

Alok Kumar Trivedi vs State Of U.P. And Another on 8 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:51152

Court No. - 73

Case :- APPLICATION U/S 482 No. - 27156 of 2024 (Leading Application)

Applicant :- Alok Kumar Trivedi

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

Counsel for Applicant :- Pradeep Chauhan

Counsel for Opposite Party :- G.A.

with

Case :- APPLICATION U/S 482 No. - 26093 of 2024 (Connected C1 Application)

Applicant :- Alok Kumar Trivedi

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

Counsel for Applicant :- Pradeep Chauhan

Counsel for Opposite Party :- G.A.

with

Case :- APPLICATION U/S 482 No. - 25067 of 2024 (Connected C2 Application)

Applicant :- Alok Kumar Trivedi

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Pradeep Chauhan

Counsel for Opposite Party :- G.A.

Hon'ble Vikas Budhwar,J.

1. Since common questions of law and facts involved in the leading and connected C1 and C2 applications, thus, they are being decided by a common order.
2. Heard Shri Pradeep Chauhan, learned counsel for the applicant in leading as well as connected C1 and C2 applications and Shri S.K. Singh, learned AGA for the State-opposite parties.
3. A joint statement has been made by the learned counsel for the applicant in leading application, connected C1 and C2 applications as well as learned AGA that they do not propose to file any further affidavits and the applications be decided on the documents available on record. With the consent of the parties, the applications are being decided at this stage.
4. The facts of the leading applications are that the complaint was logged on 18.11.2023 by the opposite party no.2 against the applicant under Section 138 read with Section 142 of the N.I. Act. In para 4 of the complaint, It has been asserted that financial assistance of an amount of Rs.46,04,600/- was made to the applicant through bearer cheques, cash, R.T.G.S. etc. and on 16.08.2023, the applicant through R.T.G.S. paid an amount of Rs.1,36,500/- resulting to the fact that total amount due and payable by the applicant to the opposite party no. 2 is Rs.45,68,100/-. In para 5 of the complaint, it is asserted that on 29.09.2023, a cheque of Rs.13,82,100/- bearing No.000172 was drawn in favour of the applicant which was presented in the bank on 30.09.2023 and the same stood dishonoured on 03.10.2023 on account of insufficient funds. A statutory demand notice was issued on 13.10.2023 which was received by the applicant on 14.10.2023. Since the said amount was not paid in spite of service of the statutory demand notice, the complaint stood preferred on 18.11.2023 and on 05.01.2024, the court of Additional Civil Judge (Senior Division) Court No.4, Kanpur Nagar summoned the applicant on 05.01.2024 in Complaint Case No. 154792 of 2023.
5. Regards connected C1 application, a complaint was filed by the opposite party no. 2 under Section 138 read with Section 142 of the N.I. Act against the applicant on 24.04.2023, wherein the allegation is that the applicant had drawn cheque of Rs.10,00,000/- bearing No.000218 in favor of the opposite party no. 2 on 02.12.2023 when presented in the bank was dishonoured on account of insufficient funds on 14.02.2024. A statutory demand notice was issued on 05.03.2024 which was received by the applicant on 06.03.2024 which was replied on 19.03.2024, thereafter on 21.03.2024 on the basis of the tendering of goods offices by certain persons, a cheque of Rs.10,00,000/- was drawn by the applicant bearing No.000109 for an amount of Rs.10,00,000/- dated 22.03.2024 and when the same was presented in the Bank on 26.03.2024 for clearance, the same stood dishonoured on 27.03.2024 on account of insufficient funds, thereafter a statutory demand notice was issued on 02.04.2024 and despite service of the said notice, the payments were not made, the complaint stood

preferred on 24.04.2024. Thereafter on 15.06.2024, the court of Additional Civil Judge (Junior Division)-IV, Metropolitan, Kanpur Nagar proceeded to summon the applicant in Complaint Case No.40309 of 2024.

