

Sharafat Ali vs State Of U.P. Thru. Its Addl. Chief Secy. ... on 1 April, 2025

Author: Alok Mathur

Bench: Alok Mathur

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:18077

Court No. - 12

Case :- APPLICATION U/S 482 No. - 2744 of 2025

Applicant :- Sharafat Ali

Opposite Party :- State Of U.P. Thru. Its Addl. Chief Secy. Deptt. Of Home Lko. And Anot

Counsel for Applicant :- Ram Naresh Yadav,Vineet Kumar Chaurasia

Counsel for Opposite Party :- G.A.

Hon'ble Alok Mathur,J.

1. Heard Shri Ram Naresh Yadav, learned counsel for applicant, learned A.G.A. for the State and perused the material available on record.
2. In view of the proposed order to be passed, notice to private respondent no. 2 is dispensed with.
3. The applicant in the present application under Section 528 of Bhartiya Nagrik Suraksha Sanhita, 2023 (under Section 482 Cr.P.C.), has assailed the validity of the order dated 06.08.2024 passed by Presiding Officer, Additional Court No. 8, Lucknow in Complaint Case No. 92930 of 2023 (Smt. Syed Reem Alam Vs. M/s Yazdan Construction & others) summoning the applicant under Section

138 of the Negotiable Instruments Act, 1881.

4. It has been submitted by learned counsel for applicant that a partnership deed was entered into between applicant, Fahad Yazdani, Sayam Yazdani & Mohd. Zaid Aleem for creating a partnership firm in the name & style of M/s Yazdan Constructions. Subsequently the aim and object of the said firm including carrying on business of constructions work through separate builder agreement of Allayah Aftak Residency situated at 498/212, Mahanagar, Lucknow. The share of the applicant was 20% in the said business and clause 17 clearly provides for any party to retire from the partnership firm by giving three months' notice to the others in writing. It has further been submitted that in furtherance of the said partnership agreement, a builder agreement was entered into on 31.07.2015 that the applicant also being a signatory to the said agreement. It seems that certain differences had arisen between the parties and accordingly, a complaint was filed in the court of learned Additional Chief Judicial Magistrate-I, Lucknow alleging that the opposite parties including the applicant had entered into an agreement which was duly registered for purchase of Flat No. 202 and 302 on the second and third floor for cost of Rs.44,00,000/- and Rs.46,93,500/- respectively with the total amount of Rs.90,93,500/- by the complainant and had tendered the entire amount of consideration of the said flats and an agreement was also entered into on 09.04.2019 and 07.09.2015 between the parties. The flats were to be handed over to the complainant within a stipulated period while in her complaint, it has been stated that till that time only the structure was constructed and the finishing work had yet to commence and despite requesting to hand over the completed flats, no action was taken by the opposite parties and accordingly, a fresh agreement was entered into on 05.01.2021. According to which, by 31.12.2021, the finished flats were to be handed over to the complainant. Despite expiry of the date in the fresh agreement, the flats were not handed over and therefore another agreement was entered into on 07.11.2022 where the market value of the flats were agreed to be refunded to the complainant. According to the said agreement, an amount of Rs.1,30,00,000/- was to be refunded to the complainant by a post dated cheque and remaining amount of Rs.30,00,000/- was to be paid thereafter. A post dated cheque no. 172716 dated 30.05.2023 was handed over to the complainant, which on presentation was dishonoured and despite giving notices, the payment was not made and consequently after satisfying with all the conditions prescribed under Section 138 of the Negotiable Instruments Act, 1881, the present complaint case has been filed.

5. The aforesaid facts were duly considered by the trial court and summons have been issued to all the persons named as accused including the applicant by means of order dated 21.08.2023.

6. It has been submitted by learned counsel for applicant that undoubtedly a partnership firm was created on 27.07.2015 but the applicant had subsequently resigned from the said partnership firm. In support of his submissions, learned counsel for applicant has filed memorandum of understanding dated 10.01.2018 entered into between M/s Yazdan Constructions and the applicant indicating that an agreement has been arrived at that the applicant would have no interference in the said business firm and shall not be responsible for any construction work done by the said firm.

