

Court No. - 14

Case :- APPLICATION U/S 482 No. - 11575 of 2024

Applicant :- Shamshad Ali Alias Shamshad

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

Counsel for Applicant :- Iqbal Ali

Counsel for Opposite Party :- G.A.

Hon'ble Ajai Kumar Srivastava-I,J.

1. Heard Sri Iqbal Ali, learned counsel for the applicant, learned A.G.A. for the State and perused the entire record.

2. In view of the order, which is proposed to be passed today, notice to opposite party No.2 is hereby dispensed with.

3. The instant application under Section 482 Cr.P.C. has been filed by the applicant for quashing the impugned summoning order dated 03.11.2021 passed by learned Judicial Magistrate, Lakhimpur Kheri in Complaint Case No.1783 of 2019 (New No.4761 of 2023) titled Kamarun Nisha vs. Shamshad, under Section 138 Negotiable Instrument Act, Police Station Phulbehad, District Kheri, as well as application under Section 138 N.I. Act dated 17.04.2019 vide Complaint No.4761 of 2023 (Old No.1783 of 2019) and non-bailable warrants dated 16.10.2024, 21.10.2024 and 16.11.2024 issued by learned Ist Additional Chief Judicial Magistrate, Lakhimpur Kheri and further

proceedings of the case.

4. His further submission that the cheque-in-question was never issued by the applicant in discharge of any legally enforceable debt or liability. Therefore, no offence under Section 138 N.I. Act is made out against the applicant.

5. His next submission is that the complaint under Section 138 N.I. Act was filed without complying with the mandatory statutory requirement. Therefore, the impugned non-bailable warrants could not have been issued by the learned trial court.

6. His further submission is that substantial part of his liability has already been paid and he is willing to pay the remaining amount. However, because of his inadvertent absence on few dates, the learned trial court has issued non-bailable warrants against the applicant, which are in contravention of law laid down by the Hon'ble Supreme Court in **Raghuvansh Dewanchand Bhasin vs. State of Maharashtra** reported in **(2012) 9 SCC 791** and in **Inder Mohan Goswami and another vs. State of Uttaranchal and others** reported in **(2007) 12 SCC 1**. Therefore, the impugned orders issuing non-bailable warrants are untenable and deserves to be set aside.

7. Per contra, learned A.G.A. controverts the submissions of learned counsel for the applicant

on the ground that this is not a stage where minute and meticulous exercise with regard to the appreciation of evidence may be done and truthfulness of the allegations could only be tested in a criminal trial. At this initial stage, the fact of innocence of the applicant can also not be determined.

8. On the basis of the aforesaid, he submits that no interference with the impugned summoning order dated 03.11.2021 and proceedings is warranted at this stage and, therefore, the application is misconceived and is liable to be dismissed.

9. Accordingly, the prayer for quashing the impugned summoning order dated 03.11.2021 and proceedings is refused as this Court does not find any illegality, impropriety and incorrectness in the proceedings under challenge. There is no abuse of court's process either.

10. However, having regard to the fact that that non-bailable warrants have come to be issued on certain dates and also having regard to the fact that learned counsel for the applicant states that the applicant herein is willing to settle his dispute, the offence under Section 138 N.I. Act is compoundable in view of Section 147 N.I. Act and having regard to the overall facts and circumstances of this case and with a view to give quietus to the entire dispute between the parties, it is directed that, in case, the applicant moves an

application for cancellation of process issued against him/ praying for bail within four weeks from today, the learned court shall dispose of such application on its own merits having regard to the fact that the offence-in-question is bailable and keeping in view the law laid down by the Hon'ble Supreme Court in **Raghuvansh Dewanchand Bhasin' case (supra)**, **Inder Mohan Goswami's case (supra)** and **Satender Kumar Antill vs. Central Bureau of Investigation and others** reported in **MANU/SC/1024/2021**, by keeping the process(s), which was issued against the applicant, in abeyance for the aforesaid period only.

11. It is made clear that in case the present applicant fails to avail the benefit as aforesaid within the stipulated period, the same shall automatically cease to exist without any further reference to this Court.

12. With the aforesaid observations, the instant application under Section 482 Cr.P.C. is finally **disposed of.**

(Ajai Kumar Srivastava-I, J.)

Order Date :- 18.12.2024

cks/-