

(2014) 01 UK CK 0007

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C-482) No. 1026 of 2010

Bimal Singh Thapa

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 03-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 147 427 504 506

Citation : (2014) 2 BC 493 : (2015) 2 Crimes 605 : (2015) 1 Crimes 625 :
(2014) 1 UC 146

Hon'ble Judges : Umesh Chandra Dhyani, J

Bench : Single Bench

Advocate : Sandeep Tandon, for the Appellant; P.S. Saun, A.G.A. for State, for the Respondent

Judgement

Umesh Chandra Dhyani, J.—The applicant, by means of present Application u/s 482 Cr.P.C., seeks to quash the summoning order dated 12.12.2008 passed by Additional Chief Judicial Magistrate 3rd, Dehradun in Complaint Case No. 2143 of 2008 titled as Ramesh Singh v. Bimal Singh Thapa, u/s 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act") The applicant also seeks to quash the proceedings of the aforementioned compliant case pending in the court of Chief Judicial Magistrate, Dehradun. The present application u/s 482 Cr.P.C. is supported by an affidavit.

2. None appeared for respondent No. 2, despite personal service of notice upon him.

3. A criminal complaint case was filed by complainant/respondent No. 2 against the applicant in the court of Additional Chief Judicial Magistrate 3rd, Dehradun. After considering the contents of the complaint and having perused the documents thus filed, accused-applicant was summoned to face the trial u/s 138 of the Act, vide order dated 12.12.2008 passed by Additional Chief Judicial

Magistrate 3rd, Dehradun. Aggrieved against the same, present application u/s 482 Cr.P.C. was filed by accused-applicant.

4. According to the complainant, the applicant purchased a piece of land from respondent No. 2 on 03.06.2008. A sale deed was executed in favour of applicant and Kishan Singh Negi. Applicant issued a cheque of Rs. 26 lakhs dated 20.08.2008 in favour of respondent No. 2. Applicant assured that the payment to him would be made when the cheque is presented in the bank for encashment. When the respondent No. 2 presented the cheque in UCO Bank, Branch Sahastradhara Road, Dehradun, the same was dishonoured. A return memo dated 09.09.2008 indicated that the payment could not be made for the reason "payment was stopped by the drawer". Respondent No. 2 sent a notice to the applicant through his Advocate on 06.10.2008, which was served upon the applicant, but inspite of the same, the applicant did not pay the money to respondent No. 2. Going by the contents of the complaint, a prima facie case u/s 138 of the Act is made against the applicant.

5. Learned counsel for the applicant contended that respondent No. 2 played fraud upon the applicant. In order to substantiate his contention, learned counsel drew the attention of this Court towards the sale deed dated 03.06.2008 executed by respondent No. 2 and others in favour of applicant and Kishan Singh Negi. The land was sold for a consideration of Rs. 72 lakhs. The payment was made by different cheques. The details of the cheques are given in the sale deed, which is enclosed as Annexure-S.A.1 to the supplementary affidavit filed in connected C482 No. 1023/2010. Out of Rs. 72 lakhs, the cheque worth Rs. 40 lakhs were encashed by respondent No. 2 and other vendors. The cheque worth Rs. 32 lakhs were dishonoured because of "payment stopped by the drawer".

6. The descriptions of cheques as per the sale deed dated 03.06.2008 are as under:

7. Learned counsel for the applicant argued that the land relating to Khasra No. 664 Kha and Khasra No. 665 Ka were in the possession of Dinesh Kumar Agarwal and Smt. Anju Agarwal, who were owners of the same. It is contended that respondent No. 2 and others were shown to be the owners in possession of the said land (to the applicant and his companion). This has been mentioned by the deponent in his affidavit.

