

Neutral Citation No.- 2024:AHC-LKO:13137

Reserved on 14.12.2023

Delivered on 13.02.2024

A.F.R.

Court No. - 16

Case :- APPLICATION U/S 482 No. - 7529 of 2022

Applicant :- Mehrab Logistics And Aviation Ltd. Thru. Its Managing Director Abdul Hai Khan And Another

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

Counsel for Applicant :- Abhishek Singh

Counsel for Opposite Party :- G.A.,Amandeep Singh,Praveen Tripathi,Shakti Krishna Chaube

Hon'ble Shamim Ahmed,J.

1. List has been revised and the case is being taken up in the revise call.
2. Heard Shri Raghvendra Singh, learned Senior Advocate assisted by Shri Abhishek Singh, learned Counsel for the applicants, Shri Sachin Upadhaya, Advocate holding brief of Shri Praveen Tripathi, Advocate as well as Shri Amandeep Singh, learned Counsel for the opposite party No.2 and Shri Anirudh Kumar Singh, learned A.G.A-I for the State-opposite party No.1. No counsel appeared on behalf of the opposite party No.3 whereas name of Shri Shakti Krishna Chaube, Advocate is shown in the cause list.
3. The instant application has been moved on behalf of the applicants with a prayer to quash the summoning order dated 22.07.2022 passed in Complaint Case No.83520 of 2021, under Section 138 N.I. Act, Police Station P.G.I., District Lucknow as well as to set aside the entire proceedings in pursuance thereof pending before the learned Presiding Officer, Additional Court No.10, Lucknow.

4. Learned counsel for the applicants submitted that the present case arises out of complaint preferred by the opposite party no.2. The applicant no.1 is a company incorporated under the Companies Act, 1956 bearing Corporate Identification Number (CIN) U60301UP1957PLC023015 and having its registered office at Mehrab Tower, Sixth Floor TC-16V, Vibhuti Khand, Gomti Nagar, Lucknow (hereinafter referred as "Company" for sake of brevity). The applicant no.2 is the Managing Director of the Company and the affairs of the Company are run and managed by him.

5. Learned counsel for the applicants further submitted that on 17.11.2021, the opposite party no.2 preferred a complaint under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as "N.I. Act" for the sake of brevity) against the applicants before the learned trial court alleging there in that the applicant no.2 and other co-accused persons contacted him on behalf of the Company for the purpose of sale of hotel and authorized him to deal for the sale of it and agreed to pay Rs.10 Crores as a fee for the services to be rendered by him vide alleged Memorandum of Understanding (Annexure No.4) (hereinafter referred to as "MoU" for the sake of brevity) which was executed between them. It has been further alleged in the aforesaid complaint that in lieu of the services rendered by the complainant, the accused issued two account payee cheques, which were dishonored, as such, the accused are liable to be prosecuted for committing the offence under Section 406, 420 I.P.C. as well as Section 138 of N.I. Act. It was also alleged by the opposite party No.2 that an authorization-cum-declaration letter dated 14.08.2020 was issued by the Director (Vishnu Kumar Pandey) of applicant No.1 Company in favour of opposite party No.2 (Annexure No.5).

6. Learned counsel for the applicants further submitted that the opposite party no.2 submitted his statement on affidavit under Section 145(1) of N.I. Act read with Section 200 Cr.P.C. which is nothing but the reiterated version of the complaint made by the opposite party No.2 against the applicants.

7. Learned counsel for the applicants further submitted that on perusal of the authorization letter dated 14.08.2020, it would reveal that the alleged authorization letter as claimed by the opposite party No.2 has been issued for the specific time period of 15 working days i.e. from 16.08.2020 till 30.08.2020 and there is no averment in the complaint made by the opposite party No.2 that the said letter has been extended further. He further submitted that there was no debt on the date 24.06.2021 when the alleged cheques were issued as admittedly the sale of the hotel took place on 12.07.2021. It is admitted case of the complainant that the alleged authorization letter has not been issued by the applicant no.2, who being a Managing Director is solely authorized to issue any such letter on behalf of the Company.

8. Learned Counsel for the applicants further submitted that the alleged two cheques which were stolen/misplaced from the possession of the applicant Company were reported to be lost by an employee of the applicant Company, namely-Raghuvir Prasad, who reported about the lost cheques to the concerned police station but the veracity of the aforesaid report was denied by police vide letter dated 02.12.2022, wherein it has been specifically stated that no such G.D. Entry was found in the concerned police station about the report for lost cheques. He further submitted that even the police has denied the report regarding lost cheques, thus, it appears that the alleged cheques were handed over to the complainant with the connivance of an employee of the applicant Company only with the intention to misappropriate the alleged cheques.

