Verma

Respondent :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lko And Another

Counsel for Petitioner :- Gyanendra Pathak, Adarsh Kumar Tripathi

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

1. Heard Sri Gyanendra Pathak, learned counsel for the petitioner and Sri Ashok Kumar Singh, learned A.G.A.-I for the State and perused the record.

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

"(i) Issue a writ, order or direction in the nature of Certiorari for quashing of the summoning order dated 17.12.2021 passed by ACJM Bahraich in Case No. 4541/2021 (Mohd. Salman Vs. Ajay Kumar Verma) as well as order dated 29.04.2024 passed by First Additional Sessions Judge Bahraich in Criminal Revision No. 100/2023 (Ajay Kumar Verma Vs State of U.P. and another) (contained in Annexure No.1 and 2 respectively, annexed with the present writ petition."

3. Learned counsel for the petitioner submits that the petitioner used to purchase medicine from one Amit Yadav, agent of R.K. Medical Jaunpur who has good relation with the petitioner. On 26.02.2021 Amit Yadav borrowed Rs. 50,000/- from the petitioner and believing Amit Yadav, petitioner after signature given blank cheque No. 21900 of Allahabad Bank to Amit Yadav after instructing him that whenever petitioner inform him then he cash the cheque, but without informing to the petitioner, Amit Yadav filled the name of opposite party No.2-Mohd. Salman and opposite party No.2 deposited the same in his account of Bank of Maharashtra Branch, Bahriach on 07.04.2021 and the cheque was dishonor due to insufficient balance.

4. Learned counsel for the petitioner further submits that on 05.05.2021 the opposite party No.2 filed a complaint under Section 138 Negotiable Instrument Act upon which the learned A.C.J.M. Bahriach summoned the petitioner vide order dated 17.12.2021 in Case No. 4541/2021 (Mohd. Salman Vs. Ajay Kumar Verma).

5. Learned counsel for the petitioner further submits that when

the petitioner came to know about the summoning order he filed a Revision on 16.09.2022 before District and Sessions Judge, Bahraich, which was rejected on 29.04.2024.

6. Per contra, the learned A.G.A. has contended that the revisional court has rightly dismissed the revision and affirmed the order dated 17.12.2021 passed by the trial court. From the allegation made in the complaint prima facie offence is made out against the applicant. The innocence of the applicant cannot be adjudged at the pre trial stage. The petitioner is trying to delay the proceeding of the case.

7. From the perusal of the impugned orders, this Court does not find any illegality or irregularity in the impugned orders. The entire matter pertains to the factual aspect, which cannot be ascertained at pre trial stage.

8. At the stage of issuing process the court below is not expected to examine and assess in detail the material placed on record, only this has to be seen whether prima facie cognizable offence is disclosed or not. The Apex Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:-(i) **R.P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866**, (ii) **State of Haryana Vs. Bhajanlal, 1992 SCC (Cri.)426**, (iii) **State of Bihar Vs. P.P. Sharma, 1992 SCC (Cri.)192** and (iv) **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283**.

9. From the aforesaid decisions the Apex Court has settled the legal position for quashing of the proceedings at the initial stage. The test to be applied by the court is to whether uncontroverted allegation as made prima facie establishes the offence and the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing criminal proceedings to be continue. In **S.W. Palankattkar & others Vs. State of Bihar, 2002 (44) ACC 168**, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court under Section 482 Cr.P.C itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

10. The High Court would not embark upon an inquiry as it is

the function of the Trial Judge/Court. The interference at the threshold of quashing of the criminal proceedings in case in hand cannot be said to be exceptional as it discloses prima facie commission of an offence. In the result, the prayer for quashing of summoning order dated 17.12.2021 is refused. The revisional court has rightly passed the impugned order dated 29.04.2024 and there is no illegality or infirmity in the impugned order dated 29.04.2024. The petitioner is trying to delay the proceedings of the case. The present petitioner lacks merit and is liable to be dismissed.

11. The trial court is directed to expedite and conclude the proceedings of the aforesaid case expeditiously, without granting any unnecessary adjournment to either of the parties, unless there is some legal impediment or unless there is any order passed by the higher court staying the proceedings of the case.

12. Office is directed to send the copy of this order to the concerned court for compliance.

13. With the above observations/directions, this petition stands **dismissed**.

Order Date :- 6.9.2024
Arvind