Bobby Anand @ Yogesh Anand vs State Of U.P. And Another on 17 May, 2023

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2023:AHC:106925

A.F.R.

Reserved on 24.04.2023

Delivered on 17th May, 2023

In Chamber

Case :- APPLICATION U/S 482 No. - 7631 of 2008

Applicant :- Bobby Anand @ Yogesh Anand

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

Counsel for Applicant :- Punit Kumar Gupta,A.P.Paul

Counsel for Opposite Party :- Govt. Advocate,Rahul Chaturvedi,Suresh Chandra Pandey

Hon'ble Shiv Shanker Prasad,J.

1. Heard Anil Tiwari, learned Senior Counsel assisted by Sri A.P. Paul, learned counsel for the applicant, Sri Suresh Chandra Pandey, learned counsel for opposite party no.2 and learned A.G.A. for the State.

2. This application under Section 482 Cr.P.C. has been preferred for quashing the entire proceedings of Case No. 235/IX of 2003 (Dina Nath Chaturvedi Vs. Maa Sherwali Production and ors), under Section 138 of N.I. Act, Police Station Kotwali, District Mathura, pending in the court of Judicial Magistrate, Mathura.

CASE OF THE APPLICANT:

3. The applicant had given a complaint letter dated 31.10.2002 with Oshiwara Police Station, Mumbai wherein he informed that two cheques bearing No. 210547 and 210546 were stolen from

his office. The applicant has also informed his bank i.e. Punjab and Sind Bank, Juhu Branch, Mumbai through the same letter dated 31.10.2002 (Annexure No.1), wherein he informed the bank not to clear the above mentioned cheques. On 01.01.2003 a phone call was received from the Bank that one of the cheques mentioned in his letter dated 31.10.2002 was presented before the Bank for clearance. The applicant immediately approached the Senior Inspector of Police, Oshiwara and registered an F.I.R. No. 1/2003 dated 01.01.2003 (Annexure No. 2) against the respondents under Sections 381, 420 read with Section 34 I.P.C.

4. On 11.03.2003 as a counter blast to the aforesaid FIR lodged by the applicant, respondent no.2 filed a complaint against the applicant (Annexure No.3) alleging therein that the applicant borrowed Rs.30 lacs from the complainant 10 years ago and after settlement, applicant gave Cheque No. 210547 on 13.12.2002 and the same has been bounced.

5. Earlier on 22.02.1998 the opposite party no.2 gave an undertaking on the notary stamp paper stating therein that he had no title or interest in the firm named as "M/s. Maa Sherawali Production" and all assets and liabilities pertaining to the said firm belongs to applicant, namely, Sri Bobby Anand @ Yogesh Anand. (Annexure No.4.).

6. On submission of the said complaint by respondent no.2, the concerned Magistrate recorded the statement of the complainant under Section 200 Cr.P.C. on 28th March, 2003, which is contradictory and creates doubt in the prosecution case (Annexure No.5). After that on 1st May, 2003, the concerned Magistrate without perusing the material on record and without application of mind, took cognizance thereon and summoned the applicant in a mechanical manner (Annexure No.6).

7. On the other hand, in F.I.R. No. 1/2003 dated 01.01.2003 lodged by the applicant, the Investigating Officer after completing investigation under Chapter XII Cr.P.C. submitted the charge-sheet against the opposite party no.2 and his associates, namely, Santosh, Rakesh Chaturvedi and Manoj Chaturvedi before Xth Metropolitan Magistrate Court at Andheri, Mumbai in Criminal Case No. 371/TW/2004. One accused Santosh arrested by the police on 22.01.2003 and he was granted bail by the X Metropolitan Magistrate. Thereafter opposite party no.2 and other co-accused persons moved anticipatory bail application before the Sessions Court, Greater Mumbai, and the same was rejected vide order dated 19.09.2003 (Annexure No.7). After rejection of anticipatory bail by the court below, the opposite party no.2 and other co-accused approached the Hon'ble High Court, Bombay and the Court passed a descriptive order mentioning therein that opposite party and other co-accused undertake to deposit the second cheque to the Investigating Officer forthwith (Annexure No.8).

8. The opposite party no.2 and other co-accused did not comply with their own undertaking given before the Hon'ble Bombay High Court while obtaining order of anticipatory bail and in order to safeguard themselves, as a counter blast opposite party no.2 maliciously filed the present complaint before the Judicial Magistrate, Mathura under Section 138 N.I. Act.

9. For compliance of the order of Hon'ble Bombay High Court, Senior Police Inspector, Oshiwara, Mumbai moved an application before learned Judicial Magistrate, Mathura with the request to allow him to seize the said cheque being the main ingredient and the relevant muddemal of the said case pending before the learned Xth Metropolitan Magistrate at Andheri, Mumbai (Annexure No.9).

10. The concerned Magistrate, Mathura without application of mind and without going through the materials on record, took cognizance upon the present complaint and ignoring the procedure of Section 210 Cr.P.C., whose sub-Section (1) provides that when in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject- matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation. However, in the present case, concerned Magistrate, Mathura after taking cognizance summoned the applicant, which is wholly illegal, arbitrary and against the settled principal of law prescribed under section 210 (1) Cr.P.C.

11. In connection with above paragraphs, the applicant further clarifies that when the issue related with the present offences is subjudice and pending for disposal, then the parallel proceedings based upon the same instrument cannot be instituted and the same is required to be heard together in accordance with the provision of Section 210 (1) Cr.P.C.

