

(2011) 09 UK CK 0080

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C482) No. 86 of 2010 and Stay
Vacation Application (CRMA) No. 174 of 2010

Amit Sharma

APPELLANT

Vs

Sachin Singhal

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 138(3)

Citation : (2011) 09 UK CK 0080

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—Heard.

2. By means of this petition moved u/s 482 of Code of Criminal Procedure, 1973 (for short Cr.P.C.) the Petitioner has sought quashing of the proceedings of criminal case No. 1590 of 2009 Sachin Singhal v. Amit Sharma relating to offence punishable u/s 138 of Negotiable Instruments Act, 1881, Police Station Kotwali Manglore, District Haridwar.

3. Learned Counsel for the Petitioner submitted that it is nowhere pleaded by the Respondent (complainant) that the notice required u/s 138(3) of Negotiable Instruments Act, 1881, was actually served on the Petitioner. Attention of this Court is drawn to Shakti Travel and Tours Vs. State of Bihar and Another, and it is contended that the proceedings should be quashed as the notices were not served on the Petitioner. However, para 3 of the criminal complaint copy of which is annexed as Annex. 1 to the petition shows that the complainant (present Respondent) has pleaded that notice was sent to the Petitioner on 17.03.2009, by registered post but the Petitioner has not paid the amount. Hence, the criminal complaint was filed on 28.04.2009. In the opinion of this Court, there is no infirmity in the criminal complaint which can be said to be the ground for

quashing it. The latest view of three Judges of the Apex Court in C.C. Alavi Haji Vs. Palapetty Muhammed and Another, it has been held that where the notice has been sent by registered post to the accused there will be presumption of service of the same. Otherwise also the object of the notice is to allow accused to make payment of the amount for which the cheque was got dishonored. The Petitioner has nowhere stated that even after receiving summons from the court, he made payment within 15 days of the amount to the complainant.

4. In the above circumstances, it is not a fit case to quash the proceedings by exercising powers u/s 482 Code of Criminal Procedure. Accordingly, the petition u/s 482 Code of Criminal Procedure, is dismissed. Interim order dated 29.01.2010, stands vacated. (Stay vacation application No. 174 of 2010, also stands disposed of).