It is further argued that even though the alleged MoU was prepared as a draft, the same was only communicated through e-mail, which was neither signed by any of the parties nor any stamp or seal of the company was appended on it nor there is any date. An unsigned, unstamped, undated draft MoU/any agreement without payment of any stamp duty is inadmissible as a piece of evidence in the eyes of law.

9. Learned counsel for the applicants further submitted that the complainant has neither disclosed his own credentials or his alleged proprietorship firm “KBJ Engineering Services” such as PAN No./GSTIN No./Income Tax Returns so as to ascertain his capacity to crack the claimed deal of sale.

10. Learned counsel for the applicants further submitted that the complainant somehow got handover to the two blank cheques of the company with the connivance of an employee of the applicants' Company and thereafter, conspired to extract the money from the company illegally as he also knew that the hotel property is being sold. The complainant in furtherance of the aforesaid criminal conspiracy and evil design, presented the aforesaid lost two cheques before the State Bank of India, S.G.P.G.I. Branch, Lucknow on 24.06.2021 with forged signature of the applicant no.2 and filling the self imagined amount of Rs.5 Crores in each cheque and entered the same date as 24.06.2021 on the aforesaid two cheques.

11. Learned counsel for the applicants further submits that in both the cheques, there was a note present **“valid upto Rs.50 lacs at non home branch”** and on 14.07.2021, the aforesaid bank closed the bank account of the applicant Company in view of the circular dated 06.08.2020 issued by Reserve Bank of India, which prohibited the running of multiple current accounts in the same bank and intimation regarding the same was given to the applicant company.

12. Learned Counsel for the applicants further submitted that when the opposite party No.2 got those two blank cheques with the connivance of an employee of the applicant Company, he presented the said two cheques by filling an imagined amount of Rs.5 Crores in each cheque to non home branch as he knew that the aforesaid cheques will be dishonored by the Bank and the applicant Company will be liable for an offence under the provisions of N.I. Act, even though, the signatures of the applicant were forged and were made in the two cheques to falsely implicate the applicant Company.

13. Learned Counsel for the applicants further submitted that despite the fact that the cheques should have been returned by the bank with an endorsement at the memo that "*exceeds arrangement refer to drawer*" or with the endorsement that the "same is unacceptable in the S.G.P.G.I Branch, which is a non home branch", however, when the two alleged cheques were presented in the bank the same were dealt in a most casual and mechanical manner and returned as dishonored with the note of "*insufficient fund*" on the same day of being presented without informing the applicant No.2.

14. Learned counsel for the applicants further submitted that the act/omission on the part of concerned employees of the bank in issuing an incorrect bank return memo is illegal as well as constitutes dereliction of duty resulting in false prosecution of the applicants as no offence under Section 138 N.I. Act could have been made out against the applicant Company and therefore, the connivance of the employee of opposite party No.3 cannot be ruled out. It is further submitted that the act/omission on the part of the concerned bank employee has also caused irreparable damage to the reputation and image of the applicant Company.

It is further argued that it is the admitted case of the complainant that no bill was ever raised in discharge of the liabilities for which two alleged cheques were issued which casts suspicion over the story of the complainant as a person/firm providing any service and charging the fee of Rs.10 Crores is also liable for 18% GST/Service Tax which is a huge amount and cannot escape the eyes of tax department. Further, argument of learned Counsel for the applicants is that it is fact of common knowledge that the brokerage in any sale is paid in percentage and normally it is not more than 1% of an astronomical amount that too about 25% of the forged value of property, which is not believable.

15. Learned Counsel for the applicants further submitted that the two cheques of Rs.5 Crore presented by the opposite party No.2 before the

incompetent Bank who has no jurisdiction to entertain the same as they were not presented at the Home Branch deliberately and even though the cheques were issued on the same day but the signature on both the cheques were not similar and there was complete mismatch. It was also argued that a forged signature was made on both the cheques of the applicant No.2, who has also denied his signature on the aforesaid two cheques.

It is further argued that even though the signature which was done by the applicant No.2 in the sale deed of Hotel and the signature shown in the two cheques are entirely different and has no resemblance that also falsify the story of opposite party No.2.

16. Learned Counsel for the applicants further argued that the case under Section 138 of N.I. Act can only be attracted in the Court if there exists any debt or the liability on the person who has issued the cheque and in the present case, no debt or other liability exists on the applicants and the case filed by the opposite party No.2 is false and fabricated and does not fall under the provisions of Section 138 N.I. Act.

