

(2011) 06 UK CK 0074

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C482) No. 597 of 2004

Harjitender Singh

APPELLANT

Vs

State of Uttaranchal (Uttarakhand) and Rajeev Khanna

RESPONDENT

Date of Decision : 24-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 380, 420, 467, 468, 471

Citation : (2011) 06 UK CK 0074

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Allowed

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. 134 of 2004, Rajeev Khanna v. Harjitender Singh, relating to offences punishable u/s 380, 420, 467, 468, 471, 506 IPC, pending in the court of Judicial Magistrate/ Ist Additional Civil Judge (Jr. Div.), Dehradun.

3. Brief facts, of the case, are that a criminal complaint is filed by the Respondent No. 2 Rajeev Khanna against the Petitioner Harjitender Singh with the allegations that the complainant used to run a registered society I.I.C.I. Penal Technology. I.I.C.I. (Intellect Institute of Computer Information) was another firm which was being run by the complainant at Dehradun, and other places. Due to acquaintance with the Petitioner Harjitender Singh he entrusted him to look and manage the affairs of the firm. An account was opened with Centurian Bank by the complainant/Respondent No. 2. It is alleged that the Petitioner was a man of confidence of Respondent No. 2, who with dishonest intention stole certain drafts in respect of which a criminal case is pending before the Chief Judicial Magistrate. Now the complainant has come to know that his

cheque book is also lost in which blank cheques were signed by him. It is further alleged in the criminal complaint that the Petitioner misusing those cheques , has given notice to the complainant (present Respondent No. 2) to pay Rs. 2,50,000/- as the cheque issued in his favour got dishonored on presentation before the bankers. Lastly, it is pleaded in the criminal complaint that Petitioner No. 1 be summoned u/s 420, 467, 468, 471, 506, 380 IPC.

4. It appears that the trial court summoned the Petitioner in the aforesaid criminal complaint which was registered as criminal complaint case No. 134 of 2004, vide its order dated 05.10.2004.

5. Learned Counsel for the Petitioner submitted that the cheque in question dated 13.10.2003, which was given by the Respondent No. 2 to the present Petitioner in discharge of his liability. On 14.10.2003, when the cheque was presented before the bankers it was dishonored. Consequently, the Petitioner issued notice dated 20.10.2003, and when the payment was not made criminal complaint was filed on 25.11.2003, by the Petitioner No. 1. Service of notice also stood admitted as the Respondent No. 2 gave reply dated 29.10.2003, to the notice dated 20.10.2003. The criminal complaint case filed by the present Petitioner against the Respondent No. 2 relates to the offence punishable u/s 138 Negotiable Instruments Act, 1881. These facts are pleaded in the present petition filed u/s 482 Code of Criminal Procedure The facts alleged in the petition supported by the affidavit remained unrequited for last more than 6 years as no counter affidavit has been filed on behalf of the Respondent.

6. In the above circumstances, the averments made in the petition u/s 482 Code of Criminal Procedure, since remained unrequited, this Court has no reasons to disbelieve the same. Perusal of the copy of criminal complaint in question filed by Respondent No. 2 shows that same was filed as counter blast on 29.01.2004, i.e., subsequent to the summoning order issued against the Respondent No. 2 in a case u/s 138 of Negotiable Instruments Act, 1881.

7. Agreeing with learned Counsel for the Petitioner that impugned criminal complaint is simply a counter blast complaint filed by the Respondent No. 2 in an order to save himself in the criminal complaint filed by the Petitioner. As such, in the opinion of this Court, it is a case of abuse of process of law on the part of the complainant.

8. Having considered submissions of learned Counsel for the parties, after going through the papers on record, and for the reasons as discussed above, the petition u/s 482 Code of Criminal Procedure, is allowed. The proceedings of criminal case No. 134 of 2004, Rajeev Khanna v. Harjitender Singh, relating to offences punishable u/s 380, 420, 467, 468, 471, 506 IPC, pending in the court of Judicial Magistrate/ Ist Additional Civil Judge (Jr. Div.), Dehradun, are hereby quashed. Interim order dated 21.12.2004, stands automatically vacated.