

(2010) 06 UK CK 0038
In the Uttarakhand High Court

Govind Lal and Darshan Kumar

APPELLANT

Vs

State of Uttarakhand and Nandan Singh Bisht

RESPONDENT

Date of Decision : 16-06-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 244, 246, 311, 313
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120B, 420

Citation : (2010) 06 UK CK 0038

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Judgement

Prafulla C. Pant, J.—This revision is directed against judgment and order dated 10.04.2007, passed by Sessions Judge, Chamoli, in Criminal Revision No. 14 of 2007, whereby, said court has set aside the order dated 13.03.2007 passed by Chief Judicial Magistrate, Chamoli in Criminal Complaint Case No. 252 of 2001. The second Criminal Revision is not maintainable at the instance to same party, but this revision has been filed by the party who was opposite party before the Sessions Judge.

2. Heard learned Counsel for the parties, and perused the papers on record.

3. Brief facts of the case are that the complainant filed a Criminal Complaint against the revisionists, which was registered as Criminal Case No. 252 of 2001 Nandan Singh Bisht v. Govind Lal and Ors. relating to offences punishable u/s 420, 120B of I.P.C and one punishable u/s 138 Negotiable Instruments Act 1881. It appears that after recording statement of the complainant u/s 202 of Cr.P.C., revisionists/accused were summoned in the aforesaid criminal complaint case. There after evidence was recorded u/s 244 of Cr.P.C and charge was framed on 21.10.2005. Thereafter the case was listed for prosecution evidence to be recorded u/s 246 of Cr.P.C. After the prosecution evidence was closed, the case was listed for statement of accused u/s 313 of Cr.P.C., and the same was recorded. Thereafter application No. 71A was moved by the complainant to file

documentary evidence. The trial court vide its order dated 13.03.2007 rejected the application. Aggrieved by said order the complainant preferred criminal revision No. 14 of 2007 which was allowed by the Sessions Judge. Hence this petition.

4. Learned Counsel for the revisionists referred to Section 311 of Code of Criminal Procedure, 1973. It is argued on behalf of the revisionist that the provision contained in Cr.P.C. does not empower the court to accept the documentary evidence filed by prosecution after the close of the prosecution evidence. On the other hand learned Counsel for the complainant argued that under the aforesaid section the court has ample power to accept the documentary evidence even after the prosecution evidence is closed.

Section 311 of Cr.P.C., reads as under:

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case".

5. The above provision makes it clear that it empowers the court to summon a witness or to examine a person present in the court at any stage of inquiry or trial. The Section 311 further empowers to recall or re-examine the witness already examined. But it nowhere empowers the Court to accept documentary evidence of the prosecution after evidence has already being closed".

6. Section 391 of Cr.P.C though empowers the appellate court to take further evidence which is necessary but said power can not be exercised by the trial court unless by the appellate court directs to do so. Learned Sessions Judge, was not seized with any appeal in the present case.

7. For the reasons as discussed above, this Court finds that the learned Sessions Judge, Chamoli, has erred in law in allowing the revision and the application of the complainant on payment of cost of Rs. 250 to the accused. Even otherwise learned Sessions Judge, Chamoli, has erred in law by entertaining the revision against the interlocutory order passed by the Magistrate.

8. Therefore, this revision is allowed. The impugned order dated 10.04.2007 passed by the Sessions Judge, Chamoli in Criminal Revision No. 14 of 2007 is set aside. The order-dated 13.03.2007 passed by the Chief Judicial Magistrate, is restored.