17. Learned Counsel for the applicants also argued that provisions of Section 68 of N.I. Act are also not attracted in the present case as there was no promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto. Section 68 of N.I. Act is quoted hereinunder:-

"68. Presentment for payment of instrument payable at specified place and not elsewhere.—

A promissory note, bill of exchange or cheque made, drawn or accepted payable at a specified place and not elsewhere must, in order to charge any party thereto, be presented for payment at that place."

18. Learned counsel for the applicants further submitted that the learned trial court did not conduct any proper inquiry as envisaged under Section 202

Cr.P.C. for ascertaining the truth and veracity of the allegations made in the complaint and for the purpose of deciding whether there exists sufficient ground for proceeding against the applicants/accused and in a mechanical manner without application of judicial mind, summoned the applicants/accused vide impugned summoning order dated 22.07.2022.

19. Learned counsel for the applicants further submitted that the impugned order dated 22.07.2022, by which the applicants were summoned, is also non speaking as the Magistrate has not considered any material available before him while summoning the applicants to face the trial. As such, the impugned order dated 22.07.2022 on the face of record appears to be unjustified and is passed against the provisions of the N.I. Act , therefore, the same is liable to be set aside by this Court alongwith the entire proceeding.

20. Learned counsel for the opposite party no.2 has opposed the argument raised by the learned counsel for the applicants and submitted that in lieu of the MoU sent by the complainant to the applicants vide email dated 08.10.2020, the applicant no.2 issued two post-dated cheques to the complainant bearing nos.955800 and 955801 dated 24.06.2021 for Rs.5,00,00,000/- each as security and ensured the complainant that if the payment of service fee is not made by the applicants, the complainant can present the cheques for encashment. He further submitted that the first advance payment in lieu of the sale of said hotel was made on 29.09.2020 and in part payments all the sale amount of the Hotel was paid till June, 2021 but even after receiving the sale amount of the said Hotel and repeated requests of the complainant to pay his service fee, the applicants did not pay even a single penny to the complainant, thus, he submitted that the impugned summoning order dated 22.07.2022 has been rightly passed by the learned trial court in accordance with law, therefore, the same is not liable to be quashed and the instant application is liable to be rejected.

21. Learned A.G.A-I for the State also opposed the argument advanced by learned Counsel for the applicants and submitted that the summoning order

dated 22.07.2022 is rightly passed and no interference by this Court is required in the instant matter.

22. After hearing learned counsel for the respective parties and after perusal of the materials available on record, prima facie it appears that the learned trial court has failed to appreciate the materials available on record and has committed manifest illegality while passing the impugned order while summoning the applicants as the same is passed without considering the evidence produced by the applicants, which is unsustainable in the eyes of law.

23. It is further observed that this Court is not the handwriting expert but prima facie on detail examination and comparison of the respective signature samples, which were present on the sale deed executed by the applicant No.2 in respect of sale of Hotel and the signatures which were present on the two lost cheques, the cardinal principles of identification of signatures and on comparing the writing habits, general and personal characteristics of both the sets of signature samples and upon close scrutiny of the nature of the writing of the comparative signatures reveals that the writing pertains to a good skilled writer capable of making forceful and crisp strokes in the writing of complete signatures with no hesitation or clumsiness in stroke making. The writing is found to be fluently and smoothly written in normal and natural flow of running signatures motion without any care or caution.

24. It is further observed that there are dissimilarities in the signatures and sufficient amount of dissimilarity is found. Cumulative consideration of all the dissimilarities in the writing habits between the signature samples, which lead to a conclusion that the person who did the signature on the sale deed executed in respect of sale of hotel and the signature which was present on the lost two cheques are not the same person, who did the specimen signatures. This fact has also been confirmed by a forensic expert, whose report is annexed as Annexure No.21 to the affidavit filed in support of the present application.

25. It is observed earlier that this Court is not a handwriting expert, though, prima facie from bare perusal of the cheques, both the signatures are different whereas, the cheques were issued on the same date. It is further observed that on perusal of the signature on the sale deed, which was executed by the applicants for sale of Hotel, wherein the signature of the applicant No.2 is present. thus, it transpires that signatures on the cheques and signature on the sale deed are different, there appears force in the argument of learned counsel for the applicants that the cheques were not signed by the applicant No.2 and this fact has also not been considered by the trial court while passing the impugned order.

26. It is further observed that though a case of breach of trust may be, both a civil wrong and a criminal offence, but there would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. The present case is one of that type where, if at all, the facts may constitute a civil wrong but the ingredients of a criminal offences are wanting.