12. As per a catena of judgment of Apex Court, it is a clear cut law that in cases of cross cases between the same parties as a matter of practice in order to avoid duplicacy of proceedings and also to avoid contradictory judgments coming from different court it is desirable that the proceedings be conducted by the same court one after another. Therefore, the passing of the impugned order by the learned Magistrate, Mathura becomes unsustainable in law and ought to be set aside (Reference: Nathi Lal and others Vs. State of U.P. and others, 1990 SCC 145).

13. Even on the point of jurisdiction the learned Magistrate erred in issuing the order of process by over looking the factual matrix of the case. A bare perusal of the complaint would indicate that it has been the stand of the complainant i.e. the respondent herein that practically entire transaction right from inception had taken place in Bombay, therefore, he never had the jurisdiction to issue process. Except for the deposition of the cheque in Mathura and the issuance of the notice from there nothing else has taken place in Mathura. In fact as per the stand taken by the complainant the intimation of the dishonored cheques have been received by him in his residence in Bombay, therefore, it is clear that the cheque was deposited in Mathura only with the sole purpose of harassing the applicant by making him to appear in a remote and distant place, where he does not have any relations, connections or base to defend himself. Therefore, on this ground the order of process is liable to be set aside as the same has become instrument of harassment to the applicant rather than an instrument of justice to the opposite party. The opposite party no.2 is operating from Bombay. Even in the past opposite party no.2 was always based in Bombay; therefore, he could have very well filed the complaint in Bombay rather than filing in Mathura.

14. On the basis of the aforesaid facts and circumstances, the applicant moved objection before the learned Magistrate, Mathura vide Application dated 09.12.2003, but the same was rejected vide his order dated 28.06.2004 on the ground that the same is not maintainable and learned Magistrate ignored the procedure of Section 210(1) Cr.P.C. (Annexure No.10).

15. Vide order dated 28.06.2004, learned Magistrate rejected the objection under Section 204 Cr.P.C. on the ground that the summoning order cannot be recalled under Section 204 Cr.P.C. against the impugned order dated 28.06.2004, the applicant preferred revision being No. 2886 of 2004, but vide order dated 04.01.2008, Hon'ble High Court has observed that the aforesaid relief cannot be granted in the revision.

16. In the meanwhile, opposite party no.2 started appearing as accused in the Magistrate Court at Bombay, where charge-sheet has been filed by the Bombay Police. Learned Public Prosecutor vide his order dated 07.02.2005 sought issuance of search warrant for the recovery of cheques which were stolen by the opposite party no.2 and ultimately presented in the Bank by committing an offence of forgery. It is noteworthy that learned Magistrate was pleased to issue an order dated 08.02.2005, whereby he issued a search warrant for the search of the house and for recovery of both the cheques in question.

17. The police did not execute the search warrant, so the applicant had to run from the pillar to post to secure justice to himself. The applicant then realized that nothing would come out so he filed a Misc. Application before the Principal Judge, at Sessions Court Mumbai. The learned Judge was pleased to pass an order dated 21.02.2007, whereby a clear cut direction was given to the police to execute the warrant and at the same time the learned Judge was pleased to direct that upon the submission of report of execution of the warrant the trial shall be concluded within a period of three to four months, there from. The said order has already been communicated to the learned Magistrate and he has given necessary direction to the police for execution thereof. The accused i.e. opposite party no.2 has participated in the proceedings in the Magistrate Court and they were very well aware of the order passed by the Sessions Court at Bombay, but they have chosen to be quite. The mischief on the part of the accused can be gauged from the omnibus silence on their part. The opposite party no.2 never came to inform the court about the whereabout of the cheques. He is actually getting benefit due to the lethargic approach of the police in executing the warrant. At the same time, the applicant, who is standing as complainant is handicapped inasmuch as he has been denied the opportunity of assisting the court. The learned Magistrate has taken a view that in a case, which has been instituted on the police report, the informant does not have the right to address the court by engaging his advocate. The learned Magistrate has always insisted upon the representation through the State Prosecutor. The applicant is stuck in vicious circle whereby, he has not been able to proceed with the matter in Bombay due to non-execution of the warrant.

Written argument on behalf of the applicant

18. Learned counsel for the applicant submits that the cheque in question was dishonoured and was otherwise payable through account of and, therefore, as per Section 142 (2) (b) of the Negotiable Instrument Act, Mathura Court does not have the jurisdiction to try the offence.

19. It is submitted that it is admitted case of opposite party no. 2 in his statement recorded under Section 200 Cr.P.C. that the cheque was given to him for discharging collective liability of M/s. ABC Pictures Pvt. Ltd., M/S. ABC Films, Kamud Films and personal liability and Section 138 of N.I. Act cannot be invoked to discharge collective liability or liability of third party.

20. Assuming but not admitting, then also Section 138 of N.I. Act proceedings cannot be maintained because ingredients of Section 138 of N.I. Act are not fulfilled in the facts of the present case. It is further submitted that Section 138 N.I. Act does not speak about the joint/ collective liability. Even in case of a joint/ collective liability, in case of individual persons, a person other than a person who has drawn the cheque on an account maintained by him, cannot be prosecuted for the offence under Section 138 N.I. Act.

