

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**(Sl.No.21)**

**Court No. - 79**

**Case :- APPLICATION U/S 482 No. - 20344 of 2024**

**Applicant :- Satish Chandra Mittal**

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

**Counsel for Applicant :- Aklank Kumar Jain**

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

**Hon'ble Anish Kumar Gupta,J.**

1. Heard Sri Aklank Kumar Jain, learned counsel for the applicant and Sri Prem Prakash Tiwari, learned AGA for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the summoning order dated 06.07.2023 as well as the entire proceeding of Complaint No. 10258 of 2023 (Subhash Chandra vs. Satish Chandra Mittal), under Section 138 of the Negotiable Instruments Act, P.S. North, District Firozabad, pending before the court of Additional Civil Judge (J.D.)/Magistrate, Shikohabad.

3. Learned counsel for the applicant submits that in the instant complaint under Section 138 of the Negotiable Instruments Act, though it has been stated that the cheque was dishonoured on 28.02.2023 and the legal demand notice was issued on 10.03.2023, which was stated to have been served, however what is the date of such service, is not given in the complaint. However, in the affidavit supporting the complaint, it has been stated that the said notice was returned by the applicant deliberately in collusion with the postman. However, vide order dated 06.07.2023, the trial court has summoned the applicant without recording its satisfaction whether the offence under Section 138 of the Negotiable Instruments Act is prima facie constituted. The trial court has recorded that only the cheque was returned for insufficient fund, which has been proved by the complainant by his oral and documentary evidence. Merely on this, the trial court has concluded that the offence under Section 138 of the Negotiable Instruments Act has been made out. Learned counsel for the applicant further submits that there must be the service of the demand notice and the the cause of action for filing of the complaint case under Section 138 would arise only after the expiry of 15 days from service of notice. Since no date of service of notice has been mentioned

and there is contradictory statements with regard to service of notice or return of the notice by the applicant, the trial court has not applied its mind to the facts of the case. In view thereof, relying upon the judgment of Apex Court in **Lalan Kumar Singh vs. State of Maharashtra, 2022 SCC Online SC 1383**, learned counsel for the applicant submits that the summoning order is bad in law, as the same has been passed without application of mind. Therefore, learned counsel for the applicant has prayed for quashing of the summoning order in the instant case.

4. Per contra, learned AGA submits that from the summoning order dated 06.07.2023, the proper application of mind is not reflected and the mandates of judgment of Lalan Kumar Singh (supra) and **Sunil Bharti Mittal vs. Central Bureau of Investigation, 2015 (4) SCC 609**, has not been complied with by the trial court. In view thereof, learned AGA submits that impugned summoning order may be quashed and the matter may be remanded back to the trial court for passing the appropriate order in accordance with law.

5. In Sunil Bharti Mittal (supra), the Apex Court has observed as under:

*"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This Section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e., the complaint, examination of the complainant and his witnesses if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.*

*52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into Court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.*

*53. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into Court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction."*

6. Relying upon the aforesaid judgment, the Apex Court in Lalan Kumar Singh (supra) has held as under :

*"38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons."*

7. In view of the aforesaid observations made by the Apex Court, this Court has carefully perused the summoning order, which apparently is without application of mind. All ingredients of the offence under Section 138 of the Negotiable Instruments Act has not been considered by the trial court, before passing the summoning order.

8. In view thereof, the summoning order dated 06.07.2023 is hereby quashed and the matter is remitted back to the trial court concerned to pass a fresh order in accordance with law.

9. The Application under Section 482 Cr.P.C. is accordingly, **disposed of.**

**Order Date :-** 27.8.2024  
Ashish Pd.

**(Anish Kumar Gupta,J.)**