6. The facts of the C2 applications are that a complaint was filed by the opposite party No. 02 on 15.09.2023 under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881, with an allegation that in the year 2019, the applicant herein claiming himself to be the proprietor of Trivedi Transport Company and Building Material approaching the opposite party No.02 with a request to tender financial assistance as he had suffered losses in the said business. The opposite party no. 2 tendered financial assistance to the tune of Rs.46,04,600/- through bearer cheque, R.T.G.S., N.E.F.T. etc. On 06.08.2023, an amount of Rs.1,36,500/- was paid by the applicant to the opposite party no. 02 through R.T.G.S. Since the residue amount of Rs.45,68,100/- was to be paid by the applicant to the opposite party no. 2 so on 20.04.2023, the applicant had drawn a cheque of Bank of Baroda bearing No.000157 of an amount of Rs.10,75,000/- with an assurance that the said cheque be presented in the bank would be cleared and the liability will be cleared very soon. In para 6 of the complaint, it is asserted that the cheques were presented on several occasions i.e. 02.05.2023, 06.05.2023, 08.06.2023 and 06.07.2023. However, the same was dishonored on 03.05.2023, 08.05.2023, 09.06.2023 and 07.07.2023 on account of insufficient funds. A statutory notice of demand was made on 05.08.2023 to clear the said amount which was received on 07.08.2023. A reply to the said notice was tendered by the applicant on 14.08.2023. Since the payments were not made despite demand, so the complaint stood lodged on 15.09.2023.

7. The Court of Additional Civil Judge (Junior Division), Kanpur Nagar in Complaint Case No.138763 of 2023 summoned the applicant on 07.10.2023 under Section 138 N.I. Act.

8. Questioning the summoning orders passed by the court below, the applicant has filed the present applications under section 482 Cr.P.C.

9. Learned counsel for the applicant has submitted that the summoning orders cannot be sustained in the eyes of law for manifold reasons:

(a) The cheques which are stated to have been dishonoured does not answer the definition of "debt or other liabilities" so as to invoke the provisions of Section 138 of the N.I. Act as the same was tendered as security.

(b) Since the applicant had made part payment of the amount as stated to be due, thus, Section 56 of the N.I. Act, 1881 would come into play and the opposite party no. 2 would not be entitled to receive the total amount so claimed and the criminal proceedings cannot be initiated against the applicant.

(c) On the similar set of allegations, two parallel proceedings cannot be continued, particularly, when there already happens to be a first information report lodged prior to the filing of the complaint on 05.03.2023 under Sections 406, 342, 506, 504 and 147 IPC, being FIR No.0065 at the instance of the opposite party no. 2 against the

applicant with respect to same incident and transaction.

10. Learned counsel for the applicant has submitted that in the first information report dated 05.03.2024 under Sections 406, 342, 506, 504 and 147 IPC, a recital has been contained in the body of the first information report that with respect to financial assistance extended by the opposite party no. 2 to the applicant, the applicant had submitted a cheque as a guarantee. Submission is that the said cheques which were submitted as security, are now being misused while presenting in the bank and getting it dishonored. Submission is that once the cheques were submitted as security and the same has been admitted in the FIR then the same cannot be attract liability under the Negotiable Instruments Act since they do not come within the ambit of debt or other liabilities. It is also contended that as per the complaint itself, it is apparent that the total amount due which was liable to be paid by the applicant to the opposite party no. 2 was Rs.46,04,600/- out of which, the applicant had discharged his liability while making of Rs.1,36,500/- on 16.08.2023, thus, the legally enforceable debt on the date of the maturity would not be the sum represented on the cheque in view of the Section 56 of the N.I. Act. Reliance has been placed upon the decision in the case of the Dashrathbhai Trikamabhai Patel v. Hitesh Mahendrabhai Patel and another; 2023 (1) SCC 578. Additionally, it is being argued that once with respect to same set of facts/ transactions, a first information report under Sections 406, 342, 506, 504 and 147 IPC stood lodged on 05.03.2023 then the criminal proceedings emanating from the complaint case cannot be proceeded with in view of the Article 20(2) of the Constitution of India read with Section 300(1) Cr.P.C. Reference has been made to the judgment in the case of J. Vedhasingh v. R.M. Govindan; 2022 SCC OnLine SC 1010 that in view of the conflicting decisions, the matter has been referred to the larger Bench. Accordingly, it is prayed that the summoning orders be quashed.

11. Shri S.K. Singh, learned AGA while countering the submission of learned counsel for the applicant has sought to argue that none of the grounds are tenable in the eyes of law and there is no illegality in the summoning order. Submission is that the question as to whether the cheques were presented for security or not, is a matter of trial, which cannot be gone into the present proceedings at this stage. As regards, the application of Section 56 of N.I. Act is concerned, it would not be attracted in the present proceedings. Lastly, it is contended that the offences under IPC, pursuant to the lodging of the first information report and the complaint under section 138 N.I. Act can proceed on their own strength, particularly, when the allegation in both the proceedings are completely different and they are not intermingling with each other and they are not on similar set of allegations.

