

Omprakash vs State Of U.P. And Another on 28 February, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:28979

Court No. - 77

Case :- APPLICATION U/S 528 BNSS No. - 5535 of 2025

Applicant :- Omprakash

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

Counsel for Applicant :- Rafeek Ahmad Khan

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Sri Rafeek Ahmad Khan, learned counsel for the applicant and Ms. Ruchi Mishra, learned State Law Officer.

2. The present application has been filed to direct the learned court of Civil Judge (Junior Division)/ FTC, Mahoba to conclude the proceeding of Complaint Case No.1060 of 2020, Computer No.1038/2020, CNR No.UPMBo40016472020, under Section 138 N.I. Act, arising out of summoning order dated 24.06.2020, pending in the court of Civil Judge (Junior Division)/ FTC, Mahoba, within a stipulated period.

3. Contention of learned counsel for the applicant is that though this complaint under N.I. Act was filed in the year 2020, but the trial could not yet be concluded. It is further submitted that as per Section 143(2) of N.I. Act, the trial for the offence under N.I. Act should be conducted on day to day basis and it is further provided u/s 143(3) that the trial should be concluded within six months from the date of filing of the complaint.

4. The Apex Court in the case of Indian Bank Association and others vs. Union of India and others; (2014) 5 SCC 590, has issued direction for expeditious disposal of the cases under N.I. Act. Paragraph Nos. 22, 23 and 24 of the aforesaid judgement are being quoted as under:

"22. We notice, considering all those aspects, few High Courts of the country have laid down certain procedures for speedy disposal of cases under Section 138 of the Negotiable Instruments Act. Reference, in this connection, may be made to the judgments of the Bombay High Court in KSL and Industries Ltd. v. Mannalal Khandelwal, Indo International Ltd. v. State of Maharashtra (2005) 44 Civil CC and Harischandra Biyani v. Stock Holding Corpn. of India Ltd. (2006) 4 MhLJ 381, the judgment of the Calcutta High Court in Magma Leasing Ltd. v. State of West Bengal and others (2007) 3 CHN 574 and the judgment of the Delhi High Court in Rajesh Agarwal v. State and another (2010) ILR 6 Delhi 610.

Directions

23. Many of the directions given by the various High Courts, in our view, are worthy of emulation by the Criminal Courts all over the country dealing with cases under Section 138 of the Negotiable Instruments Act, for which the following directions are being given :-

23.1. The Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.

23.2. The MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant. The court, in appropriate cases, may take the assistance of the police or the nearby court to serve notice to the accused. For notice of appearance, a short date be fixed. If the summons is received back unserved, immediate follow-up action be taken.

23.3. The court may indicate in the summon that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, the court may pass appropriate orders at the earliest.

23.4. The court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251 Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) for recalling a witness for cross-examination.

23.5. The court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The court has option of accepting affidavits of the witnesses, instead of examining them in the court. The witnesses to the complaint and accused must be available for cross-examination as and when there is direction to this effect by the court.

24. We, therefore, direct all the criminal courts in the country dealing with Section 138 cases to follow the above-mentioned procedures for speedy and expeditious disposal of cases falling under Section 138 of the Negotiable Instruments Act. Writ Petition is, accordingly, disposed of, as above."

5. The Apex Court in the case of In Re: Expeditious Trial of Cases under Section 138 N.I. Act, 1881, reported in 2021 SCC Online 325 has already issued following directions for expeditious trial u/s 138 N.I. Act as under:-

"24. The upshot of the above discussion leads us to the following conclusions:

1) The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial.

2) Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.

3) For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.

4) We recommend that suitable amendments be made to the Act for provision of one trial against a person for multiple offences under Section 138 of the Act committed within a period of 12 months, notwithstanding the restriction in Section 219 of the Code.

5) The High Courts are requested to issue practice directions to the Trial Courts to treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques issued as part of the said transaction.

6) Judgments of this Court in Adalat Prasad (supra) and Subramaniam Sethuraman (supra) have interpreted the law correctly and we reiterate that there is no inherent power of Trial Courts to review or recall the issue of summons. This does not affect

the power of the Trial Court under Section 322 of the Code to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint.

7) Section 258 of the Code is not applicable to complaints under Section 138 of the Act and findings to the contrary in *Meters and Instruments* (supra) do not lay down correct law. To conclusively deal with this aspect, amendment to the Act empowering the Trial Courts to reconsider/recall summons in respect of complaints under Section 138 shall be considered by the Committee constituted by an order of this Court dated 10.03.2021.

8) All other points, which have been raised by the *Amici Curiae* in their preliminary report and written submissions and not considered herein, shall be the subject matter of deliberation by the aforementioned Committee. Any other issue relating to expeditious disposal of complaints under Section 138 of the Act shall also be considered by the Committee."

6. From the above mentioned judgements of Hon'ble Apex Court, it is clear that the Apex Court for expeditious disposal of cases under N.I. Act, has issued several directions which the concerned court/Magistrate has to follow while deciding the cases under N.I. Act. From the observations of the Apex Court as well as analysis of Sections 138 & 143 of N.I. Act, it is expedient that all the proceedings under N.I. Act should be concluded expeditiously without going into unnecessary technicality.

7. Considering the aforesaid judgements, the Civil Judge (Junior Division)/ FTC, Mahoba is directed to conclude the trial of Complaint Case No.1060 of 2020, Computer No.1038/2020, CNR No.UPMBo40016472020, under Section 138 N.I. Act, arising out of summoning order dated 24.06.2020, pending in the court of Civil Judge (Junior Division)/ FTC, Mahoba, keeping in mind the direction of the Apex Court in above mentioned cases, expeditiously preferably within a period of six months from the date of receipt of certified copy of this order, strictly in accordance with statutory provision of Sections 143(2) and 143(3) of the N.I. Act, if there is no legal impediment.

8. It is also directed to the concerned court that for ensuring the presence of accused during trial, it should not hesitate to take coercive measures provided under Cr.P.C.

9. With the aforesaid direction, the application is disposed of.

Order Date :- 28.2.2025 Jitendra