

A.F.R.

Court No. - 84

**Case :-** APPLICATION U/S 482 No. - 12997 of 2020

**Applicant :-** Kamal Chand Patel

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

**Counsel for Applicant :-** Ravindra Kumar, Arun Kumar Goyal

**Counsel for Opposite Party :-** G.A.

Hon'ble Ram Krishna Gautam, J.

1. Heard learned counsel for the applicants and learned A.G.A. representing the State. Perused the records.

2. This application under Section 482 Cr.P.C. has been filed by applicant Kamal Chand Patel against State of U.P. and another with prayer to quash impugned order dated 21.1.2020 as well as entire proceedings of Complaint Case No. 1850 of 2017, under Section 138 of N. I. Act, Mohd. Habib Vs. Kamal Chand Patel, P.S. Soraon, district Allahabad, pending in court of Special Judge N.I. Act, Allahabad.

3. Learned counsel for the applicants argued that entire proceeding of complaint case is an abuse of process of law. It was a pre-matured complaint because there is no mention of date of service of legal notice, whereas it was served upon applicant on 01.12.2017 and without expiry of 15 days period, this complaint has been filed. The cheque was dishonoured for the first time on 13.9.2017 and there is endorsement of above dishonour, but for creating a cause of action for limitation, it was falsely stated that it was subsequently presented for encashment, but it was again dishonoured, whereas no such presentation was there. This cheque was in lieu of security and it was not on account of any liability. It was misused for which an F.I.R. has been lodged by way of an application u/s 156(3) Cr.P.C. against complainant. Besides those legal defects, this summoning order was there. Hence an application for discharge was moved and it too was rejected vide order dated 21.1.2020, without considering the facts written therein. Those contents were not written in the impugned order. Thus, entire proceeding of complaint case as well as impugned order passed on discharge application is under abuse of process of law. Hence this application with above prayer.

4. Learned counsel for applicant has cited order of learned Single Bench of this court passed in Criminal Misc. Application No. 27216 of 2010 decided on 01.10.2012, Vijay Kumar Upadhyay Vs. State of U.P. and another, wherein it has been

held that cheque issued as security and towards payment of amount and if it was dishonoured, it is an offence in view of provisions of Section 138 of N.I. Act. But cheque given in security is not covered u/s 138 of N. I. Act.

5. Learned A.G.A. has vehemently opposed the above argument.

6. From the very perusal of complaint, annexed at page no. 58 of paper book, it is apparent that it was filed by Mohd. Habib against accused-applicant Kamal Chand Patel with this contention that the complainant was owner in possession of agricultural land of plot no. 70 situate in Mauza Saraibrisingh alias Sarai Bahar, Tehsil Soraon, District Allahabad. A portion of aforesaid plot measuring 30 Ft x 60 Ft. was alienated for an amount of Rs. 12 lacs by way of registered sale deed dated 28.8.2017 and consideration of Rs. 12 lacs was paid by way of cheques, two cheques for Rs. Three lacs and Rs. Two lacs were issued in favour of Rizwan Ahmad, another cheque for Rs. Three lacs was issued in favour of Faizan Ahmad and yet another cheque for Rs. Two lacs Ninety thousand was issued in favour of complainant against above sale consideration. When this cheque was presented by the complainant before bank for encashment, it was dishonoured. This was complained to the drawer, who assured for its payment on subsequent presentation. This cheque was presented. Subsequently, it was dishonoured on 01.11.2017. A legal notice by way of registered post dated 10.11.2017 was issued to the applicant, receipt of this registered post was annexed with the complaint and after receipt of above notice, payment was not made, then after this complaint was filed before above court on 11.12.2017 i.e. after lapse of 30 days from the date of issuance of notice by registered post. Now it is being stated that notice was received by accused-applicant on 01.12.2017 and complaint was pre-marute. Now it is a question of fact to be seen by the trial court by way of evidence, as to whether the notice was served on 01.12.2017 or it was delivered within three days of its posting by registered post. The issuance of cheque is an undisputed fact. Now whether it was against security or against consideration for execution of above sale deed is again a question of fact to be seen by trial court after evidence. The Apex Court in ***Fiona Shri Khande vs. State of Maharashtra and another, AIR 2014, Supreme Court 957***, has held that the Magistrate is not expected to analytically analyze all facts and evidence at the stage of issuing process u/s 204 Cr.P.C. Rather at that time, only prima-facie case for issuance of process is to be seen. In the present case, admitted fact of issuance of cheque is there, dishonour of it by bank concerned, dishonour memo and receipt of issuance of notice to accused- applicant by complainant by

registered post is there and non-payment of above amount is also undisputed. Hence on the basis of above facts, prima-facie case for issuance of process for offence punishable u/s 138 Act of N.I. Act was there and accordingly, it was done so.

