

M/S Dream Home Construction Llp Having ... vs State Of U.P. And Another on 1 May, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:69090

Court No. - 73

Case :- APPLICATION U/S 482 No. - 32370 of 2024

Applicant :- M/s Dream Home Construction Llp Having Its and another

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

Counsel for Applicant :- Bhuvnesh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Vikas Budhwar,J.

1. Supplementary affidavit filed today is taken on record.
2. Heard Shri Bhuvnesh Kumar Singh, learned counsel for the applicants and Shri S.P. Singh, learned State Law Officer for the State.
3. This Court on 20.03.2025 entertained the present petition and proceeded to pass the following orders:

"1. Contention of the learned counsel for the applicants is that from the perusal of the complaint it is more than evidence that a cheque is stated to have been issued for an amount of Rs. 13,64,000/- with regard to purchase of the property. However, there is no sale deed executed and the applicant was never put to possession, hence, the same does not partake the character of any offences under Section 138. Reliance has been

placed upon the judgment of B. Krishna Reddy Vs. Syed Hafeez (2020) 17 SCC 488.

2. Issue notice to the opposite party No. 2.

3. Put up this case on 16.04.2025, as fresh."

4. There is an office report dated 15.04.2025 which reads as under:

"Notice served upon opposite party no. 2 through his son namely Abhijeet, as per report of Learned CJM, Agra at flag 'A'.

Put up for order."

5. On 16.04.2025, the following orders have been passed:

"1. On 20.03.2025, this Court has issued notice upon the opposite party no. 2.

2. There is an office report dated 15.04.2025 that the notice has been served upon the opposite party no. 2 through his son.

3. Learned counsel for the applicant seeks time to bring on record the legal notice by way of supplementary affidavit.

4. Put up this case on 01.05.2025 at 2:00 P.M., as fresh."

6. The counsel for the rival parties have made a joint statement that they do not propose to file any further affidavits, thus, with the consent of the parties, the application is being decided at the fresh stage. Till the dictation of the order, nobody has put in appearance on behalf of the opposite party no. 2.

7. This application under Section 482 Cr.P.C. has been filed by the applicant to quash of Complaint Case No.3946 of 2024 (Jitendra Kumar Vs. M/s Dream Home Construction LLP and another) under section 138 of N.I. Act, P.S.-Hariparvat, District-Agra pending before A.C.J.M., Court No.5, District-Agra as well as to quash the impugned summoning order dated 24.04.2024 passed by the A.C.J.M., Agra.

8. Learned counsel for the applicant has submitted that a complaint was lodged by the opposite No. 2 on 04.03.2024 with an allegation that the opposite party no. 2 had purchased a house No. 20/211, Jaipur House Ratanmuni Marg, Loha Mandi, District Agra and a cheque for an amount of Rs. 13,64,000/- stood drawn by the applicant bearing No. 436086 dated 30.11.2023 which on presentation in the bank stood dishonoured on 06.01.2024 for insufficiency of funds is statutory, notice was issued on 24.01.2024 served upon the applicant on 25.01.2024 but the payments were not made within the statutory period, thus, the complaints stood lodged. Learned counsel for the applicant submits that an affidavit under Section 200 Cr.P.C. was also submitted by the

complainant and the court of Additional Chief Judicial Magistrate, Court No.5, Agra proceeded to summon the applicant on 24.04.2024 under Section 138 of N.I. Act being Complaint Case No. 3946 of 2024 (Jitendra Kumar Vs. M/s Dream Home Construction LLP and another).

9. Questioning the summoning order as well as the entire proceedings, the present application has been preferred.

10. Learned counsel for the applicant has submitted that the summoning order cannot be sustained even for a single moment. Elaborating the said submissions, it is submitted that there is no legally enforceable debt or liability so as to expose that the applicant would apply the provisions under Section 138 of the N.I. Act, particularly, though cheque bearing No. 436086 stood drawn on 30.11.2023 for an amount of Rs.13,64,000/- but no conveyance or sale deed stood executed between the parties. He submits that a totally incorrect false assertion has been made in the complaint that the applicant purchased the said land as there is no reference either in the complaint or in the summoning order about the details and the date of the agreement to sell/ sale deed. He also invited attention of the court towards para 11 of the application wherein the following has been asserted:

"11. That the opposite party no.2 neither executed sale deed of his share in favour of the applicants and M/s Anugya Hotels LLP inspite of repeated request nor handed over the possession of his share in the aforesaid property to the applicants and M/s Anugya Hotels LLP while he had already received Rs.22,50,000/-through earlier five cheques."