12. I have heard learned counsel for the parties and gone through the records carefully.

13. The sole question which arises for determination in the present proceedings is the extent of judicial intervention in the present proceedings at this stage. Apparently, a first information report stood lodged by the opposite party no. 2 against the applicant on 05.03.2023 at 18:32 hours, FIR No.0065 of 2023 before Police Station Bari-South, Commissionerate Kanpur Nagar, under Sections 406, 342, 506, 504 and 147 IPC relatable to the commission of the offenses on 05.03.2023 against the applicant and other unnamed four and five persons with an allegation that certain amounts were transferred through R.T.G.S. by the opposite no. 2 to the applicant and the applicant had submitted

a cheque as a guarantee, however, the said amount was not paid, despite one year has lapsed and when on 04.03.2023, when the opposite party no. 2 requested the applicant to pay the amount then threats were administered on phone so the opposite no. 2 contacted the Manager of the institution and when he had made phone-call to the applicant, he apprised that he was in District Court and he directed him to come there but when the Manager stated that the applicant was not in the District Court then he was called to another place and when even to that place then threats were administered, pursuant whereto the first information report was lodged. So far as the complaint lodged by the opposite party no. 2 is concerned, the same alleges that an amount of Rs.46,04,600/- was extended as a financial assistance by the opposite party no. 2 to the applicant and a part payment of Rs.1,36,500/- through R.T.G.S. was made by the applicant to the opposite party no. 2 on 16.08.2023 and the total residue amount was Rs. 45,68,100/-. Cheques are stated to have been issued by the applicant being of Rs.13,82,100/- on 29.09.2023 bearing no. 00072 (leading application) and an amount of Rs.10,00,000/- on 22.03.2024 bearing no. 000109 (connected C1 application) and Rs. 10,75,000/- being cheque no. 000157 dated 20.04.2023 (connected C2 application). The said cheques stood dishonored on various dates, pursuant whereto statutory demand notice was issued which was complaint so filed and summoning order has been passed.

14. A pivotal question which arises for consideration is firstly, whether offences under IPC and the complaint under Section 138 of the N.I. Act can be proceeded with or not, secondly, whether on the basis of the making of the part payment, the legal enforceable debt on the date of the maturity of the cheque is there or not while applying Section 56 of the N.I. Act and thirdly, whether the said cheques can be termed to be security or not.

15. Coming to the issue of continuance of the criminal proceedings emanating from lodging of an FIR and complaint under Section 138 of N.I. Act is concerned, what is to be seen is the fact as to whether there happens to be on the similar set of allegations or not. Apparently, the first information report under Sections 406, 342, 506, 504 and 147 IPC stood lodged on 05.03.2023 bearing FIR No. 0065. The said FIR does not disclose any allegations referable to the dishonouring of the cheques which are the part and the parcel in the complaints under Section 138 of the N.I. Act. The allegation in the first information report is regarding administering threats and not paying the amounts due and payable referable to the financial assistance extended by the opposite party no. 2 to the applicant. The complaints under Section 138 of the N.I. Act which are subject matter of application under Section 482 of the Cr.P.C. are post lodging of first information report on 18.11.2023, 24.04.2024 and 15.09.2023 in respect of dishonouring of cheques on 29.09.2023 for Rs. 13,82,100/-, cheque dated 22.03.2024 of Rs. 10,00,000/- and cheque no. 000157 dated 20.04.2023 for Rs. 10,75,000/-

16. Interestingly, in the leading and connected C1 applications, the cheques have been drawn post lodging of the first information report which stood dishonored. However, in the connected C2 application, though the cheque was drawn on 20.04.2023 and the same stood dishonoured on various occasions and lastly, on 07.07.2023 on account of insufficient funds but the payment was made on 16.08.2023 which is post dishonouring of the cheque. Thus, it can be safely said that they are not on the similar set of allegations. The cause of action as well as the contents of the complaints and the FIR are entirely different. Hence the judgment in the case of J. Vedhasingh (supra) would

not apply in the facts and circumstances of the case, particularly, when in the present facts of the case, allegations are on different set of facts.

17. Section 56 of the Negotiable Instruments Act, 1881 reads as under:

"56. Endorsement for part of sum due.—No writing on a negotiable instrument is valid for the purpose of negotiation if such writing purports to transfer only a part of the amount appearing to be due on the instrument; but where such amount has been partly paid, a note to that effect may be indorsed on the instrument, which may then be negotiated for the balance."