7. The accused appeared with making contentions, as above, but those facts were to be decided by trial court after getting evidence and till disposal of application 9B moved for discharge, there was no fact at all except the grounds for summoning. Hence pre trial acquittal or without giving evidence to make decision making disposal of complaint was not made by trial court and there was no abuse of process in both of above proceedings. The fact involved in above proceeding, cited by learned counsel for applicant, is entirely different than the fact in hand. In above precedent, the money was held to be advanced as a security cheque, but in the present case the complaint version is that cheque was issued against payment of consideration for alienating landed property by way of registered sale deed. Hence, above precedent is of no effect to the accused at this juncture. Accordingly, the points raised relate to facts, as per law.

8. This court in exercise of its inherent jurisdiction u/s 482 Cr.P.C. is not expected to meticulously analyse the facts and evidence as it is matter of trial to be seen during trial.

9. Saving of inherent power of High Court, as given under Section 482 Cr.P.C, provides that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Meaning thereby this inherent power is with High Court (I) to make such order as may be necessary to give effect to any other order under this Code (II) to prevent abuse of the process of any Court (III) or otherwise to secure the ends of justice. But Apex Court in ***State of Andhra Pradesh v. Gaurishetty Mahesh, JT 2010 (6) SC 588: (2010) 6 SCALE 767: 2010 Cr. LJ 3844*** has propounded that "*While exercising jurisdiction under section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable apprehension of it accusation would not be sustained. That is the function of the trial Judge/Court*". In another subsequent ***Hamida v. Rashid, (2008) 1 SCC 474***, hon'ble Apex Court propounded that "*Ends of justice would be better served if valuable time of the Court is spent in hearing those appeals rather than entertaining petitions under Section 482 at an interlocutory stage which after filed with some oblique motive in order to circumvent the*

prescribed procedure, or to delay the trial which enable to win over the witness or may disinterested in giving evidence, ultimately resulting in miscarriage of Justice". In again another subsequent **Monica Kumar v. State of Uttar Pradesh, (2008) 8 SCC 781**, the Apex Court has propounded "Inherent jurisdiction under Section 482 has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself." While interpreting this jurisdiction of High Court Apex Court in **Popular Muthiah v. State, Represented by Inspector of Police, (2006) 7 SCC 296** has propounded "High Court can exercise jurisdiction suo motu in the interest of justice. It can do so while exercising other jurisdictions such as appellate or revisional jurisdiction. No formal application for invoking inherent jurisdiction is necessary. Inherent jurisdiction can be exercised in respect of substantive as well as procedural matters. It can as well be exercised in respect of incidental or supplemental power irrespective of nature of proceedings".

10. Regarding prevention of abuse of process of Court, Apex Court in **Dhanlakshmi v. R.Prasana Kumar, (1990) Cr LJ 320 (DB): AIR 1990 SC 494** has propounded "To prevent abuse of the process of the Court, High Court in exercise of its inherent powers under section 482 could quash the proceedings but there would be justification for interference only when the complaint did not disclose any offence or was frivolous vexatious or oppressive" as well as in **State of Bihar v. Murad Ali Khan, (1989) Cr LJ 1005: AIR 1989 SC 1**, Apex Court propounded "In exercising jurisdiction under Section 482 High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not".

11. Meaning thereby, exercise of inherent jurisdiction under Section 482 Cr.P.C. is within the limits, propounded as above. This court is not to make any comment on factual matrix because the same remains within the domain of trial court.

12. Accordingly, there remains nothing for any indulgence in this proceeding. The prayer for quashing the impugned order as well as proceeding of the aforesaid complaint case is refused and the application u/s 482 Cr.P.C. is hereby dismissed.

**Order Date :-** 6.10.2020

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