

**Court No. - 44**

**Case :-** APPLICATION U/S 482 No. - 8070 of 2019

**Applicant :-** Sohan Lal Sharma

**Opposite Party :-** State Of U.P.And Anr

**Counsel for Applicant :-** Shri Krishna Mishra

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

**Hon'ble Arvind Kumar Mishra-I,J.**

Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material brought on record.

This application under Section 482 Cr.P.C. has been filed seeking the quashing of entire proceeding of complaint case no. 4434 of 2018, Hariom Sharma Vs. Sohan Lal Sharma, under Section 138 Negotiable Instruments Act, P.S. Phase-2 NOIDA, District Gautam Budh Nagar as well as the summoning order dated 30.10.2018 passed by the Additional Chief Judicial Magistrate, Court No. 3, Ghaziabad. Further prayer has been made to stay the further proceedings of the aforesaid case.

It is submitted by the learned counsel for the applicant that the entire allegations are false. Cheque in question was not issued against any existing debt or liability. Referring to the entire evidence available on record, it is submitted that the summoning order is illegal and without application of judicial mind. No cause of action arose to file the complaint.

On the other hand, learned A.G.A. opposed the prayer.

I have considered the rival submissions made by the learned counsel for the parties and perused the entire record carefully.

The submissions made by the applicant's counsel call for adjudication on pure questions of fact which may be adequately adjudicated upon only by the trial court and while doing so even the submissions made on points of law can also be more appropriately gone into by the trial court in this case. This Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins. A threadbare discussion of various facts and circumstances, as they emerge from the allegations made against the accused, is being purposely avoided by the Court for the reason, lest the same might cause any prejudice to either side during trial. But it shall suffice to observe that the perusal of the complaint, and also the material available on record make out a prima facie case against the accused at this stage and there appear to be sufficient ground for proceeding against the accused. I do not find any justification to quash the complaint or the summoning order or the proceedings against the applicant arising out of them as the case does not fall in any of the categories recognized by the Apex Court which may justify their quashing.

The prayer for quashing the same is refused as I do not see any abuse of the Court's process either.

In the last, the counsel has urged before the Court that the facts and circumstances of the case and the nature of offence involved are such in which the litigating parties should be given a chance to settle this matter

amicably and for this purpose some protective direction may be given by this Court so that adequate steps may be taken in furtherance of the same object. The counsel has also placed reliance on the Apex Court given in the cases of **Damodar S. Prabhu Vs. Sayed Babalal H., 2010(5) SCC 663 and Meters and Instruments Private Limited vs. Kanchan Mehta, LAWS(SC) 2017 10 1** in this regard. Submission is that the Apex Court decision has taken cognizance of the heavy pendency of the cases in the courts which may result ultimately in the choking of criminal justice system. It has been urged that with the laudable object of providing the rival parties, who have hitherto locked their horns in litigation, an opportunity to arrive at a mutually agreeable settlement and put an end to the escalating litigations, the compounding of the offence has not only been encouraged but in order to given incentive to do so at the earliest stage, certain directions have also been issued by the Hon'ble Supreme Court.

As requested by the counsel, it is directed that the accused may appear before the court below within a period of one month from today through the representing counsel and move an application seeking compounding of offence through compromise. On such application being moved, the concerned court may take adequate steps in accordance with law in this regard and shall provide further opportunity to the accused which shall not exceed a maximum period of four months from today to make an endeavour in this direction. Thereafter, the court shall pass necessary orders specifically keeping in view the law laid down by the Apex Court in the case of **Damodar S. Prabhu** (supra) as also the latest amendment made in the Act in the year 2018 within a period of five months from today.

If the decision of the Court given in the light of the application does not conclude the proceedings against the accused and he is further required to appear and face the trial, the court shall be at liberty to proceed in accordance with law against the accused and take all necessary steps and measures to procure his attendance as the law permits.

In the aforesaid period of five months or till the decision given in the light of the application, whichever is earlier, no coercive measures shall be adopted against the accused.

It is made clear that no application for extension of time shall be entertained if this order is not availed by the accused in the stipulated period of time. It is further clarified that this order has been passed only with regard to the accused on behalf of whom this application u/s 482 Cr.P.C. has been moved in this Court.

With the aforesaid observations this application is disposed of.

**Order Date :- 28.2.2019**

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