18. In the Dashrathbhai Trikambhai Patel (supra) the Hon'ble Apex Court had the occasions to consider Section 56 of the N.I. Act 1881 and in para 30, it was held as under:

"30. In view of the discussion above, we summarise our findings below:

(i) For the commission of an offence under Section 138, the cheque that is dishonoured must represent a legally enforceable debt on the date of maturity or presentation;

(ii) If the drawer of the cheque pays a part or whole of the sum between the period when the cheque is drawn and when it is encashed upon maturity, then the legally enforceable debt on the date of maturity would not be the sum represented on the cheque;

(iii) When a part or whole of the sum represented on the cheque is paid by the drawer of the cheque, it must be endorsed on the cheque as prescribed in Section 56 of the Act. The cheque endorsed with the payment made may be used to negotiate the balance, if any. If the cheque that is endorsed is dishonoured when it is sought to be encashed upon maturity, then the offence under Section 138 will stand attracted;

(iv) The first respondent has made part-payments after the debt was incurred and before the cheque was encashed upon maturity. The sum of rupees twenty lakhs represented on the cheque was not the 'legally enforceable debt on the date of maturity. Thus, the first respondent cannot be deemed to have committed an offence under Section 138 of the Act when the cheque was dishonoured for insufficient funds; and

(v) The notice demanding the payment of the 'said amount of money' has been interpreted by judgments of this Court to mean the cheque amount. The conditions stipulated in the provisos to Section 138 need to be fulfilled in addition to the ingredients in the substantive part of Section 138. Since in this case, the first respondent has not committed an offence under Section 138, the validity of the form of the notice need not be decided."

(emphasised court)

19. In the present case in hand, the question of application of Section 56 of the N.I. Act would not arise for the simple reason that one of the condition precedent is that part payment is to be made post drawing of the cheque and before its maturity. Here in the present case, so far as leading applicant and connected C1 application, whatever payments have been made, it is prior to drawing of the cheques, particularly, when out of the total amount of Rs.46,04,600/- as per the complaint and case of the applicant and an amount of Rs.1,36,500/- being the part payment was made on 16.08.2023. However, the cheques in the leading case was drawn by the applicant on 29.09.2023 for 13,82,100/- and in the connected application for an amount of Rs. 10,00,000/- drawn on 22.03.2024, thus, whatever part payments which are claimed to be made by the applicant is concerned, the same is prior to drawing of the cheque. So far as connected C2 application is concerned, the cheques were though issued drawn on 20.04.2023 and was lastly dishonoured on 07.07.2023 but the part payments were made on 16.08.2023 of an amount of Rs. 1,36,500/-. Moreover, the reply to the applicant dated 14.08.2023 to the statutory demand notice does not disclose that barring the making of a part payment of Rs. 1,36,500/-, there was any other part payment made by the applicant. Even otherwise, a bare perusal of the complaints itself make it clear that the total amount due and payable was Rs. 45,68,100/- against which the three cheques were drawn by the applicant which stood dishonoured, however, adding the amount of the cheque which was being dishonoured also do not exceed the total amount stated to be due and payable as reflected in the complaint.

20. Nevertheless, it would not be appropriate for the Court to intervene at this stage and throttle the continuance of the proceedings, particularly, when there is nothing to substantiate and further whatever arguments are being sought to be made are the matter of defences, thus, the applicant is not entitled to the benefit.

21. Lastly, the submission of the learned counsel for the applicant that the cheques were delivered to the opposite party no. 2 as security, thus, they do not answer the debt or other liabilities is concerned, the same cannot be accepted for the simple reason that there is nothing on record to show that the said/ same cheques were kept as security. Apart from the same, the issue as to whether the cheques were tendered by way of security is concerned, the same is a matter of defence which cannot be gone into at this stage in the present proceedings, as it is a matter of trial. The Hon'ble Apex Court in the case of M/s Womb Laboratories Pvt. Ltd. v. Vijay Ahuja and another; 2022 (18) SCC 631 in para 4 as observed as under:

"4. In our opinion, the High Court has muddled the entire issue. The averment in the complaint does indicate that the signed cheques were handed over by the accused to the complainant. The cheques were given by way of security, is a matter of defence. Further, it was not for the discharge of any debt or any liability is also a matter of defence. The relevant facts to countenance the defence will have to be proved - that such security could not be treated as debt or other liability of the accused. That would be a triable issue. We say so because, handing over of the cheques by way of security per se would not extricate the accused from the discharge of liability arising from

such cheques."

22. The said proposition of law stood reiterated in the case of Sunil Todi v. State of Gujarat; 2022 (16) SCC 762. Accordingly, no ground is made out to interfere in the present proceedings, thus, interference is declined. Applications are dismissed.

Order Date :- 8.4.2025 A. Prajapati