11. Learned counsel for the applicant has also seeks to rely upon the judgment of the Hon'ble Apex Court in the case of B. Krishna Reddy v. Syed Hafeez (died) and another; 2020 (17) SCC 488. It is, thus, prayed that the entire proceedings and the summoning be quashed.

12. As noted earlier, there has been no representation on the part of the opposite party No. 2, despite the fact that the service upon the opposite party No. 2.

13. Learned AGA has not disputed the fact that as per the allegations made in the complaint and the documents available on record, no conveyance deed executed. According to him, the judgment in the case of B. Krishna Reddy (supra) would apply in the facts and circumstances of the case.

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

15. Apparently, as per the allegations in the complaint under Section 138 of the N.I. Act, the applicant is stated to have purchased a house bearing No. 20/211, Jaipur House Ratanmuni Marg, Loha Mandi, District Agra and the sale consideration was Rs.13,64,000/- through a cheque bearing No. 436086 dated 30.11.2023 and as per the complaint, the said cheques stood dishonored on presentation on account of the insufficiency of funds and statutory notice issued on 24.01.2024 which is stated to have been received on 25.01.2024. The contention of the learned counsel for the applicant is that a totally incorrect averments have been made in the complaint that a conveyance deed stood executed and the possession of the land in question was handed over to the applicant. Reliance has been placed upon para 11 of the application so as to contend that the opposite party has

neither executed the sale deed in favour of the applicant nor handed over possession. The issue as to whether the offence alleged to have been committed while dishonouring of cheque towards consideration of the purchased of property wherein neither conveyance deed was executed nor the possession whereof was delivered had been a subject matter of consideration by the Hon'ble Apex Court in B. Krishna Reddy (supra) observed as under:

"The allegations in the complaint were that there was an oral sale of a property and towards consideration for said purchase, the appellant had given the cheque for Rs.4,00,000/-. However, the evidence on record discloses that no conveyance was executed in favour of the appellant and, as such, the very basic ingredient was not proved. In the circumstances, the Trial Court found that no case was established as against the appellant and therefore the Trial Court vide its judgment and order dated 06.06.2008 acquitted the appellant of the charge levelled against him.

The matter was carried in appeal by the original complainant by filing Criminal Appeal No.1086 of 2008 in the High Court. The view taken by the Trial Court was upset by the High Court; the appeal was allowed; the appellant was found guilty of the offence under Section 138 of the Negotiable Instruments Act, 1881, and was sentenced to suffer imprisonment till rising of the Court and was also directed to pay a fine of Rs.4,25,000/-, out of which an amount of Rs.4,00,000/- was to be paid to the complainant towards compensation and the remaining amount of Rs.25,000/- was to be paid towards fine to the State.

While issuing notice on 18.11.2016, this Court stayed the operation of the impugned judgment passed by the High Court.

In our view, the offence alleged was that a cheque was given towards consideration for purchase of a property. Neither any document was produced on record nor there was any evidence that any conveyance was executed in favour of the appellant. Thus, the submission of the appellant that there was no existing debt or liability against which the cheque was given had to be accepted. In our view, the High Court was in error in accepting the appeal and upsetting the view taken by the Trial Court.

We, therefore, allow this appeal, set-aside the decision of the High Court and restore the judgment and order of acquittal passed by the Trial Court. The appeal stands allowed in aforesaid terms."

16. Since this much has been only alleged that the applicant has purchased the house but it is the specific case of the applicant that neither sale deed nor the possession of the land was handed over and the same fact has not been controverted, probably for the reason that the opposite party No. 2 has not put in appearance, despite service. Thus, respectively following the judgment in the case of B. Krishna Reddy (surpa), the application is allowed.

17. The summoning order dated 24.04.2024 passed by the A.C.J.M., Agra in Complaint Case No.3946 of 2024 (Jitendra Kumar Vs. M/s Dream Home Construction LLP and another) is set aside.

18. Passing of the order would not preclude the complainant to take any other remedy as available under law.

Order Date :- 1.5.2025 A. Prajapati