

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:128096

RESERVED ON : 24.7.2025

DELIVERED ON: 31.7.2025

SL. NO. 251

Court No. - 78

Case :- APPLICATION U/S 482 No. - 42944 of 2022

Applicant :- Uttkarsh Shukla

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Abhishek Gupta,Dharm Raj Pal

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Shri Abhishek Gupta, learned counsel for the applicant and Shri Rajesh Kumar Gupta, learned A.G.A. for the State.
2. Vide order dated 23.2.2023 notices were directed to be issued to the opposite party no. 2. As per office report dated 28.4.2023 notices have been served upon the opposite party no. 2. Despite service of notice no one appears on behalf of the opposite party no. 2.
3. The instant application under section 482 Cr.P.C. has been filed seeking quashing of the entire proceedings of Complaint Case No. 3583 of 2022 (Keenheads Technologies Pvt. Ltd .Vs. Uttkarsh Shukla) under section 138 N.I. Act police station Expressway, District Gautam Budh Nagar, pending in the Court of Addl. Chief Judicial Magistrate-3 District Gautam Budh Nagar as well as the summoning order dated 13.6.2022.
4. Learned counsel for the applicant submitted that that the applicant is an employee in the Company Keenheads Private Limited. There was an agreement between the applicant and the company and as per agreement, applicant has given undated cheque of Rs.4 lakh to the Company to

indemnify the complainant in case the applicant left the job before the prescribed period. The applicant left the job without completing the bond period, thereafter, the company has presented the said cheque, which was dishonored with the remarks "drawer signature differs". He further submits that the blank cheque was taken by the Company as security and not for encashment and no appointment letter was given to the applicant despite working for a long time. He further submits that service agreement cannot be relied upon as the same was got signed from the applicant under force and pressure, therefore, the service agreement is void-ab-anitio being against public policy and against the law, thus, the cheques in question given towards such an agreement was without any valid consideration. He further submits that Clause-f specifically says that "In this regard and to secure the service agreement cum indemnity bond, the employee shall provide the company with an undated cheque of amount of Rs.4 lakh in favour of the "Keenheads Technologies Pvt. Ltd" with an understanding and agreement that in the event of breach of this agreement before the entire term of service period, the Company can present the cheque for clearance within 7 days of termination of agreement. The same cheque shall be returned back to the employee by the company once he/she completes the entire service term of this agreement". He has also drawn attention of the Court towards last paragraph of the agreement wherein it is stated that "Governing Law and Forum: In event of any dispute or difference arising out of this agreement or whatsoever nature, the same shall be referred to Sole Arbitrator appointed by the Company for arbitration and shall be governed by the Arbitration Act in force at that time". He further submits that the said cheque was issued just for security but the company, while flouting the agreement condition, has intentionally presented before the Bank, which was dishonored. It is further submitted that in the instant case the cheque was dishonoured for the reason "drawer signature differs" therefore no offence under section 138 of the N.I. Act is made out.

5. Per contra, learned A.G.A. submitted that it is the admitted case of the applicant herein that he has signed the Agreement with the Company before seeking employment in the Company and the issuance of the cheque in question has also not been denied by the applicant herein. The only allegation in the instant case is that the applicant herein had executed the said agreement and issued the cheque under pressure. From perusal of the agreement it is apparent that there was no pressure on the applicant to execute the agreement and the said cheque issued in favour of the Company. It was an voluntary act on the part of the applicant herein. Once the issuance of cheque is admitted by the applicant then the presumption under section 139 of the N.I. Act come into play and it is presumed that the said cheque was issued in due discharge of its liability by the drawer of the cheque. It is also an admitted fact that in the instant case the applicant has left the employment with the opposite party no. 2 before the specific term for which the applicant has agreed to continue in the job with the Company. It is further submitted by the learned A.G.A. that when any person comes for employment a huge investment is made by the employer for training a raw incumbent and to ensure that such investment may not go waste and actually the person who is trained works for the company for certain period. It is being assured by such Agreement which are very common. However, while getting the Agreement executed no force or pressure has been created by the company. It is the voluntary choice of the person who is seeking employment and he has to abide by the Agreement. He is not being forced by any one to take the employment of the Company. So far as the fact that it was an undated cheque, then Section 87 of the N.I. Act provides the holder of the cheque to carry out the material alterations in the cheque in order to carry out the common intention of the parties, while executing a negotiable instrument. Thus, learned A.G.A. submits that there is no illegality in the impugned summoning order dated 13.6.2022 issued against the applicant herein and no interference is required by this Court.

