
(2021) 02 UK CK 0027

In the Uttarakhand High Court

Case No : Writ Petition (Criminal) No. 307 Of 2021

Bhag Chand

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 18-02-2021

Acts Referred:

Indian Penal Code, 1860 — Section 420
Negotiable Instruments Act, 1881 — Section 138
Code Of Criminal Procedure, 1973 — Section 156 (3)
Constitution Of India, 1950 — Article 226

Citation : (2021) 02 UK CK 0027

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : Dharmendra Barthwal, J.S. Virk

Final Decision : Dismissed

Judgement

Ravindra Maithani, J

1. Instant writ petition has been filed for quashing the FIR No. 14 of 2021, under Section 420 IPC, Police Station Badkot, District Uttarkashi lodged by

the respondent no.3 on 12.02.2021.

2. According to the FIR, the petitioner runs a meat shop in Tyuni, District Uttarkashi. In the year 2019, he purchased goats of value Rs.12,16,700/-.

The petitioner paid Rs.3,50,000/- and for the remaining amount, he gave a cheque which when presented was dishonored. Subsequent to it, the

petitioner again gave a cheque to the informant of Rs.50,00,000/-, but it could not be honoured because there were discrepancies in the amount written

on it. The informant claimed his amount from the petitioner, but instead of making payment the petitioner executed an agreement. Thereafter,

Rs.80,000/- were given to the informant by the petitioner and remaining amount was not paid. Thereafter, the petitioner started threatening the informant to life. There are other averments as well in the FIR.

3. Learned counsel for the petitioner would submit that the allegations of dishonouring of cheque is of the year 2019 for which appropriate remedy is under Section 138 of the Negotiable Instruments Act, 1881. It is argued that an agreement has been executed between the parties, which provides remedy. The informant could have availed that remedy in civil court and there is no element of criminality in the instant matter.

4. It is a writ petition under Article 226 of the Constitution of India. It is no rule that if a case is civil in nature, a criminal prosecution cannot be launched. A case having civil nature may also have an element of criminality in it. It is a matter of intention.

5. In the case of Indian Oil Corpn. Vs. NEPC India Ltd. and others, (2006) 6 SCC 736, the Honâ??ble Supreme Court in para 12 (v) observed as

hereunder:-

â??(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A

commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal

offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a

commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal

proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.â??

6. Undoubtedly, instant case also makes out a civil case, but the question whether it lacks any element of criminality. The FIR narrates the story as to

at what stages, the petitioner cheated the informant, first by giving a cheque which was not honoured; secondly, by giving a cheque which was not

properly filled up and thirdly, by executing an agreement and not fulfilling his part of a promise. Prima facie, it cannot be said that this case has not

element of criminality. In fact, it has an element of criminality. The FIR discloses commission of cognizable offence. In fact, FIR has been lodged

after order under Section 156 (3) of the Code of Criminal Procedure, 1973

passed by learned Judicial Magistrate, Purola on 20.01.2020. The order is also quite elaborate to observe that prima facie, a case is made out. Therefore, this Court sees no reason to make any interference and the writ petition deserves to be dismissed.

7. The writ petition is dismissed.

8. Learned counsel for the petitioner would submit that the petitioner apprehends that he may be arrested in a very routine and mechanical manner by the Investigating Officer without ascertaining their role.

9. Needless to say, arrest is not a mechanical act of the Investigating Officer. First and foremost, he has to ascertain the complicity of a person in the offence and thereafter, to weigh in his mind the need for arrest. This Court has no doubt that the Investigating Officer, in the instant case, shall also follow the law on the subject of arrest, if any occasion to arrest arises in the instant case.

10. Let a certified copy of this judgment be provided to learned counsel for the parties, today itself, on payment of usual charges.