

## **Court No. - 22**

**Case :-** APPLICATION U/S 482 No. - 3354 of 2017

**Applicant :-** Abhishek Jain

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

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

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

**Hon'ble Amar Singh Chauhan,J.**

Heard learned counsel for the applicant, learned AGA for the State and perused the material on record.

The applicant Abhishek Jain through the present application under section 482 Cr.P.C. has invoked the inherent jurisdiction of this Court with a prayer to quash the entire proceedings in Complaint Case No. 5635 of 2016 under section 138 of Negotiable Instruments Act 1881, Police Station Lal Kurti, District Meerut, pending in the court of Additional Chief Judicial Magistrate, Court No. 5, Meerut.

Submission of learned counsel for the applicant is that the applicant is a sole proprietor firm and deals in the business of mobiles accessories situated at near old Jain Sthanak Patti, Chaudharan Baraut, District Baghpat. The applicant is a bank account holder of Central Bank of India, Baraut Branch and he has lost a signed cheque bearing Cheque No. 006894 amount of Rs. 2,80,000/- without mentioning any date or name on 06.04.2016 for which the applicant has informed the concerned Bank as well as Station House Officer, Police Station Baraut on the same day. The aforesaid lost cheque was misappropriated by the opposite party no. 2 and the same was presented to the concerned bank by mentioning its name as Naina Enterprises as well as mentioned date as 30.5.2016. On 01.07.2016, a notice has been sent by the opposite party no. 2 to the applicant. Thereafter the applicant came to know about the stolen cheque. The applicant replied the said notice and stated that the same cheque was misplaced from his shop. It is further submitted that applicant had never any business or monetary transaction with the opposite party no. 2. On the

basis of false and baseless complaint of opposite party no. 2, the Additional Chief Judicial Magistrate has taken cognizance against the applicant under section 138 of Negotiable Instruments Act. The court below has not applied its judicial mind while passing the summoning order and has not demanded the document regarding business transaction by the opposite party no. 2.

From perusal of the order and complaint, it cannot be said that prima facie no offence is made out against the applicant. All the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C. Only in cases where the Court finds that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order was not correct, this power may be exercised to prevent the abuse of process or miscarriage of justice.

Accordingly, prayer of the applicant is **refused**.

However, in view of the submissions made by learned counsel for the applicant, if the accused in response to the summon, appears and raises plea as to the maintainability of the complaint under section 251 Cr.P.C., the Magistrate is to decide it before it takes any other step or in case the applicant moves an application for discharge through counsel within two weeks, the same shall be disposed of by the trial court by a speaking order in accordance with law within two weeks thereafter.

For a period of four weeks or till the disposal of the discharge application, whichever is earlier, no coercive action shall be taken against the applicant.

With the aforesaid direction, this application is **disposed of**.

**Order Date :- 13.2.2017**

Puspendra