21. In support of this plea learned counsel for the applicant has placed reliance upon the Hon'ble Supreme Court in the case of Alka Khandu Avhad Vs. Amar Syamprasad Mishra, reported in (2021) 2 PUN LR 1. Reliance is also placed upon the judgement of Bombay High Court in the case of Hiten Sagar Vs. IMC Ltd. And another reported in LAW Finder Doc Id # 9631 wherein it has been held that "cheque issued by 'A' in discharge of liability of 'B'- Dishonour of cheque- 'A' is not liable - 'A' could be liable if he had taken upon himself the liability of 'B' by an agreement.

22. It is further submitted that while filing the present complaint under Section 138 N.I. Act before the concerned Magistrate at Mathura, opposite party no.2 has wilfully concealed that a criminal prosecution is pending regarding the same disputed cheque in the court of Mumbai, wherein the opposite party no.2 and others have been charge-sheeted and the charges have been framed against them under Sections 381, 420, 511 r/w 34 I.P.C. Needless to add, the State of Maharashtra Police tried with respect of the stolen cheque bearing CC No. 2201205/PW/2006 is pending before the Court of X Metropolitan Magistrate at Andheri, Mumbai. In support of his plea, learned counsel for the applicant has placed reliance upon the judgment of the Delhi High Court in the case of Taruna Batra Vs. Shikha of Delhi High Court , reported in Law Finder Doc Id # 218864.

23. It is submitted that the disputed cheque was reported as stolen/ missing to the drawee bank on 31.10.2002 and stop payment instruction was given by the applicant. The cheque was returned with remark "Stop payment" later on. In such cases liability under Section 138 N. I. Act cannot be attracted. For the said plea, learned counsel for the applicant has placed reliance upon the judgment of the Kerala High Court in the case of K. Sadanandan Vs. Satheesh Kumar & Another reported in (2016) 1 NIJ 93 as also the judgment of the Apex Court in the case of Raj Kumar Khurana Vs. State of (NCT of Delhi), reported in Law Finder Doc Id # 192011, wherein it has held that the payment refused by Bank on the ground that the account holder has reported the cheques as lost/ stolen, no offence under Section 138 N.I. Act is made out.

24. It is further submitted that the summoning order dated 01.05.2003 was a proforma order and was passed without application of mind. Issuing of summon by learned Magistrate at JMFC Court, Mathura under Section 138 N.I. Act was illegal, arbitrary and against the settled principles of law as he has not considered the materials on record and has not scrutinized the evidence on record and has not given any reason for his conclusion as there is absence of strict consideration of the penal

provisions under Section 138 N.I. Act i.e. ingredients to constitute the offence under Section 138 of N.I.Act. Learned counsel for the applicant has drawn the attention of the Court to the judgment of the Apex Court in the case of M/s. PEPSI Foods Ltd Vs. Special Judicial Magistrate reported in Law Finder Doc Id # 40157, wherein the Apex Court has held in paragraph no.26 that "Order of Magistrate summoning the accused should reflect application of his mind - Mere examination of two witnesses by complainant is not sufficient- Magistrate has to carefully scrutinise the evidence and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of allegations or otherwise and then examine if any offence was prima facie committed by the accused.

25. Learned counsel for the applicant submits that it is well settled law that in absence of necessary averments in the complaint in question regarding the nature of transaction between the parties, complaint cannot be maintained on sketchy averments. He further submits that it is well settled law that the complainant should narrate the entire history of transaction and the off shoots of the transactions resulting in litigation between the parties. If the complainant does not place all material facts and details of the cheques, in his complaint before the Court, cognizance of his complaint has to suffer. One who does not come with clean hands has to suffer as the Hon'ble Supreme Court has declared that in absence of requisite pleadings in respect of the transaction concerned (i.e. absence of the details of the cheques, absence of the details of the date and the year of the cheques, absence of the details of the name of the Bank of the cheques, absence of the details of the cheque number and absence of the time or the year when the said loan was advanced, etc.) quashing of complaint under Section 138 N.I. Act is justified. In support of his plea, learned counsel for the applicant has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of Omni Plast Pvt. Ltd. Vs. Standard Chartered Bank and others reported in Law Finder Doc Id # 659121 .

26. It is lastly submitted by the learned counsel for the applicant that the statutory notice under section 138 of N.I. Act has been sent on 27.01.2003 by the opposite party no.2 i.e. after the period of 15 days from the date of intimation of the dishonour of the stolen cheque number 210547 from Dena Bank, Mathura. Therefore, the demand notice being beyond the period of limitation cannot be considered because, the cause of action came to an end on 25.01.2003 and 26.01.2003. Hence the complaint filed at Mathura is liable to be quashed. Reliance in that regard is placed upon the judgment of Hon'ble Supreme Court in the case of Tomy Jacob Kattikkaran Vs. Dr. Thomas Man Jaly and another reported in Law Finder Doc Id # 39681.

27. On the cumulative strength of the aforesaid, learned counsel for the applicant submits that the entire criminal proceedings initiated by the respondent no.2/opposite party no.2 against the applicant is not only illegal but is an abuse of process of law, as such, the same are liable to be quashed by this Court in exercise of powers under Section 482 Cr.P.C.

CASE OF THE OPPOSITE PARTIES

28. Opposite party no.2 filed a complaint under Section 138 of N.I. Act against the applicant and his company, namely, Maa Sherawali Production Limited. The allegations made in the complaint are

that opposite party no.2 gave money to the applicant and his firms on various dates amounting to Rs.30,00,000/- for which the applicant issued a Cheque No. 210457 from his account No. 2622 of Punjab and Sindh Bank, Juhu, Mumbai and the same has been dishonoured and the opposite party gave notice to the applicant to which he denied to pay the same, hence the present complaint was filed.

