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**(2012) 12 AHC CK 0202**

**Allahabad High Court**

**Case No:** Criminal Miscellaneous Writ Petition No. 15257 of 2012

Amit Singh

APPELLANT

Vs

State of U.P. and another

RESPONDENT

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**Date of Decision:** Dec. 5, 2012

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 258, 262, 482
- Negotiable Instruments Act, 1881 (NI) - Section 138, 143

**Citation:** (2013) 1 ADJ 248 : (2013) 2 BC 189

**Hon'ble Judges:** Manoj Misra, J

**Bench:** Single Bench

**Advocate:** S.C. Pandey, for the Appellant;

**Final Decision:** Dismissed

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**Judgement**

Manoj Misra, J.

Heard learned counsel for the petitioner and learned A.G.A. for the State.

The facts giving rise to the present writ petition are that a complaint was filed by the opposite party No. 2 against M/s. A.D. Rice Mill Limited and its Directors/ Authorised Signatories, u/s 138 of the N.I. Act, which gave rise to Complaint Case No. 1936 of 2007. On the said complaint the petitioner was summoned vide order dated 10.10.2007. It appears that the petitioner invoked the jurisdiction of this Court, u/s 482 Cr.P.C. by filing Criminal Misc. Application No. 32586 of 2011 for quashing of the proceedings of the complaint Case No. 1936 of 2007. The said application was disposed off vide order dated 20.10.2011 with liberty to the petitioner to file a discharge application within a period of one month from the date of the order and the Court was directed to decide the said application, in accordance with law, and coercive steps pursuant to the proceedings were stayed till the disposal of the said application. It appears that pursuant to the order dated 20.10.2011 the petitioner filed an application for discharge, which was rejected by order dated 12.12.2011

passed by the A.C.J.M. Anup Shahr, Bulandshahr, against which, the petitioner preferred a revision. This revision was registered as Criminal Revision No. 31 of 2012. However, the Additional Session Judge, Court No. 7, Bulandshahr dismissed the revision vide its order dated 20.9.2012

Challenging the orders dated 20.9.2012 and 12.12.2011 the present writ petition has been filed.

Before entering the merits of the case, the learned A.G.A. has raised a preliminary objection with regard to the maintainability of the discharge application. It has been contended that the proceeding u/s 138 N.I. Act is to be carried out as a summons-case in accordance with Chapter XX of the Code of Criminal Procedure. As Chapter XX of the Code does not provide for discharge in a case instituted on a complaint, the application for discharge was misconceived and, as such, the Courts below were justified in rejecting the same and since the summoning order as well as the proceedings are not under challenge, the writ petition is not maintainable.

2. The preliminary objection raised by the learned AGA appears to have force. Section 143 of the N.I. Act, 1881 provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, all the offences under Chapter XVII shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of Sections 262 to Section 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial. Section 262 Cr.P.C. provides that trial shall be as per the procedure for trial of summons-case. The procedure for trial of summons-case is provided in Chapter XX of the Code of Criminal Procedure. Chapter XX of the Code does not provide for any opportunity to claim for discharge although Section 258 of the Code provides for power to stop proceedings in certain cases, which may be akin to discharge. But the power to stop the proceedings u/s 258 CrPC is available only in a case instituted otherwise than upon a complaint. As the proceedings u/s 138 of the N.I. Act are instituted on a complaint, the benefit of the provision of Section 258 of the Code is not available. The view that I am taking is also supported by a decision of the Gujarat High Court in the case of [Mehta Prafulchandra Kalidas Vs. Patel Cheljibhai Kalidas and Another](#), .

Accordingly, I am of the view that the application of the petitioner seeking discharge from prosecution was not legally maintainable, therefore, the Courts below were justified in rejecting the same. Further, as there is no prayer to quash the summoning order, no relief can be granted to the petitioner. The writ petition is, accordingly, dismissed.

However, the dismissal of this petition would be without prejudice to any right that the petitioner may possess to seek for such relief/remedy, which may be permissible in law.