6. Having heard the learned counsel for the parties this court has carefully gone through the entire record of the case. From the record of the case it is apparent that the complaint filed by the opposite party no. 2 against the applicant herein for dishonour of cheque of Rs.4,00,000/- dated 4.1.2022 issued by the applicant in favour of the Company/opposite party no. 2 which was dishonoured. Thereupon, a legal demand notice dated 15.1.2023 was issued to the applicant which was not received by the applicant herein. Thereupon the instant complaint has been lodged by the Company against the applicant herein. So far as the service agreement executed between the parties is concerned, it appears to have been voluntarily signed by the applicant herein for securing the employment with the opposite party no. 2 and as per the said agreement, the applicant herein has agreed to work in the Company for a period of two years and four months and in case he leaves the job prior to the said period, he would be bound to pay a sum of Rs.4,00,000/- to the opposite party. There is no averment in the instant case that any force or undue influence was used by the Company forcing the applicant to take the employment with the Company. The Company has offered the employment conditionally, which has been voluntarily agreed by the applicant herein and he signed the service agreement and issue an undated cheque for a sum of Rs.4,00,000/- in favour of the Company/opposite party no. 2. Thus, there was no fault on the part of the opposite party no. 2 for filing the complaint against the applicant in case of dishonour of the cheque. The said agreement has been executed by the applicant voluntarily without any fear or force. Admittedly he has left before the expiry of period of two years four months for which he had submitted the Bond. Thus he had violated the terms of the employment with the opposite party no. 2. Since the applicant left the job within the said period, an amount of Rs.4,00,000/- accrued on the part of the applicant towards the opposite party no. 2. Though the cheque in question was given in advance as a security of the amount in case of violation of terms of employment by the applicant

herein, that is not disputed by the applicant herein. Thus the issuance of cheque is not disputed. Section 87 of the N.I. Act provides for necessary alteration to carry out the common intention of the parties. If such alteration is against the common intention of the parties that will make the instrument invalid. In the instant case at the time of issuance of cheque the applicant herein was fully aware about the consequences of issuance of the said cheque and by issuing the said cheque in terms of the agreement he has agreed that in case there is any default on the part of the applicant, the said cheque shall be presented for encashment, as agreed between the parties. Therefore, the opposite party no. 2 has acted well within his rights for making alteration, so far as the date is concerned and presentation of the same for encashment, in terms of Section 87 of the N.I. Act. Section 139 of the N.I. Act also otherwise provides presumption in favour the holder with regard to liability. However, the said presumption is a rebuttable presumption.

7. So far as the submission of the learned counsel for the applicant with regard to arbitration clause is concerned, the applicant herein has submitted the cheque in question at the time of Agreement with the condition that in case he leaves the job within the period of two years four month, he would be liable for payment of Rs.4,00,000/- towards the Company and admittedly he left the job within the aforesaid period, thus there was no occasion for the Company to invoke the arbitration clause.

8. So far as the dishonour of cheque for reason “signature differs” is concerned, once the applicant has not denied the issuance of cheque and the cheque has been dishonoured for reason signature differs, then it is manipulation on the part of the applicant herein. Therefore, in the considered opinion of the Court an offence under section 138 of the N.I. Act is made out against the applicant.

8. It is not the case of the applicant that he has not violated the terms of the Agreement. Thus he had admitted the liability in terms of the said Agreement. The said cheque was present well within its validity period

and was dishonoured. Notices were issued to the applicant which he has refused to receive. Thereupon the instant complaint case has been filed and the trial court having found a prima-facie case against the applicant has rightly summoned the applicant herein.

9. For the aforesaid reasons, this court found no apparent error or illegality in the impugned summoning order. Accordingly, the instant application is **dismissed**.

Order Date :- 31.7.2025
o.k.

(Anish Kumar Gupta, J)