29. The present case pertains to a Cheque dated 13.12.2002, which was submitted in the Bank on 26.12.2002, which was dishonoured on 13.01.2003. A case was filed on 28.03.2003 and the learned court summoned the applicant on 01.05.2003 and since then the matter is pending because of dilatory tactics adopted by the applicant.

30. It would be pertinent to mentioned that the applicant preferred a Criminal Revision No. 2886 of 2004 before this Hon'ble Court against the summoning order dated 01.05.2003, which was dismissed as not pressed without granting any liberty to file afresh applicantion as such the present application is not maintainable. A copy of the order dated 18.04.2008 passed in Criminal Revision No. 2886 of 2004.

Written Submission on behalf of opposite party no.2 as also the submission of learned A.G.A. for the State

31. The learned counsel for the opposite parties submit that the applicant has taken a defence that the cheque in issue in the present case has been stolen and an F.I.R. has been registered and he has given stop payment instruction to the bank. They have drawn the attention of the judgment of the Hon'ble Supreme Court in the case of HMT Watches Ltd. Vs. M.A. Abida and others (2015) 11 SCC 776, wherein it has been held that stop payment also attracts the provisions of Section 138 N.I. Act and the factual defence of the accused can not be considered in an application seeking quashing of the proceedings.

32. The learned counsel for the opposite parties further submit that in the cases where the cheque was dishonoured on account of "stop payment" or instructions of the drawer, a presumption regarding the cheque being for consideration would arise under Section 139 of the Act. Reliance in that regard is placed upon the judgment of the Hon'ble Supreme Court in the case of Laxmi Dyechem Vs. State of Gujarat and others (2012) 13 SCC 375. They have further placed reliance upon the judgment of the Apex Court in the case of Goaplast (P) Ltd. v. Chico Ursula D'souza and Anr. (2003) 3 SCC 232, where the Apex Court has held that 'stop payment instructions' and consequent dishonour of the cheque of a post-dated cheque attracts provision of Section 138.

33. The learned counsel for the opposite parties further submit that the defence of stolen cheque cannot be taken in the High Court by means of an application under Section 482 Cr.P.C. seeking quashing of the proceedings as the same is a question of fact as the same has been held by this Hon'ble Court in the case of Bimal Kumar Nopani Vs. State of Uttar Pradesh and others, 2006 (55) ACC 399. The learned counsel for the opposite parties further relies upon the judgment of the Gujarat High Court in the case of Joitaram K. Patel Vs. State of Gujarat and others, Manu/ GJ/ 0036/1998 wherein it has held that defence of stolen cheque cannot be taken in the High Court by

an application under Section 482 Cr.P.C. seeking quashing of proceedings as the same is a question of fact.

34. Learned counsel for the opposite parties further submit that at any rate, whenever facts are disputed the truth should be allowed to emerge by weighing the evidence (Reference:-Rajeshbhari Muljibhai Patel Vs. State of Gujarat (2020) 3 SCC 794). This Hon'ble Court in the case of Naveen Saxena Vs. State of U.P. and others, 2021 (7) ADJ 431 held that proceeding cannot be quashed on the basis of factual defiance and that stop payment also attracts the provisions of Section 138 of the N.I. Act.

35. Learned counsel for the opposite parties further submit that the burden of proving that there is no existing debt or liability, is to be discharged in the trial (Reference:- two judges Bench of the Hon'ble Supreme Court in the case of M.M.T.C. Ltd. And another Vs. Medchl Chemicals and pharma (P) Ltd. And another (2002) 1 SCC 234).

36. It is then submitted that at the stage of summoning order, when the factual controversy is yet to be canvassed and considered by the trial court. Based upon a prima facie impression, an element of criminality cannot be entirely ruled out here subject to the determination by the trial court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited. Reliance in that regard is placed upon the judgment of the Apex Court in the case of Rathish Babu Unnikrishnan Vs. The State (Govt. of NCT of Delhi) and ors, Manu/ SC/ 0542/2022.

On the cumulative strength of the aforesaid submissions learned counsel for the opposite parties submits that there is no illegality or infirmity in the order of summoning of the applicant passed by the concerned Magistrate, as also in the order affirming the same passed by the revisional court. It is further submitted that the submissions made by the learned counsel for the applicant that stolen cheques cannot be a basis for not constituting an offence of Section 138 of N.I. Act. As such the present application is liable to be dismissed.

37. I have considered the submissions made by the learned counsel for the applicants and have gone through the records of the present application.

ISSUE WHETHER SECTION 138 N.I. ACT IS APPLICABLE IN THE FACTS OF PRESENT CASE AND THE FINDING AND CONCLUSION OF THIS COURT

38. It is admitted position from the records of the present application that the applicant has also informed his bank M/s. Punjab and Sind Bank, Juhu Branch, Mumbai through the same letter dated 31.10.2002 (Annexure No.1), wherein he informed the bank not to clear the above mentioned cheques.

39. For ready reference the averments made in the letter dated 31.10.2002 are being quoted herein-below:

"From AA SHERAWALI PRODUCTIONS Date: 31.10.2002 1/603 Mari Gold C H S LTD 6th Floor New Link Road Opp Oshiwara Police Station Andheri (W) Mumbai-400 053 To The Manager Punjab & Sind Bank Dear Sir/Madam Re: Our Current Account No: 2664 It has been brought to our notice by my company accountants that our cheques nos: 210546 & 210547 which were left signed by me in the custody of my employees since I was busy travelling, have been STOLEN.

