

(2011) 11 UK CK 0105

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C482) No. 1175 of 2011

M/S Brawn Laboratories Ltd. and Others

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 28-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 205, 305, 482
Drugs and Cosmetics Act, 1940 — Section 18, 27

Citation : (2011) 11 UK CK 0105

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Judgement

Hon"ble Prafulla C. Pant, J.—Heard.

2. By means of above two petitions filed by the petitioners, orders dated 28.09.2011 and 19.11.2011, passed by learned Sessions Judge, Pithoragarh, in Special Trial No. 10 of 2010, Drug Inspector Vs. Naval Arora and others, are sought to be quashed.

3. Brief facts of the case are that certain medicines were purchased from M/s Brawn Laboratories Ltd., New Delhi, through M/s Navchem Pharmaceuticals, by the Superintendent of B.D. Pandey Government Hospital, Pithoragarh, under the rate contract basis as allowed by the Government. However, the medicines were allegedly found of sub standard and complaint was given to Drug Inspector concerned. The Drug Inspector, after inquiry submitted a criminal complaint in the court. The accused (petitioners) were summoned to face the trial in respect of offence punishable u/s 18a (i) and 18a (vi)/27 of Drugs & Cosmetic Act, 1940.

4. Learned counsel for the petitioners submitted that learned Sessions Judge has erred in law, in rejecting the bail application, moved by the petitioners namely A.K. Gupta, B.R. Gupta and P.K. Sinha, and their bail applications should have been allowed by the court concerned.

5. However, on going through the order dated 19.11.2011, this Court finds that

the application has been rejected by the court concerned, as the aforesaid petitioners were not present in the court. I find no illegality in the order, for the reasons that at the time of seeking bail, the accused should have either in custody, or present in the court in person.

6. Since the trial was held up due to the non-appearance of the accused, in the circumstances, the trial court has declined to exercise the power u/s 205 of Cr.P.C., to dispense the personal attendance of the accused. It is not the case of the petitioners that they have appeared in the case so far. The trial appears to be pending since year 2006.

7. As far as, the order relating to application moved u/s 305 of Cr.P.C., is concerned, the trial court has not rejected the said application. It has been observed that the same be listed on the next date. No doubt, u/s 305 of Cr.P.C., the accused company (in the present case M/s Brawn Laboratories Ltd.) has a right to appoint its representative for the purposes of the trial, and it has appointed one Mr. Harish Chand Kushwaha for the said purpose through resolution passed by the Board of Directors. As such, the trial court can pass orders on said application, so that the trial may proceed further.

8. It is pertinent to mention here that earlier petitions u/s 482 of Cr.P.C., were filed in the year 2006, which were disposed of by this Court, vide its order dated 21.07.2010, and this Court has declined to interfere with the trial of the case.

9. In the above circumstances, both these petitions filed u/s 482 of Cr.P.C., are disposed of summarily, with the observation that if the petitioners B.R. Gupta, A.K. Gupta and P.K. Sinha, surrender before the court concerned, their bail application shall be heard and disposed of without unreasonable delay. Thereafter, on the subsequent dates when their personal presence is not required, their application for exemption through counsel u/s 205 of Cr.P.C., may be considered. As far as the application moved u/s 305 of Cr.P.C., is concerned, if the person appointed by the company is present in the court to represent it, the application shall be disposed of. It is further observed that since the accused are not residents of the State of Uttarakhand, local sureties shall be not insisted upon. (Stay applications No. 1592 of 2011 and 1591 of 2011, stand disposed of).