

Court No. - 73

Case :- APPLICATION U/S 482 No. - 23152 of 2024

Applicant :- Smt. Rani

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

Counsel for Applicant :- Ratnesh Kumar Shukla, Shikhar Tandon

Counsel for Opposite Party :- G.A.

Hon'ble Vikas Budhwar, J.

1. Heard Shri Shikhar Tandon, learned counsel for the applicant and Sri Vikash Sharma, learned State Law Officer for the State.
2. Records reveal that assailing the order dated 05.09.2018 passed by the Judicial Magistrate-I, Hapur in Complaint Case No. 536 of 2016 under Section 138 of the N.I. Act, Police Station- Pilakhhua, District Hapur convicting and sentencing the opposite party no. 2 for a simple imprisonment of one year and a fine of Rs. 60,00,000/- and default sentence of one month imprisonment, a Criminal Appeal No.56 of 2018 came to be filed which was dismissed on 26.07.2019 by the Sessions Judge, Hapur.
3. Questioning both the orders, the opposite party no. 2 preferred Criminal Revision No. 3338 of 2019 in which on 11.09.2019, the following orders were passed:

"Heard learned counsel for the revisionist and learned A.G.A. for the State.

The present criminal revision has been filed to quash the order dated 26.7.2019 passed by the learned Sessions Judge, Hapur in Criminal Appeal No. 56 of 2018 as well as the judgment and order dated 5.9.2018 passed by Judicial Magistrate-I, Hapur, in Complaint Case No. 536 of 2016, under Section 138 of N.I. Act.

Learned counsel for the applicant submits that cheque in question was dishonoured due to mismatch of signature, however, both the courts below arbitrarily presumed that the cheque was dishonoured due to insufficiency of fund. Further, it has been submitted that the applicant had been confined in

jail since 20.7.2019.

Matter requires consideration.

Admit.

Issue notice to opposite party no.2 returnable at an early date.

Summon the lower Court record.

List for hearing after two months.

Considering the facts and the circumstances of the case, let the revisionist-Abdul Hak (who is languishing in jail since 20.07.2019) be released on bail on his furnishing a personal bond and two local sureties each in the like amount to the satisfaction of the Court concerned below in the aforesaid case. It is further directed that the revisionist shall deposit 20% of the fine before the court concerned within a month from the date of his release. In case, the same is not deposited within stipulated time, his bail shall stand cancelled.

As soon as personal and surety bonds are furnished, photocopies of the same are directed to be transmitted to this Court forthwith by the concerned court to be kept on record."

4. The said order of subject matter of challenge before the Apex Court in SPL (Cri) No. 1471 of 2020 (Abdul Hak v. State of U.P.) in which on 14.02.2020, the following orders were passed:

"The special leave petitions are dismissed.

Pending application(s), if any, stands disposed of."

5. Since according to the applicant in the present application who is a complainant, the accused-Abdul Haq who had preferred criminal revision had not complied with the orders dated 11.09.2019 so he preferred an application on 27.11.2019 in the Complaint Case No. 536 of 2016 (Smt. Rani v. Abdul Haq) for issuance of non-bailable warrants. As the said application was not being decided so he preferred the present application U/S 482 of the Code of Criminal Procedure, wherein the following reliefs were sought:

"It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to direct the learned Judicial Magistrate-Hapur to adjudicate upon the application dated 27.11.2019 filed by the applicant and issue warrants

against the opposite party no. 2, in Misc. Case No. 109 of 2018, under Section 138 N.I. Act, titled Abdul Haq v. State of U.P. in compliance of the orders passed by this Hon'ble Court in Criminal Revision No. 3338 of 2019."

6. On 22.10.2014, this Court proceeded to pass the following orders in the present application:

"1. Heard Sri Shikhar Tandon, learned counsel for the applicant and Sri Ramesh Kumar, learned A.G.A. for the State.

2. The instant application has been filed seeking a direction to the Judicial Magistrate, Hapur to adjudicate the application dated 27.11.2019 filed by the applicant and issue warrants against opposite party No.2 in Misc. Case No. 109 of 2018 (Abdul Haq vs. State of U.P.), under Section 138 N.I. Act, in compliance of the orders passed by this Court in Criminal Revision No. 3338 of 2019.

3. Contention of learned counsel for the applicant is that after conviction, opposite party No.2 filed Criminal Revision No. 3338 of 2019 before this Court and this Court while admitting the same released opposite party No. 2 on bail, subject to condition that he would deposit 20% of the fine before the court below, with further observation that in case the said amount is not deposited within stipulated time, then his bail would be cancelled. It is further submitted that when opposite party No.2 did not deposit the amount as directed by this Court, then the applicant moved an application before the court below to cancel the bail of opposite party No.2 and that application is still pending.

4. Considering the fact that a criminal revision, filed by opposite party No.2, is still pending wherein he has already been granted bail, it would be appropriate that the present application is heard along with Criminal Revision No. 3338 of 2019.

5. Put up this case on 18.11.2024 as fresh along with Criminal Revision No. 3338 of 2019, before appropriate Bench."

7. The applicant herein who is opposite party no. 2 in the criminal revision proceeded to contest the matter and thereafter in the criminal revision No. 3338 of 2019 on 18.11.2024, the following orders were passed:

"Even after revised call, none appeared on behalf of the revisionist. Learned counsel for the respondent No.2 is present.

Learned counsel for the opposite party No.2 submits that an application for cancellation of bail granted to revisionist vide order dated 11.9.2019 is being filed in the office of this Court on the ground of non compliance of conditions of bail.