27. It is further observed that this is a very clear case of the parties entering into an agreement or MoU, if any, and compounding the offence to save themselves from the process of litigation. When such a step has been taken by the parties, and the law very clearly allows them to do the same, the Courts then cannot override such compounding and impose its will.

On perusal of the authorization letter dated 14.08.2020, it would reveal that the alleged authorization letter as claimed by the opposite party No.2 has been issued for the specific time period of 15 working days i.e. from 16.08.2020 till 30.08.2020 and there is no averment in the complaint made by the opposite party No.2 that the said letter has been extended further. He further submitted that there was no debt on the date 24.06.2021 when the alleged cheques were issued as admittedly the sale of the Htoel took place on 12.07.2021. It is admitted case of the complainant that the alleged

authorization letter has not been issued by the applicant no.2, who being a Managing Director is solely authorized to issue any such letter on behalf of the Company, thus, there exists no debt or liability upon the applicants.

28. Further, on perusal of **Section 138 N.I.** Act which reveals that it is a penal provision, it must, therefore, be construed strictly, section 138 (2) enacting part of the provision makes it abundantly clear that what constitutes an offence punishable with imprisonment and/or fine is the dishonour of a cheque for insufficiency of funds, etc in the account maintained by the drawer with the bank for discharge of a debt or other liability whether in full or part. The language used in the provision is unambiguous and the ingredients of the offence clearly discernible namely (a) cheque is drawn by the accused on an account maintained by him with a banker, (b) the cheque amount is in discharge of a debt or liability, and (c) the cheque is returned unpaid for insufficiency of funds or that the amount exceeds the arrangement made with the bank. Any dishonour falling within the four corners of the enacting provision would be punishable without much ado.

Section 138 is structured in two parts, the primary and the provisory. The contents of the proviso place conditions on the operation of the main provision, while it does not form a constituent of the crime itself, it modulates or regulates the crime in circumstances where, unless its provisions are complied with, the already committed crime remains impervious to prosecution.

The cause of action for prosecution will arise only when the period stipulated in the proviso elapses without payment. Ingredients of the offence have got to be distinguished from the conditions precedent for valid initiation of prosecution. The stipulations in the proviso must also be proved certainly before the offender can be successfully prosecuted. But in the strict sense they are not ingredients of the deemed offence under the body of Section 138 of the N.I. Act, though the said stipulations must also be proved to ensure and claim conviction. It is in this sense that it is said that the proviso does not

make or unmake the offence under Section 138 of the NI Act. That is already done by the body of the sections.

29. Further, Hon'ble the Supreme Court in case of **Indus Airways Private Limited and Others Vs. Magnum Aviation Private Limited and others; (2014) 12 SCC 539** in para 9 has held as under:-

“13. The explanation appended to Section 138 explains the meaning of the expression ‘debt or other liability’ for the purpose of Section 138. This expression means a legally enforceable debt or other liability. Section 138 treats dishonoured cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. The explanation leaves no manner of doubt that to attract an offence under Section 138, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. In other words, drawal of the cheque in discharge of existing or past adjudicated liability is sine qua non for bringing an offence under Section 138. If a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise, and material or goods for which purchase order was placed is not supplied, in our considered view, the cheque cannot be held to have been drawn for an exiting debt or liability. The payment by cheque in the nature of advance payment indicates that at the time of drawal of cheque, there was no existing liability.”

30. Further, the Hon'ble Apex Court in the case of **B. Krishna Reddy Vs. Syed Hafeez (Died) Per Legal Representative Naseema Begum and Another; (2020) 17 SCC 488** and in paragraph 8 and 9 of the aforesaid judgment was pleased to observe as under:-

“8. In our view, the offence alleged was that a cheque was given towards consideration for purchase of a property. Neither any document was produced on record nor there was any evidence that any conveyance was executed in favour of the appellant. Thus, the submission of the appellant that there was no existing debt or liability against which the cheque was given had to be accepted. In our view, the High Court was in error in accepting the appeal and upsetting the view taken by the Trial Court.

9. We, therefore, allow this appeal, set-aside the decision of the High Court and restore the judgment and order of acquittal passed by the Trial Court.”

31. In the case of *Meters and Instruments Private Limited v. Kanchan Mehta 1*, the Hon'ble Apex Court held that the nature of offence under section 138 of the N.I. Act, is primarily related to a civil wrong and has been specifically made a compoundable offence. The relevant paragraph of the judgment has been extracted herein:

“This Court has noted that the object of the statute was to facilitate smooth functioning of business transactions. The provision is necessary as in many transactions' cheques were issued merely as a device to defraud the creditors. Dishonor of cheque causes incalculable loss, injury and inconvenience to the Vide the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 payee and credibility of business transactions suffers a setback. At the same time, it was also noted that nature of offence under Section 138 primarily related to a civil wrong and the 2002 amendment specifically made it compoundable.”