I, instruct your bank to immediately STOP PAYMENT of the above Mention cheques if the same are received by your bank, and to immediately inform me of the same.

In case we discover any other missing cheques we will inform you of the same.

Kindly do the needful Yours truly For SHERAWALI PRODUCTIONS"

40. It is also admitted from record that on 01.01.2003 a phone call was received from the Bank that one of the cheques mentioned in his letter dated 31.10.2002 was presented before the Bank for clearance. The applicant immediately approached the Senior Inspector of Police, Oshiwara and registered an F.I.R. No. 1/2003 dated 01.01.2003 (Annexure No. 2) against the respondents under Sections 381, 420 read with Section 34 I.P.C.

41. Before expressing any opinion on the merits of the case set up by both the parties, it would be worthwhile to reproduce Sections 118, 138 and 139 of the Negotiable Instrument Act, which are quoted herein-below:

"118. Presumptions as to negotiable instruments. --Until the contrary is proved, the following presumptions shall be made:--

(a) of consideration --that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration;

(b) as to date --that every negotiable instrument bearing a date was made or drawn on such date;

(c) as to time of acceptance --that every accepted bill of exchange was accepted within a reasonable time after its date and before its maturity;

(d) as to time of transfer --that every transfer of a negotiable instrument was made before its maturity;

(e) as to order of indorsements --that the indorsements appearing upon a negotiable instrument were made in the order in which they appear thereon;

(f) as to stamps --that a lost promissory note, bill of exchange or cheque was duly stamped;

(g) that holder is a holder in due course --that the holder of a negotiable instrument is a holder in due course:

Provided that, where the instrument has been obtained from its lawful owner, or from any person in lawful custody thereof, by means of an offence or fraud, or has been obtained from the maker or acceptor thereof by means of an offence or fraud, or for unlawful consideration, the burden of proving that the holder is a holder in due course lies upon him.

138. Dishonour of cheque for insufficiency, etc., of funds in the account. --Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless--

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, 20 [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.-- For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.]

139. Presumption in favour of holder.--It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability."

42. The Legal Fiction created under Section 138 of the N.I. Act, when a cheque is returned by the bank unpaid has been explained as follows:

> "A bare perusal of the aforementioned provision would clearly go to show that by reason thereof a legal fiction has been created. A legal fiction, as is well known, although is required to be given full effect, has its own limitations. It cannot be taken recourse to for any purpose other than the one mentioned in the statute itself.
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> In State of A.P. & Anr. V. A.P. Pensioners Association reported in (2005) 13 SCC 161, the Apex Court has held as follows:
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> "...In other words, all the consequences ordinarily flowing from a rule would be given effect to if the rule otherwise does not limit the operation thereof. If the rule itself provides a limitation on its operation, the consequences flowing from the legal fiction have to be understood in the light of the limitations prescribed. Thus, it is not possible to construe the legal fiction as simply as suggested by Mr. Lalit."

11. Section 138 of the Act moreover provides for a penal provision. A penal provision created by reason of a legal fiction must receive strict construction. (See R. Kalyani v. Janak C. Mehta & Ors., (2009) 1 SCC 516) and DCM Financial Services Ltd. v. J.N. Sareen & Anr. (2008 (2) KLT 762 (SC) = (2008) 8 SCC 1). Such a penal provision, enacted in terms of the legal fiction drawn would be attracted when a cheque is returned by the bank unpaid. Such non- payment may either be: (i) because of the amount of money standing to the credit of that account is insufficient to honour the cheque, or (ii) it exceeds the amount arranged to be paid from that account by an agreement made with that bank.

Before a proceeding thereunder is initiated, all the legal requirements therefor must be complied with. The court must be satisfied that all the ingredients of commission of an offence under the said provision have been complied with.

The parameters for invoking the provisions of S.138 of the Act, thus, being limited, we are of the opinion that refusal on the part of the bank to honour the cheque would not bring the matter within the mischief of the provisions of S.138 of the Act.

12. The court while exercising its jurisdiction for taking cognizance of an offence under S.138 of the Act was required to consider only the allegations made in the complaint petition and the evidence of the complainant and his witnesses, if any."

43. The penal provision, enacted under Section 138 of the Negotiable Instrument Act shows that a legal liability drawn would be attracted when a cheque is returned by the bank unpaid. It explains that, such non-payment by the bank may either be: (i) because of the amount of money standing to the credit of that account is insufficient to honour the cheque, or (ii) it exceeds the amount arranged to be paid from that account by an agreement made with that bank. Before a proceeding the legal requirements mentioned therein must be complied with and convince the court that all the

ingredients of the offence have been complied with. Therefore it is clear that the parameters for invoking the provisions of S.138 of the Act being limited, the refusal on the part of the bank to honour the cheque would not bring the matter within the mischief of the provisions of S.138 of the Act.

44. Considering the above limitation, the question here is, whether a cheque is returned by the bank on the ground "cheque reported lost" will come within the purview of Section 138 of the N.I. Act. The limitations are provided in the above dictum. Therefore, the refusal on the part of the bank to honour the cheque would not bring the matter within the penal provisions of Section 138 N.I. Act. The facts and issue involved in the present case are fully applicable to the judgment of the Apex Court in the case of Raj Kumar Khurana VS. State of (NCT OF DELHI) & Another reported in (2009) 6 SCC 72.

