

**Court No. - 93**

**Case :-** APPLICATION U/S 482 No. - 1054 of 2024

**Applicant :-** Jai Prakash Goyal

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

**Counsel for Applicant :-** Rakesh Kumar Singh

**Counsel for Opposite Party :-** G.A.

**Hon'ble Arun Kumar Singh Deshwal,J.**

1. Heard learned counsel for the applicant, Sri Ramesh Kumar, learned A.G.A for the State and perused the record.
2. The present application under Section 482 Cr.P.C. has been filed for quashing the order dated 16.12.2023 passed by Presiding Officer, Additional Court No.3, Agra as well as entire proceeding of Complaint Case No.35153 of 2018, under Section 138 N.I. Act, Police Station Hari Parwat, District Agra pending in the court of Additional Court No.3, District Agra.
3. Facts giving rise to the present case is that on issuance of summon order against the applicant under Section 138 N.I. Act, the applicant filed an Application u/s 482 Cr.,P.C. No. 6433 of 2019 challenging the entire proceedings of Complaint Case No.3513 of 2018. That case was disposed of by this Court vide order dated 18.02.2019 permitting the applicant to raise all the dispute regarding the complaint before the trial court. Thereafter, the applicant filed a discharge application before the trial court on 05.03.2019. In that discharge application, the applicant has raised number of issues including the issue of pre-mature complaint as well as cheque in question was given as security, therefore no

## VERDICTUM.IN

liability under Section 138 N.I. Act is made out and also that complaint was filed by stranger, hence not maintainable. The trial court vide order dated 16.12.2023 rejected the aforesaid discharge application vide order dated 16.01.2023 on the ground that discharge application is not maintainable as per judgement of Hon'ble Apex Court in **Adalat Prasad vs Rooplal Jindal and others; 2004 (7) SCC 338** wherein it is observed that the summoning order cannot be recalled by the court which had issued the same.

4. The contention of counsel for the applicant is that the impugned order dated 16.12.2023 is bad in law; firstly because the court has not considered the issue raised in its discharge application. Secondly, the court has erroneously held that the discharge application is not maintainable after passing the summoning order. Counsel for the applicant further submits that as per proviso of Section 143 N.I. Act, in the proceeding under Section 138 N.I. Act, Section 262 to 265 Cr.P.C. will be followed and Section 262 Cr.P.C. specifically mentioned that during summary trial of case, proceeding of summon case has to be followed and proceeding of summon case has been mentioned in Chapter 20 of Cr.P.C. which cover Sections 251 to 259 and Section 259 specifically provides that the trial court may convert summons case into warrant case in appropriate case, therefore the provisions of the warrant case mentioned in Chapter 19 of Cr.P.C. will also applicable in proceeding under N.I. Act. Therefore, discharge application under Section 244 Cr.P.C. in the proceeding under Section 138 N.I. Act is very well maintainable.

5. Learned counsel for the applicant also submitted that as the complaint itself was premature, therefore, proceeding under

## VERDICTUM.IN

Section 138 N.I. Act was itself bad in eye of law as per judgement of Apex Court in the case of **Yogendra Pratap Singh vs Savitri Pandey & Anr.; JT2014 (10) SC 444.**

6. Counsel for the applicant also relied upon the judgement of Apex Court in the case of Janki Vashdeo Bhojwani and another vs Indusland Bank Ltd; AIR 2005 Supreme Court 439, wherein it was observed that power of attorney holder cannot depose instead of the principal.

7. Per contra, learned AGA submitted that application for discharge is not applicable in the proceeding under N.I. Act unless the court pass specific order converting from the proceeding of summon case to warrant case as required under Section 259 Cr.P.C. and in the present case, the court has not passed any order for converting for summary trial to warrant trial.

8. After considering the submissions of learned counsel for the parties and perusal of record, it appears that in the present case, the applicant has challenged the order dated 16.12.2023 by which discharge application of the applicant was rejected. Therefore, other contention, at this stage, cannot be looked into or consider unless discharge application itself is maintainable, even otherwise, the applicant has already challenged the impugned complaint proceeding in earlier application u/s 482 Cr.P.C., wherein court was not inclined to interfere in the impugned proceeding of complaint case.

9. The Hon'ble Apex Court in the case of Re: **Expeditious Trial of Case u/s 138 N.I. Act; (2021) 16 SCC 116** observed in para 24 that Magistrate should record reason while converting the trial of complaint case under Section 138 N.I. Act from summary trial to

## VERDICTUM.IN

summon trial and it was also observed that judgement of **Adalat Prasad another (supra)** and **Subramaniam Sethuraman vs State of Maharashtra; (2004) 13 SCC 324** are confirmed. It was also observed that discharge application filed under Section 258 Cr.P.C. is not maintainable in the proceeding of complaint case under Section 138 N.I. Act. For the ready reference para 24 of the **Re: Expeditious Trial of Case u/s 138 N.I. Act (supra)** is being quoted hereinunder;

*"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*

## VERDICTUM.IN

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."*

10. From the above analysis as well as law laid down by the Apex Court, it is clear that unless proceeding of complaint case under Section 138 N.I. Act specifically converted into summon case or into trial case then the provision of summon case or warrant case cannot be strictly applied in the proceeding under Section 138 N.I. Act. In the present case, Magistrate has not passed any order for converting the trial of impugned proceeding from summary trial into warrant case. Once it is established that provisions of warrant case are not applicable then question of applicability under Section 245 Cr.P.C. regarding discharge of accused does not arise.

11. This Court also held that discharge application under Section 258 Cr.P.C. is also not maintainable as that section applies where summons case instituted otherwise than upon complaint, but proceeding under Section 138 N.I. Act instituted on the basis of complaint. Hon'ble Apex Court in the case of **Re: Expeditious Trial of Case u/s 138 N.I. Act (supra)** already clarified this legal position.

12. In view of above, this Court does not any good ground to quash the impugned order by which the discharge application of the applicant was rejected, on the ground of maintainability.

13. Accordingly, the present application is **dismissed**.

14. However, it is always open for the applicant to raise all such grounds during trial before the court below.

## **VERDICTUM.IN**

15. It is provided that in case, the applicant appears before the court below within 15 days from today and applies for bail, his bail application shall be considered and decided in view of law laid down by the Apex Court in the case of **Satender Kumar Antil vs Central Bureau of Investigation and another, 2021 SCC Online SC 922**.

**Order Date :- 21.3.2024**

A.Kr.