32. Further, a three Judge Bench of Hon'ble Supreme Court in **Dashrath Rupsingh Rathod Vs. State of Maharashtra, 2014(9) SCC 129** in para 58 held as follows:

"58. To sum up:

58. 1. An offence under Section 138 of the Negotiable Instruments Act 1881 is committed no sooner a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for unsufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.

58.2. Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date the cause of action accrues to such payee or holder under clause (c) of proviso to section 138.

58.3. The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if:

(a) the dishonoured cheque is presented to the drawee bank within a period of six months from the date of its issue.

(b) if the complainant has demanded payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour of the cheque, and

(c) if the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice.

58.4. The facts constituting cause of action do not constitute the ingredients of the offence under Section 138 of the Act.

58.5. The proviso to section 138 simply postpones/defers institution of criminal proceedings and taking of cognizance by the court till such time cause of action in terms of clause (c) of the proviso accrues to the complainant.

58.6. Once the cause of action accrues to the complainant, the jurisdiction of the court to try the cause will be determined by reference to the place where the cheque is dishonoured."

The ratio of Dashrath Rupsingh Rathod case was followed by a subsequent three Judge Bench in ***Vinay Kumar Shailendra Vs. Delhi High Court Legal Services Committee and another, 2014(10) SCC 708.***

33. It is further observed that the trial court while summoning the applicants by impugned order has totally failed to appreciate the factual and legal aspect of the matter. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

34. Further the Hon'ble Supreme Court of India in the case ***Inder Mohan Goswami v. State of Uttaranchal (2007)12 SCC 1*** has held that it would be relevant to keep into mind the scope and ambit of section 482 Cr.PC and circumstances under which the extra ordinary power of the court inherent therein as provisioned in the said section of the Cr.P.C. can be exercised, para 23 is being quoted here under:-

"23. This court in a number of cases has laid down the scope and ambit of courts powers under section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:

- (i) to give effect to an order under the Code;*
- (ii) to prevent abuse of the process of court, and*
- (iii) to otherwise secure the ends of justice."*

35. Further Hon'ble the Supreme Court of India in the case of ***Lalankumar Singh and Others vs. State of Maharashtra*** reported in ***2022 SCC Online SC 1383*** has specifically held in paragraph No.38 that the order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. Paragraph No.38 of Lalankumar Singh and Others (supra) is being quoted hereunder:-

"38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, which reads thus:

"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely

because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

36. Further, Hon'ble the Supreme Court of India has provided guidelines in case of **State of Haryana Vs. Bhajan Lal** reported in **1992 Supp (1) SCC 335** for the exercise of power under Section 482 Cr.P.C. which is extraordinary power and used separately in following conditions:-

"102.(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused."

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

37. Further 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 Bihar Vs. P.P. Sharma, 1992 SCC (Crl.)192, (iii) Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq***

and another, (Para-10) 2005 SCC (Cri.) 283 and (iv) Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, AIR 2021 SC 1918.

38. In *S.W. Palankatkar & 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 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.

39. Thus, in view of the law laid down by the Hon'ble Apex Court and the facts and circumstances, as narrated above and from the perusal of the record, the impugned summoning order dated 22.07.2022 passed in Complaint Case No.83520 of 2021, under Section 138 N.I. Act, Police Station P.G.I., District Lucknow and the entire proceeding are against the spirit and directions issued by the Hon'ble Apex Court and are liable to be set aside.

40. Accordingly, the impugned summoning order dated 22.07.2022 passed by Presiding Officer, Additional Court No.10, Lucknow in Complaint Case No.83520 of 2021, under Section 138 N.I. Act, Police Station P.G.I., District Lucknow and the entire proceeding pending before the Presiding Officer, Additional Court No.10, Lucknow is hereby **set aside** and **reversed** and the matter is remanded back to the trial court. Learned trial court concerned is directed to pass a fresh order within four months from today, keeping in view the discussions/observations and judgments of Hon'ble the Apex Court referred above.

41. For the reasons discussed above, the instant application under Section 482 Cr.P.C. is **allowed** in respect of the instant applicants.

42. Learned Senior Registrar of this Court is directed to transmit a copy of this order to the trial court concerned for its necessary compliance.

(Shamim Ahmed, J.)

Order Date :- 13.02.2024
(Saurabh) / (Piyush/-)