45. In paragraph nos. 10 to 12 the Apex Court in the case of Raj Kumar Khurana has observed as follows:

> "10. .....A bare perusal of the aforementioned provision would clearly go to show that by reason thereof a legal fiction has been created. A legal fiction, as is well known, although is required to be given full effect, has its own limitations. It cannot be taken recourse to for any purpose other than the one mentioned in the statute itself. In State of A.P. & Anr. Vs. A.P. Pensioners Association & Ors. [(2005) 13 SCC 161], this Court held:
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> "...In other words, all the consequences ordinarily flowing from a rule would be given effect to if the rule otherwise does not limit the operation thereof. If the rule itself provides a limitation on its operation, the consequences flowing from the legal fiction have to be understood in the light of the limitations prescribed. Thus, it is not possible to construe the legal fiction as simply as suggested by Mr. Lalit."

11. Section 138 of the Act moreover provides for a penal provision. A penal provision created by reason of a legal fiction must receive strict construction.....

Before a proceeding thereunder is initiated, all the legal requirements therefore must be complied with. The court must be satisfied that all the ingredients of commission of an offence under the said provision have been complied with.

12. The parameters for invoking the provisions of Section 138 of the Act, thus, being limited, we are of the opinion that refusal on the part of the bank to honour the cheque would not bring the matter within the mischief of the provisions of Section 138 of the Act."

46. In view of the legal proposition as discussed above, this Court is of the view that the essential ingredients of Section 138 of the Act are lacking in the facts of the present case as the case of stolen/lost/theft cheque does not fall under the ambit of Section 138 of N.I. Act, thus Section 138 N.I. Act will not be applicable in such cases.

APPLICABILITY OF SECTION 210 (1) CR.P.C. IN THE FACTS OF THE PRESENT CASE, FINDING AND CONCLUSIONS OF THIS COURT

47. From the records it is cropped up that for two stolen cheques being Cheque Nos. 210547 and 210546, the applicant wrote a letter to the concerned Bank on 31st October, 2002 requesting not to clear or encash the same and when the Bank informed him on telephone that cheque no. 210547 was submitted before the Bank for its clearance/encashment, then the applicant lodged an FIR bearing no. 1 of 2003 at Police Station Oshiwara at Mumbai under Sections 381, 420 read with Section 34 I.P.C. on 01st January, 2003 against the complainant/opposite party no.2 along with other co-accused persons and the present complaint for dishonour of the same cheque i.e. cheque no. 210547 has been filed by the complainant on 11th March, 2003 against the applicant. In Case Crime No. 1 of 2003 at Police Station-Oshiwara at Mumbai, after investigation proceeded and ultimately, charge-sheet came to be submitted against the complainant and other co-accused persons, namely, Santosh, Rakesh Chaturvedi and Manoj Chaturvedi before the Court of X Metropolitan Magistrate, Andheri, Mumbai on which cognizance was taken and Criminal Case No. 371/TW/2004 was registered, after that co-accused Santosh was arrested and he granted bail by the court concerned. Opposite party no.2 and co-accused Rakesh Chaturvedi and Manoj Chaturvedi preferred anticipatory bail application before the Bombay High Court and they were granted anticipatory bail by the Court concerned of the Bombay High Court vide orders dated 3rd November, 2003 In Anticipatory Bail Application No. 3963 of 2003 (Dinanath Chaturvedi & Ors. Vs. The State of Maharashtra). The relevant portion of the order of the Bombay High Court dated 3rd November, 2003 reads as under:

> "3. It is noticed that the applicants have already filed criminal case for dishonour of cheque against the complainant and at the behest complainant, C.R.No.1 of 2003 has been at the Oshiwara Police Station at Mumbai for offences punishable under Sections 381 and 420 read with Section 34 of the Indian Penal Code. The applicants apprehend arrest.
>
> 4. The subject matter of the complaint registered against the applicants are two cheques which are alleged to have been stolen from the office of the complainant and one of them or both are subject matter of the proceedings initiated under Section 138 of the Negotiable Instruments Act in a Court at Mathura in Uttar Pradesh. The learned A.P.P. on instructions from the investigating Officer states that the remaining cheque also is not submitted to him by the Applicants and therefore, taking into consideration the allegations for forged signature, their custodial interrogation is necessary.
>
> 5.....
>
> 6. It is therefore directed that in the even or any of the Applicant's arrest, he/they shall be released on bail in the sum of Rs.50,000/ (Rupees Fifty Thousands) each, with a solvent surety for the like amount, and on the condition that all the Applicants shall report to the Investigating Officer at Oshiwara Police Station for a period of two

> weeks from tomorrow or day after tomorrow between 2.00 to 6.00 p.m. and none of them shall leave the territories of Greater Bombay District without permission of the said Investigating Officer.
>
> 7. The Applicants also undertakes to deposit the second cheque with the Investigating Officer forthwith.
>
> 8. This order shall be valid for a period of four weeks or till the interrogation is completed whichever is later, and it operates only ....of C.R. No. 01/2003."

48. Despite the order of the Bombay High Court dated 3rd November, 2003 and the undertaking given before it, the complainant has not submitted the said cheque before the Investigating Officer of Case N. C.R. No. 01 of 2003.