8. In order to show the same, learned counsel for the applicant drew attention of this Court towards Annexure-8 to the present petition, which is a copy of a plaint filed by Dinesh Kumar Agarwal and Smt. Anju Agarwal against Kishan Singh Negi, Bimal Singh Thapa (applicant), Manoj Ghildiyal, Surendra Singh, Ramesh Singh, Chajju Singh, Pradeep Singh, Smt. Kala Devi and Mangat Singh. The plaintiffs filed the said suit against the defendants for cancellation of sale deed and for permanent prohibitory injunction. It was stated by the plaintiffs in para 12 of the plaint that the defendants No. 5 to 9 had no right to execute the sale deed in favour of the defendants No. 1 & 2 in respect of Khasra No. 664 Kha and

Khasra No. 665 Ka. The said suit was filed in the court of Civil Judge (S.D.), Dehradun on 04.07.2008. On 25.06.2008, i.e., before presentation of the said suit by Dinesh Kumar Agarwal and another against the applicant and others, one Vinod Kumar Goyal (caretaker of Dinesh Kumar Agarwal) lodged an FIR against the applicant and vendors at Police Station Rajpur Road, Dehradun for the offences punishable under Sections 504, 506, 427 & 147 IPC alleging therein that the vendors reached there to give physical possession of the land to the purchasers, i.e., applicant and Kishan Singh Negi. A reference of another suit between Dinesh Kumar Agarwal and Ramesh Singh & others was also made in the FIR. Ramesh Singh and others were the vendors of the land, which was sold to the applicant and Kishan Singh Negi. Learned counsel for the applicant stated that when the applicant came to know that the ownership of the respondent No. 2 & others over the disputed land was in question, he had no other option, but to request the bank for stop payment.

9. It was mentioned in the internal page 4 of the sale deed dated 03.06.2008 that the land in question is free from any encumbrances, the same is not disputed, the litigation of which is not pending in any court and the vendors are the real owners - in possession of the land and the same is not mortgaged anywhere. Believing the same to be true, the applicant purchased the said land, gave cheques to the respondent No. 2, including the cheque under reference/scrutiny, which was dishonoured by the bank and in respect of which present litigation u/s 138 of the Act is pending. When the applicant came to know that the land which he purchased was disputed one, he requested the bank to stop payment for balance amount. The applicant has already paid a sum of Rs. 40 Lakhs to respondent No. 2. A sum of Rs. 32 lakhs was yet to be paid, but in the meantime, the applicant came to know about the pendency of litigation challenging the ownership of respondent No. 2 over the land in question, and therefore, he rushed to the bank with the aforesaid request. Explanation furnished by the applicant for stopping the payment is sufficient. Any reasonable prudent person would have done the same.

10. Considering the background of the petition, fully supported by the documents on record, it is a fit case in which this Court should intervene in the proceedings of the court below in exercise of it's inherent jurisdiction to prevent the abuse of process of the Court.

11. The Hon''ble Apex Court has provided the guidelines as regards the exercise of jurisdiction u/s 482 Cr.P.C. in the judgment of Rajiv Thapar and Others Vs. Madan Lal Kapoor, wherein the Hon''ble Apex Court has desired the High Courts to follow the following steps while dealing with applications u/s 482 of Cr.P.C. The same reads as under:

? Step one: Whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

? Step two: Whether the material relied upon by the accused would rule out the

assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

? Step three: Whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

? Step four: Whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

12. Hon"ble Supreme Court has provided guideline that if the replies to the aforesaid four steps is in the affirmative, then only proceedings u/s 482 of Cr.P.C. should be allowed. In the instant case, the replies to all the aforesaid questions is in the affirmative.

13. It is a well settled law that the inherent powers of the Court u/s 482 Cr.P.C. should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section. In the instant case, the accused-applicant is able to pass those tests and it is a fit case where such jurisdiction should be exercised.

14. As a consequence thereof, application u/s 482 Cr.P.C. is allowed and the summoning order dated 12.12.2008 passed by Additional Chief Judicial Magistrate 3rd, Dehradun alongwith the proceedings of Complaint Case No. 2143/2008 titled as Ramesh Singh v. Bimal Singh Thapa, u/s 138 of the Act pending in the Court of Chief Judicial Magistrate, Dehradun are hereby quashed qua applicant.