Vijay Kumar Yadav vs State Of U.P. And Another on 2 January, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:6

Court No. - 77

Case :- APPLICATION U/S 482 No. - 17849 of 2024

Applicant :- Vijay Kumar Yadav

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

Counsel for Applicant :- Anup Kumar Pandey,Sanjay Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Sri Manish Kumar Pandey, learned counsel holding brief of Sri Anup Kumar Pandey along with Sri Sanjay Srivastava, learned counsel for the applicant and Sri Rajeev Kumar Singh, learned AGA for the State.

2. The present 482 Cr.P.C. application has been filed to quash the entire criminal proceedings including summoning order dated 19.10.2023 in Complaint Case No.14209 of 2022, under Section-138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act, 1881'), Police Station-Kotwali Padrauna, District-Kushinagar, Diwakar Versus Vijay Kumar, pending in the court of Chief Judicial Magistrate, Kushinagar at Padrauna.

3. Contention of learned counsel for the applicant is that while passing the summoning order, court below has not recorded finding in support of prima facie satisfaction. In support of his contention, learned counsel for the applicant has relied upon the judgement of the Apex Court in the cases of

S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla & Another in Criminal Appeal No.664 of 2002 decided on 20.09.2005. It is further submitted by learned counsel for the applicant that cheque in question was not issued in discharge of any liability and same was a missing cheque. In support of his contention, learned counsel for the applicant has also relied upon the judgement of Raj Kumar Khurana Vs. State of (NCT of Delhi) & Another in Criminal Appeal No.913 of 2009, arising out of SLP (Crl.) No.8059 of 2007 decided on 05.05.2009. Therefore, no liability u/s 138 of the Act, 1881 is attracted. It is also submitted by learned counsel for the applicant that though applicant is a resident of Kushinagar but at present, he has been residing at Kanpur, therefore, the court having jurisdiction in district- Kushinagar should have conducted enquiry as required by Section 202 Cr.P.C.

4. Per contra, learned AGA has opposed the prayer on the ground that all the pleas raised by the applicant are disputed questions of fact which cannot be a ground to quash the impugned proceeding, at this stage.

5. Considering the submission of parties and on perusal of record, it appears from the impugned summoning order that after stating the facts of the complaint as well as statement, the court below after recording its satisfaction summoned the applicant on the ground that cheque signed by the applicant was returned by the bank with the endorsement 'insufficiency of fund' which prima facie attracts the liability u/s 138 of the Act, 1881. The Apex Court in the recent judgement in the case of Sharif Ahmad & Another Vs. State of U.P. & Another reported in 2024 LiveLaw SC 337 had observed in paragraph no.17 that Section 204 Cr.P.C. does not mandate the Magistrate to explicitly state the reason for issue of the summons. Therefore, no detailed reason is required to be mentioned in the summoning order.

6. So far as the contention of learned counsel for the applicant that cheque in question was a missing cheque regarding which the applicant has already informed the police is concerned, same is disputed question of fact that can be raised by the applicant during trial. As in the present case, cheque has been returned with the endorsement 'fund insufficient' and had it been the missing cheque, applicant would have instructed the bank for stopping the payment of cheque. Therefore, judgement of Raj Kumar Khurana (supra) relied upon the applicant does not apply in the present case. Apex Court in the case of Laxmi Dyechem Vs. State of Gujarat & Others reported in (2012) 13 SCC 375 as well as in the case of Lafarge Aggregates And Concrete India Private Ltd. Vs. Sukarsh Azad And Another reported in 2014 (13) SCC 779 has observed that in case dishonour of cheque for insufficient fund or for any other reason, accused is free to take all plea during trial but proceeding cannot be quashed on this ground. Paragraph nos.16.2 and 17 of Laxmi Dyechem (supra) as well as paragraph no.8 of Lafarge Aggregates (supra) are being quoted as under:

> ?16.2.There may indeed be situations where a mismatch between the signatories on the cheque drawn by the drawer and the specimen available with the bank may result in dishonour of the cheque even when the drawer never intended to invite such a dishonour. We are also conscious of the fact that an authorised signatory may in the ordinary course of business be replaced by a new signatory ending the earlier mandate to the bank. Dishonour on account of such changes that may occur in the

course of ordinary business of a company, partnership or an individual may not constitute an offence by itself because such a dishonour in order to qualify for prosecution under Section 138 shall have to be preceded by a statutory notice where the drawer is called upon and has the opportunity to arrange the payment of the amount covered by the cheque. It is only when the drawer despite receipt of such a notice and despite the opportunity to make the payment within the time stipulated under the statute does not pay the amount that the dishonour would be considered a dishonour constituting an offence, hence punishable. Even in such cases, the question whether or not there was a lawfully recoverable debt or liability for discharge whereof the cheque was issued would be a matter that the trial court will examine having regard to the evidence adduced before it and keeping in view the statutory presumption that unless rebutted the cheque is presumed to have been issued for a valid consideration.

17.In the case at hand, the High Court relied upon a decision of this Court inVinod Tanna case[(2002) 7 SCC 541 : 2002 SCC (Cri) 1825] in support of its view. We have carefully gone through the said decision which relies upon the decision of this Court inElectronics Trade & Technology Development Corpn. Ltd.[(1996) 2 SCC 739 : 1996 SCC (Cri) 454] The view expressed by this Court inElectronics Trade & Technology Development Corpn. Ltd.[(1996) 2 SCC 739 : 1996 SCC (Cri) 454] that a dishonour of the cheque by the drawer after issue of a notice to the holder asking him not to present a cheque would not attract Section 138 has been specifically overruled inModi Cements Ltd. case[(1998) 3 SCC 249 : 1999 SCC (Cri) 252] . The net effect is that dishonour on the ground that the payment has been stopped, regardless whether such stoppage is with or without notice to the drawer, and regardless whether the stoppage of payment is on the ground that the amount lying in the account was not sufficient to meet the requirement of the cheque, would attract the provisions of Section 138.

8.The object of bringing Sections 138 to 142 of the Negotiable Instruments Act on statute appears to be to inculcate faith in the efficacy of banking operations and credibility in transacting business of negotiable instruments. Despite several remedies, Section 138 of the Act is intended to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in his account maintained by him in a bank and induces the payee or holder in due course to act upon it. Therefore, once a cheque is drawn by a person of an account maintained by him for payment of any amount or discharge of liability or debt or is returned by a bank with endorsement like (i) refer to drawer, (ii) exceeds arrangements, and (iii) instruction for stop payment and like other usual endorsement, it amounts to dishonour within the meaning of Section 138 of the Act. Therefore, even after issuance of notice if the payee or holder does not make the payment within the stipulated period, the statutory presumption would be of dishonest intention exposing to criminal liability.?

7. So far as the last contention of learned counsel for the applicant that he has been presently residing at Kanpur, therefore, while issuing summons, the court having jurisdiction in district-Kushinagar should have conducted enquiry as required by Section 202 Cr.P.C. is concerned, is also misconceived as court below has recorded its prima facie satisfaction before issuing summons to the applicant.

8. From the perusal of complaint, it is clear that the address of the applicant has been mentioned as Kushinagar with further observation that applicant has presently been residing at Kanpur, therefore, it is not mandatory for Magistrate to conduct detailed enquiry as required u/s 202 Cr.P.C.

9. In view of the above, this court does not find any illegality in the impugned proceeding as well as in the impugned summoning order.

10. Accordingly, the present application is rejected.

Order Date :- 2.1.2025 S.Chaurasia