

Sanjay Kumar (Dr.) Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Nov-21-2007

Reported in : II(2008)BC576

Judge : M.K. Mittal, J.

Appellant : Sanjay Kumar (Dr.)

Respondent : State of U.P. and anr.

Advocate for Pet/Ap. : Mr. Shamim Ahmed

Disposition : Application dismissed

Judgement :

M.K. Mittal, J.

1. The application has been filed for quashing the proceedings in Criminal Complaint Case No. 632/04, Avnish Dutt Sharma v. Dr. Sanjay Kumar, under Section 138, Negotiable Instruments Act (hereinafter referred as Act) pending in the Court of Special A.C.J.M. C.B.I. (A.P.), Lucknow.

2. Heard Mr. Shamim Ahmed, learned Counsel for the applicant, Mr. Shrikant, learned Counsel for the opposite party No. 2, learned AGA and perused the material on record. Counter and rejoinder affidavits have been exchanged between the parties.

3. The brief facts of the case are that the opposite party No. 2 filed a complaint against the applicant alleging that he had taken Rs. 25,000/- from him on 26.11.2003 in connection with the marriage of his sister and had issued a post-dated cheque on 26.11.2003 for Rs. 25,000/- in favour of the applicant. When this cheque was presented at the Bank at Lucknow, it was returned with the endorsement 'insufficient fund, on 25.2.2004. The complainant approached the accused and he assured him that the payment would be made and then again the complainant presented the cheque on 20th May, 2004 but it was again returned with the endorsement insufficient fund on 27.5.2004. The complainant thereafter gave a registered notice to the accused on 17.6.2004 but the accused did not make the payment within the stipulated period of 15 days and thereafter the complaint was filed on 7.7.2004.

4. The learned Magistrate after recording the statement of the complainant under Section 200, Cr.P.C. and finding that a prima facie case was made out against the accused directed to summon him under Section 138 of the Act. Feeling aggrieved this application has been filed.

5. According to applicant the cheque was not presented in time at the payee Bank and that the transactions had taken place in Kanpur and, therefore, this Court has the jurisdiction to hear the present application.

6. The opposite party filed counter affidavit and denied this fact and contended that all the transactions had taken place at Lucknow. A specific plea has been taken in para 29 of the counter affidavit that the High Court at Allahabad has no jurisdiction to entertain this application since the cheque was issued at Lucknow and same was presented for credit of this amount in his account in Lucknow and the complaint was filed in a Court at Lucknow and this application should have been find before the Lucknow Bench of this Hon'ble Court,

7. During arguments it was noted that applicant did not mention the fact in his prayer clause that the case was pending in the Court at Lucknow. It appears that the word Lucknow was typed in the prayer clause initially but before filing it in Court the word Lucknow was erased at least at 5 places in the application and in the prayer clause. It is also important to note that the applicant filed the typed copy

of the summoning order as Annexure 7 but even in this the name of the Court, which passed the order has not been mentioned. During arguments it was admitted by the learned Counsel for the applicant that Criminal Case is pending in the Court at Lucknow.

8. In the circumstances, the petition under Section 482, Cr.P.C. should have been filed in the Lucknow Bench and if there was any reason for not filing there it should have been specifically stated and permission sought for filing the petition in this Court. The otherwise conduct of the applicant and his Counsel is not above board. It is also important to mention that the applicant by concealing the correct facts was successful in obtaining the stay order as long back as on 22.11.2004 and has been enjoying it.

9. The contention as made by the learned Counsel for the opposite party and the learned AGA that this Court has no jurisdiction to hear the petition is correct. As per allegations of the complainant not only the cause of action arose within the limits of the Lucknow District but the case was also filed there and therefore the petition under Section 482, Cr.P.C. if any should have been filed in the Lucknow Bench of this Court. The learned Counsel for the applicant contended that the application was filed in this Court as the applicant was advised to do so by his Counsel. But it cannot be a valid ground to accept the maintainability of the application. Therefore, this application is not maintainable and is liable to be dismissed.

10. In the circumstances of the case it is necessary to impose some exemplary cost on the applicant so that such malpractices are avoided in future by the scrupulous litigants. The applicant shall deposit Rs. 20,000/- within one month in the trial Court and after the deposit is made the amount shall be paid to the opposite party No. 2 Avnish Dutt Sharma. In case the applicant fails to deposit the amount, it shall be recovered from him as arrears of land revenue.

11. The legal advice if any given by the Advocate to applicant to file the petition in this Court is a matter between the applicant and his Counsel. The perusal of the application shows that the manipulation in the application as well as in the summoning order was made before the petition was filed. If it was made in the

office of the learned Counsel it is a serious matter. However, it is left open to the applicant to take necessary action against his Counsel as he may deem fit.

12. The application under Section 482, Cr.P.C. is hereby dismissed. The interim stay order dated 22.11.2004 stands vacated.

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