49. Apart from the above, in compliance of the order of the Bombay High Court dated 3rd November, 2003, Senior Police Inspector of Police Station-Oshiwara, Mumbai moved an application before the concerned Judicial Magistrate, Mathura along with the order of the Mumbai High Court dated 18th June, 2004 requesting therein that he may be permitted to seize the cheque, which is alleged to be dishonoured cheque, for which the present complaint has been filed by the complainant/opposite party no.2 against the applicant on 24th November, 2003, as the said cheque being the main ingredient and relevant muddemal of the Criminal Case No. 371/TW/2004 pending before the X Metropolitan Magistrate, Andheri, Mumbai but no order was passed by the concerned Magistrate at Mathura in the present complaint case. After passing of the summoning order passed by the concerned Magistrate at Mathura in the present complaint case, the applicant filed objection by means of application dated 9th December, 2003 that when the issue related with the present offences is subjudice and pending for disposal, then the parallel proceeding based upon the same instrument cannot be instituted and the same is required to be heard together as per the provisions of sub-Section (1) to Section 210 Cr.P.C. But ignoring the said provisions, the concerned Magistrate has rejected the said objection of the applicant vide order dated 28th June, 2004, which was confirmed by the revisional court vide order dated 4th January, 2008.

50. For resolving the said issue, it would be worthwhile to reproduce sub-Section (1) to Section 210 Cr.P.C., which is quoted as under:

> "210.Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.
>
> (1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject- matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

...."

51. From perusal of the aforesaid fact and Section 210 (1) Cr.P.C., it is crystal clear that the concerned Magistrate at Mathura has not only disobeyed the orders of the Bombay High Court dated 3rd November, 2003 and 24/28th June, 2004, which is higher court and but also ignored the provisions of Section 210 (1) Cr.P.C. while proceeding further in the present criminal case, despite the fact that the cheque giving rise to the present complaint case is a case property in Criminal Case No. 371/TW/2004 pending before the X Metropolitan Magistrate, Andheri, Mumbai and for its seizure, an application has been made by the Senior Police Inspector of Police Station-Oshiwara, Mumbai on 24th November, 2003 before him. Therefore, this Court is of the firm opinion that the further proceedings in the present complaint as per Section 210 (1) Cr.P.C. are per se illegal.

THE ISSUE WHETHER THE PRESENT CRIMINAL PROCEEDINGS ARE A CASE OF COUNTER BLAST OR NOT? AND THE FINDING AND CONCLUSIONS OF THIS COURT

52. It is also cropped up from the record that on 1st January, 2003, the applicant lodged an FIR bearing no. 01 of 2003 for stolen of cheque, against the complainant and three co-accused persons under Section 381, 420 read with Section 34 I.P.C. at Police Station Oshiwara at Mumbai in which after submission of the charge-sheet, all the accused persons granted anticipatory bail/regular bail. It is also emerged that after more than two months and eleven days i.e. on 11th March, 2003 after lodging of the aforesaid FIR, the complainant filed the present complaint under Section 138 N.I. Act for dishonour of cheque no. 210547, against the applicant before the concerned Court of Magistrate at Mathura. Meaning thereby the present complaint case is a case of counter blast to the criminal proceedings initiated by the applicant by lodging the aforesaid FIR.

53. The Apex Court considering the case of counter blast or wreak vengeance M/s Eicher Tractor Ltd. and others Vs. Harihar Singh and another, 2009(1)JIC 245 (SC) has held as follows:

> "7. In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt, should not be an instrument of oppression or needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process

of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana Vs. Bhajan Lal [1992 Supp (1) SCC 335]. A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of the rare cases. The illustrative categories indicated by this Court are as follows: (SCC pp. 378-79, para 102) "(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7)Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

8. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the

Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceedings instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings.

9. These aspects were also highlighted in State of Karnataka Vs. M. Devendrappa [2002(3) SCC 89].

10. The case at hand squarely falls within the parameters indicated in category (7) of Bhajan Lal's case (supra). The factual scenario as noted above clearly shows that the proceedings were initiated as a counterblast to the proceedings initiated by the appellants. Continuance of such proceedings will be nothing but an abuse of the process of law. Proceedings are accordingly quashed."

54. On deeper scrutiny and evaluation of the aforesaid fact and the law laid down by the Apex Court in the case of Eicher Tractor (Supra), this Court is of the considered opinion that the present criminal proceedings by filing a complaint have been engineered to wreak vengeance, which is not permissible.

THE ISSUE WHETHER THE OPPOSITE PARTY NO.2/COMPLAINANT HAS CONCEALED THE MATERIAL FACT IN FILING OF THE PRESENT COMPLAINT CASE OR NOT?,

55. For examining the submission of the learned counsel for the applicant that the complainant/opposite party no.2 has concealed the material fact i.e. pendency of criminal case arising out of FIR bearing no. 01 of 2003 against the complainant and three co-accused persons under Section 381, 420 read with Section 34 I.P.C. at Police Station Oshiwara at Mumbai against him along with other co-accused in filing of the present complaint case dated 11th March, 2003 under Section 138 N.I. Act before the Court of concerned Magistrate, Mathura, it would be

worthwhile to reproduce the same, which is being quoted herein below:

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56. From perusal of the above complaint of the complainant/opposite party no.2, it is crystal clear that the complainant has not approached the court of Judicial Magistrate, Mathura with clean hands in filing such complaint under Section 138 N.I. Act giving rise to the present criminal proceedings against the applicant and has also concealed the material fact qua the above criminal case pending against him at Mumbai for dishonour of the same cheque, which is subject matter in the aforesaid criminal case.

