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**(2013) 07 AHC CK 0111**  
**In the Allahabad High Court**  
**Case No : Application No. 5955 of 2011**

Haushila Prasad Mishra

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 17-07-2013

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Negotiable Instruments Act, 1881 (NI) — Section 138  
Penal Code, 1860 (IPC) — Section 420

**Citation :** (2013) 1 BC 691

**Hon'ble Judges :** Ashok Srivastava, J

**Bench :** Single Bench

**Advocate :** Rajesh Kumar and Mr. J.S. Pandey, for the Appellant; S.N. Singh and Mr. S.P. Singh, for the Respondent

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## Judgement

Ashok Srivastava, J.—This petition u/s 482, Cr.P.C. has been moved on behalf of the applicant Haushila Prasad Mishra with the prayer to quash the proceedings of case No. 762 of 2001 u/s 138, Negotiable Instruments Act (Dhirendra v. H.P. Mishra) pending in the Court of VIII A.C.J.M., Allahabad in pursuance of the summoning order dated 15.9.2001. This case was listed for hearing on 27.5.2013. On that date learned Counsel for the applicant and the learned AGA were present who were heard. But no one was present on behalf of opposite party No. 2. It has been mentioned here that opposite party No. 2 has already appeared in this case and a counter affidavit tiled on his behalf is available on record.

2. The brief facts of the case are that on 23.7.2001 a complaint was filed by opposite party No. 2 against the applicant u/s 138, N.I. Act, 1881 and. Section 420, IPC. As per allegation opposite party No. 2 and the applicant belong to the same village and they had good relationship with each other. The applicant was in need of money and he requested opposite party No. 2 for a loan of Rs. 12000/- Keeping in view the need of the applicant opposite party No. 2 gave a sum of Rs. 12 000/- to the applicant on 6.6.1999 at his Allahpur residence within

the local jurisdiction of P.S. George Town, Allahabad. The applicant promised to return the amount within a period of three months to opposite party No. 2. When this period of 3 months was over the applicant did not return the money. Thereafter on persistent insistence on behalf of opposite party No. 2 the applicant gave cheque No. 883558 for a sum of Rs. 12,000/- to opposite party No. 2 on 21.11.2000 with the request that the later would deposit the cheque in his account after 10.5.2001. The applicant deposited the cheque in his Bank i.e. United Bank of India, Allahpur Branch, Allahabad on 19.5.2001. On 27.6.2001 Banker of opposite party No. 2 informed him that the amount could not be realized as there was no sufficient fund in the account of the applicant. On 30.6.2001 opposite party No. 2 issued a notice by registered post to the applicant. The said notice was given on behalf of opposite party No. 2 by his Counsel. It was mentioned in the notice that the applicant should pay the amount within a period of 15 days but no amount was paid. Thereafter on 23.7.2001 the complaint was filed in the Court of the Magistrate. The learned Magistrate conducted the inquiry and thereafter vide his order dated 15.9.2001 he summoned the applicant to face trial u/s 138, N.I. Act. Feeling aggrieved by filing of such complaint case and summoning order the present petition has been filed.

3. I have heard learned Counsel for the applicant and the learned AGA and also perused the records.

4. As mentioned earlier in this order no one was present on behalf of opposite party No. 2 on the date when the arguments were heard. It has been submitted from the side of the applicant that notice dated 30.6.2001 is defective as it is in contravention of Clause (b) of proviso attached to N.I. Act. It has further been submitted that the learned Magistrate has not looked into the merits of the case and only on behest of opposite party No. 2 an illegal summoning order has been passed. It has further been submitted that filing of complaint case is an abuse of process of Court. It has also been submitted that the notice u/s 138, N.I. Act is time barred. It has further been submitted that the applicant is a Principal of a High School and he had given a cheque to opposite party No. 2 for depositing the amount for coaching of his son but opposite party No. 2 did not do so and when the applicant demanded back his cheque opposite party No. 2 filed a false complaint case against him. Refuting the contention of the applicant learned AGA has said that it is admitted case of the applicant that he had given a cheque to opposite party No. 2. It has further been submitted that in para 8 of his affidavit a cursory contention has been raised with no details and the applicant has not mentioned any where in his affidavit or rejoinder affidavit that what is the name of his son or in which coaching institute he was to be admitted for coaching. It has further been submitted that the rejoinder affidavit contained a long description of facts and in a petition u/s 482, Cr.P.C. facts can not be analyzed or examined by this Court. It has also been submitted that the notice is not defective nor it is time barred.

5. In the instant case it has not been denied by the applicant that he had given a cheque of Rs. 12,000/- to opposite party No. 2. In para 8 of his affidavit he has mentioned that he had given that cheque to opposite party No. 2 to pay the fee of the coaching institute where applicant's son intended to join for coaching. From perusal of para 8 it is evident that the contentions are cursory in nature. Name of the son of the applicant has not been mentioned nor there has been any detail of the coaching institute in it. From perusal of para 8 of the counter affidavit it is evident that it is a defence for the sake of defence. The facts mentioned in this para do not inspire any confidence. From perusal of para 8 and the entire rejoinder affidavit it is evident that so many factual aspects of the case has been detailed in it. In a proceeding u/s 482, Cr.P.C. this Court can not analyze or examine factual aspect of the case. From perusal of Clause (b) of the proviso attached to Section 138, N.I. Act, I do not find that there is any illegality in the notice dated 30.6.2001. As per allegation the information regarding the dishonour of the cheque was received by opposite party No. 2 on 27.6.2001 and he issued a notice on 28.6.2001. At this stage it is immaterial to examine whether dishonour information was received by the applicant on 27.6.2001 or much earlier to it. It can only be looked into by the Trial Court at the time of trial of the case.

6. Considering all the aspects of the case and without expressing any opinion as to the merits of the case, I am of the view that there is no force in this petition and accordingly it is dismissed. Stay order, if any, stands vacated. Let a copy of this order be sent to the learned Sessions Judge, Allahabad for its onward transmission to the Court concerned. The learned Trial Court is directed to expedite the trial of the case and try to conclude the same at the earliest possible as the matter is quite old.