7. It has further been submitted that once the applicant has removed himself from the partnership deed, he can no longer be tried for the acts conducted by the other partners and consequently seeks

to assail the summoning orders, which has been issued at the behest of opposite party no. 2.

8. There is no doubt with regard to the fact that neither has the partnership deed registered been and is merely on a notary affidavit and similarly the memorandum of understanding has only been notarized and reliance has been placed by the applicant on the above two documents to claim innocence in the matter.

9. On the other hand, learned A.G.A. for the State has submitted that the fact of resignation of the applicant from the partnership firm cannot be conclusive proof or accepted by the memorandum of understanding as annexed in the present application and these facts would have to be placed before the trial court, which may took into the validity of the said documents before excluding the applicant from the list of the accused and merely because the applicant alleges that he has resigned, cannot be a conclusive proof of the said facts, merely on the basis of documents annexed in the present application and hence, it cannot be said that there is abuse of process of law by the trial court in summoning the applicant.

10. I have heard learned counsel for parties and perused the material available on record.

11. The facts in the present case are not disputed with regard to the existence of a partnership deed where the applicant has shown to be a partner by means of the agreement dated 27.07.2015.

12. It seems that there is no doubt with regard to the builder agreement entered into by the partnership namely M/s Yazdan Construction and Aftek Private Limited which agreement was registered on 31.07.2015 where the applicant is also a signatory.

13. The issue which falls for consideration is as to whether summons could be issued to the applicant on being a partner in the firm, which had issued a cheque in favour of the complainant in discharge of the obligations for providing the complainant two flats, after he has resigned from the partnership, merely relying on a notary affidavit in support of his case.

14. It has noticed that the exclusion of the applicant has been sought merely on the basis of a memorandum of understanding.

15. A perusal of the partnership deed indicates that in clause 17 that any party may retire from the partnership firm by giving three month's notice to the others in writing and Mr. Fahad Yazdani had a right to remove and join any of the party during the project or after completion of the project.

16. In the present case, a memorandum of understanding has been annexed wherein paragraph no. 3, the applicant is described as an active partner, who is unable to continue in the partnership firm and in paragraph no. 5, it is noticed that the first party has accepted the resignation but has expressed their inability to refund the contribution made by the second party.

17. In the aforesaid circumstances, it is noticed that firstly the memorandum of understanding is not in terms of the partnership deed which only provides for a partner to retire from the partnership

firm. It is also noticed that the partnership deed further provides for three month's notice but in the memorandum of understanding, there is no mention of any notice for retirement and even otherwise seems to be a conditional resignation, inasmuch as, he has not been paid back his contribution by the other partners

18. Whether the memorandum of understanding annexed by the applicant amounts to resignation or otherwise is a question of fact, which can be decided only by adducing evidence and not merely by annexing a copy of the same in the present proceedings under Section 482 Cr.P.C. Due opportunity would be available to the applicant during course of trial to demonstrate that he was not partner when the cheque was issued to the complainant and he did not have any concern with the partnership firm.

19. At this stage, from the material adduced by the applicant, no such finding can be recorded in his favour.

20. In the aforesaid circumstances, the applicant cannot be excluded from the proceedings under Section 138 of the Negotiable Instruments Act, 1881 initiated against him considering the fact that undoubtedly he was a signatory to the builders agreement and the memorandum of understanding annexed by him is neither a registered document and nor in sink with the partnership deed.

21. In light of the above and for the reasons detailed hereinabove no interference can be made in the impugned summoning order dated 06.08.2024 passed by Presiding Officer, Additional Court No. 8, Lucknow in Complaint Case No. 92930 of 2023 (Smt. Syed Reem Alam Vs. M/s Yazdan Construction & others).

22. Therefore, the present application under Section 482 Cr.P.C. being bereft of merits and is hereby dismissed.

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(Alok Mathur, J.) Order Date :- 1.4.2025 Virendra