
(2016) 08 AHC CK 0082

In the Allahabad High Court

Case No : Criminal Misc. Application No. 24116 of 2016

Kamleshwar Kumar Tripathi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 12-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 418, 420

Citation : (2017) 99 ACrC 122 : (2016) 9 ADJ 5

Hon'ble Judges : Pramod Kumar Srivastava, J.

Bench : Single Bench

Advocate : Ramesh Kumar Mishra and Gyanendra Kumar Mishra, Advocates, for the Applicant; G.A, for the Opposite Parties

Final Decision : Allowed

Judgement

Pramod Kumar Srivastava, J.—; Heard learned counsel for the applicant, learned AGA and perused the records.

2. Complaint case no. 1800/2008 (Brijbhan Singh v. Kamleshwar Kumar Tripathi) was filed when cheque issued by accused Kamleshwar Kumar Tripathi in favour of complainant Brijbhan Singh was dishonoured and he had not paid amount of cheque after legal notice served on him. The cognizance for summoning the accused was taken by trial court for offences under section 138 N.I. Act and sections 418 and 420 IPC. Certified copies of documents produced before this Court show that parties had compromised the matter outside the court, and thereafter complainant Brijbhan Singh had moved application and affidavit before trial court with prayer that on the basis of compromise, he does not want to prosecute the case, which may be dismissed. But said application was not disposed of by trial court, the apparent reason for which appears that accused was absent in spite of non-bailable warrant issued against him. These proceedings are challenged by applicant, the accused of original case, through

present application under section 482 Cr.P.C.

3. In 2000 Cri. L.J. 824, G. Sagar Suri & another v. State of U.P. & others, the Apex Court had held as under:-

"A criminal complaint under Section 138 of the negotiable Instrument Act is already pending against the appellants and other accused. They would suffer the consequences if offence under Section 138 is proved against them. In any case there is no occasion for the complainant to prosecute the appellants under Sections 406/420 I.P.C. and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed, which we do."

4. Thus, it appears that trial court was erroneously prosecuting the applicant accused for offence under sections 418, 420 IPC and matter should have been prosecuted only for offence under section 138 N.I. Act. The trial for this offence under section 138 N.I. Act is carried out as summons trial, in which in absence of complainant or by not pressing the complaint by him, the prosecution should be put to an end. But trial court is carrying out proceedings for ensuring attendance of applicant-accused.

5. This matter neither involves any offence of heinous nature having any societal impact, and dispute has come to an end under amicable settlement, which is not forbidden by law, and there is no possibility of any evidence would be forthcoming to nail the applicant; therefore it appears appropriate that exercising inherent jurisdiction of this Court, such legal proceedings should be put to an end.

6. Accordingly, this application is allowed, and the proceedings of Complaint Case No. 1800/2008 (Brijbhan Singh v. Kamleshwar Kumar Tripathi), under Sections 418, 420 IPC and section 138 N.I. Act, P.S. Khaga, District Fatehpur pending in the Court of Judicial Magistrate, Khaga, Fatehpur, are hereby quashed.