57. In M/s. Tilokchand Motichand & Ors. Vs. H.B. Munshi & Anr., reported in AIR 1970 SC 898; State of Haryana Vs. Karnal Distillery reported in AIR 1977 SC 781; and Sabia Khan & Ors. Vs. State of U.P. & Ors. reported in (1999) 1 SCC 271, the Hon'ble Supreme Court held that filing totally misconceived petition amounts to abuse of the process of the Court and such a litigant is not required to be dealt with lightly, as petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the Court.

58. In Agriculture & Process Food Products Vs. Oswal Agro Furane & Ors., reported in AIR 1996 SC 1947, the Apex Court had taken a serious objection in a case filed by suppressing the material facts and held that if a petitioner is guilty of suppression of very important fact his case cannot be considered on merits. Thus, a litigant is bound to make "full and true disclosure of facts". While deciding the said case, the Hon'ble Supreme Court had placed reliance upon the judgment in King Vs. General Commissioner, reported in (1917) 1 KB 486, wherein it has been observed as under:-

> "Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a

> way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent abuse of its process, to refuse to proceed any further with the examination of its merits....."

59. In Abdul Rahman Vs. Prasony Bai & Anr., AIR 2003 SC 718; and S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar & Ors., reported in (2004) 7 SCC 166, the Hon'ble Supreme Court held that whenever the Court comes to the conclusion that the process of the Court is being abused, the Court would be justified in refusing to proceed further and refuse relief to the party. This rule has been evolved out of need of the Courts to deter a litigant from abusing the process of the Court by deceiving it. However, the suppressed fact must be material one in the sense that had it not been suppressed, it would have led any fact on the merit of the case.

60. In K.D. Sharma vs. SAIL, reported in (2008) 12 SCC 481, the Apex Court has held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same law was reiterated in G. Jayashree vs. Bhagwandas S. Patel reported in (2009) 3 SCC 141.

61. The Hon'ble Supreme Court of India has repeatedly held that filing of false affidavit and concealment of material facts amounts to interference in the administration of justice and as such is criminal contempt of Court. In Dhananjay Sharma versus State of Haryana & ors., reported in AIR 1995 SC 1795, wherein in paragraphs 39 and 40, the Apex Court has held as follows:

> "39. The question, therefore, which now requires our consideration is as to what action, is required to be taken against the respondents.
>
> 40. Section 2 (c) of the Contempt of Courts Act, 1971 (for short the Act) defines criminal contempt as the publication (whether by words, spoken or written or by signs or visible representation or otherwise) of any matter or the doing of any other act whatsoever to (1) scandalise or tend to candalise or lower or tend to lower the authority of any Court: (2) prejudice or interfere or tend to interfere.....Thus, any conduct, which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. ....."

62. The Apex Court in the case of Sunkara Lakshminarasamma & Anr. Versus Sagi Subba Raju & Ors. reported in (2009) 7 SCC 460 held that filing of false affidavit knowingly is a contempt and exemplary cost be imposed.

63. In Afzal & Anr. Versus State of Haryana & Ors., reported in JT 1996 (1) SC 328, the Apex Court in paragraph-32 has held as follows:

> "32. The question then is: whether he committed contempt in the proceedings of this Court? Section 2 (b) defines "Contempt of Court" to mean any civil or criminal contempt. "Criminal contempt" defined in Section 2(c) means interference with the administration of justice in any other manner. A false or a misleading or a wrong statement deliberately and wilfully made by a party to the proceedings to obtain a favourable order would prejudice or interfere with the due course of judicial proceedings. ....."

64. In Dhananjay Sharma vs. State of Haryana & others reported AIR 1995 SC 1795, in paragraph-40 the Supreme Court has held as follows:

> "40. .....Thus, any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. ....."

65. In Sabia Khan & Ors. Vs. State of U.P. & Ors., (1999) 1 SCC 271, the Hon'ble Apex Court held that filing totally misconceived petition amounts to abuse of the process of the Court and such litigant is not required to be dealt with lightly.

66. In view of the aforesaid, this Court finds substance in the submission made by the learned counsel for the applicant that this Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt firmly. A litigant like the applicant who take liberties with the truth or with the procedures of the Court should be left in no doubt about the consequences to follow. Others should not venture along the same path in the hope or on a misplaced expectation of judicial leniency. Exemplary costs are inevitable, and even necessary, in order to ensure that in litigation, as in the law which is practised in our country, there is no premium on the truth. In the case in hand, the complainant has concealed the material fact by filing complaint under Section 138 N.I. Act before the Court below giving rise to the present criminal proceedings and he has not approached the Court with clean hands, his complaint case is not only liable to be rejected on this ground alone but also the he should be punished with exemplary cost.

67. On the cumulative strength of the aforesaid discussions and deliberations, this Court finds no substance in the submissions made by the learned counsel for opposite party no.2 and the learned A.G.A. for the State and also finds that case laws relied upon by them are clearly distinguishable in the facts of the present case. This Court is of the firm opinion that the present criminal proceedings initiated against the applicant are not only malicious but also amount to an abuse of the process of the Court. As such, the proceedings of the above mentioned complaint case are liable to be quashed by this Court.

68. Accordingly, the proceedings of Complaint Case No. 235/IX of 2003 (Dina Nath Chaturvedi Vs. Maa Sherwali Production and ors), under Section 138 of N.I. Act, Police Station Kotwali, District Mathura, pending in the court of Judicial Magistrate, Mathura are hereby quashed.

69. The application is, accordingly, allowed. There shall be no order as to costs.

(Shiv Shanker Prasad, J.) Order Date:-17.05.2023 Abhishek Singh/Sushil