Learned counsel for the opposite party No.2 also submits that he has filed an application before this Court U/S 482 Cr.P.C. No.23152 of 2024 for issuing directions to trial court for expediting the hearing of application dated 27.11.2019 and issue warrants against the respondent No.2 in Misc. Case No.109 of 2018, Abdul Hak vs State of UP, under Section 138 of NI Act, which has been listed with present revision.

List this case as fresh on 20.12.2024 alongwith Application U/S 482 Cr.P.C. No.23152 of 2024."

8. In the present application also on 18.11.2024, the following orders were passed:

"Learned counsel for the applicant is present.

On 22.10.2024, this Court following order:-

"2. The instant application has been filed seeking a direction to the Judicial Magistrate, Hapur to adjudicate the application dated 27.11.2019 filed by the applicant and issue warrants against opposite party No.2 in Misc. Case No. 109 of 2018 (Abdul Haq vs. State of U.P.), under Section 138 N.I. Act, in compliance of the orders passed by this Court in Criminal Revision No. 3338 of 2019.

3. Contention of learned counsel for the applicant is that after conviction, opposite party No.2 filed Criminal Revision No. 3338 of 2019 before this Court and this Court while admitting the same released opposite party No. 2 on bail, subject to condition that he would deposit 20% of the fine before the court below, with further observation that in case the said amount is not deposited within stipulated time, then his bail would be cancelled. It is further submitted that when opposite party No.2 did not deposit the amount as directed by this Court, then the applicant moved an application before the court below to cancel the bail of opposite party No.2 and that application is still pending.

4. Considering the fact that a criminal revision, filed by opposite party No.2, is still pending wherein he has already been granted bail, it would be appropriate that the present application is heard along with Criminal Revision No. 3338 of 2019."

Learned counsel for the opposite party No.2 to file counter affidavit, if any, be filed in the matter, failing which appropriate order will be passed on the next date fixed.

List this case as fresh on 20.12.2024 alongwith connected revision."

9. On 20.12.2024, 04.04.2025, this Court proceeded to pass the following orders:

20.12.2024

"Even after revised call, none is there on behalf of the opposite party No.2 whereas learned counsel for the applicant is present.

Learned counsel for the applicant submitted that the opposite party No.2 was enlarged on bail in connected Criminal Revision No.3338 of 2019 filed by the opposite party No.2 with directions that the opposite party No.2 shall deposit 20 per cent of fine before the court concerned within one month from the date of his release. In case the same is not deposited within stipulated time, his bail shall stand cancelled. He next submitted that in respect of a clear mandate of this Court in bail order, the opposite party No.2 has not deposited 20 percent of fine till date.

List this case as fresh on 17.1.2025 alongwith connected revision at 2:00 PM.

Registry to inform in writing to the counsel for the opposite party No.2 to appear on that date and to argue his case.

In absence of learned counsel for the opposite party No.2 even after being informed, the matter raised by the applicant will be heard and decided in accordance with law."

04.04.2025

"1. Today when the matter has been taken up, this Court on 22.10.2024 connected the present application with the records of Criminal Revision No. 3338 of 2019. Order sheet further reveals that on 20.12.2024 orders were passed but the learned counsel for the applicant no. 2 was not appearing.

2. Today Sri S.A. Imam has made a statement at bar that he has no instructions in the connected matter and the file has been taken from his office by the revisionist in the connected revision.

3. Issue notice to the opposite party no. 2 in the present application. In addition to the same, CJM, Hapur shall serve notice upon the opposite party no. 2 in the present application and revisionist in the Revision No. 3338 of 2019.

4. Office to do the needful.

5. Put up this case as fresh on 21.04.2025 at 2:00 P.M."

10. There is an office report dated 19.04.2025 that the notice has been served upon the opposite party no. 2 personally.

11. On 21.04.2025, there is another office report that notice has been served upon the revisionist in criminal revision no. 3338 of

2019.

12. However, till the dictation of the order, nobody has put in appearance on behalf of the opposite party no. 2, though as noted in the order dated 04.04.2025 as extracted above, the counsel who is to appear for the opposite party no. 2 for the revisionist had made a statement that he has no instructions.

13. Learned counsel for the applicant submits that once the revisionist/ opposite party no. 2 has not complied with the order 11.09.2019 passed in Criminal Revision No. 3338 of 2019 which was a conditional order wherein the revisionist/ opposite party was directed to be released on bail on furnishing bond and two sureties each of the like amount to the satisfaction of the court concerned and to deposit 20% of the fine within one month from the date of the release then once the revisionist/ opposite party no. 2 was though enlarged on bail but he did not deposit the fine within the said period or till today the interim protection would stand automatically vacated. Argument is that the interim protection accorded on 11.09.2019 in Criminal Revision No. 3338 of 2019 cannot be in any manner whatsoever be treated as a tool in the hands of the accused and once the order has not been complied then the legal consequences should follow. So much so, the applicant had preferred an application on 27.11.2019, certified copy whereof is Annexure-4 at page 69 of the application, reference in para-17 for taking appropriate action post non-compliance of the order dated 11.09.2019 passed in Criminal Revision No. 3338 of 2019 by the opposite party no. 2 but the same is not being decided. Prayer is for taking decision on the said application.

14. Learned AGA has no objection to the same.

15. Looking into the overall facts and circumstances of the case, the issue as to whether the accused-opposite party no. 2/ revisionist has complied with the order dated 11.09.2019 passed in Criminal Revision No. 3338 of 2019 in entirety or not is an issue which needs consideration and in case, the order has not been complied with then natural legal consequences have to follow. Accordingly, the applicant may approach the court below for taking appropriate action along with the self-attested copy of the order passed today.

16. On the receipt of the same, the court below shall do the needful as required under the statute.

17. Accordingly, the application stands **disposed of**.

Order Date :- 21.4.2025

A. Prajapati