(2010) 07 UK CK 0085

In the Uttarakhand High Court

Murari Lal Agarwal and Vinod Kumar Walia — APPELLANT

Vs

State of Uttarakhand and Another — RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 210, 482
Penal Code, 1860 (IPC) — Section 406, 420, 467, 468, 471

Citation : (2010) 07 UK CK 0085

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Judgement

Dharam Veer, J.—Since the dispute involved in all the applications are same, hence, all these applications are being disposed of by this one and common order.

2. By means of Code 482 No. 449 of 2004, moved u/s 482 of The Code of Criminal Procedure, 1973 (for short Cr.P.C.), the petitioner/applicant has sought quashing of the proceedings of Complaint Case No. 1241 of 2003, George Renato v. Vinod Kumar and Ors., under Sections 420, 468, 478, 471 and 506 of IPC.

3. By means of Code 482 No. 800 of 2005, the petitioner/applicant has sought quashing of the order dated 19.5.2005 passed by C.J.M., Tehri Garhwal, New Tehri, in Criminal Case No. 2122 of 2005, State v. Murari Lal Agarwal and Ors., under Sections 406, 420, 467, 468, 471 of IPC and also quashing of the charge sheet dated 31.1.2005 submitted in Case crime No. 844 of 2004.

4. By means of Code 482 No. 812 of 2005, the petitioner/applicant has sought quashing of order dated 19.5.2005 passed by C.J.M., Tehri Garhwal, New Tehri in Criminal case No. 2121 of 2005, State v. Murari Lal Agarwal and others, under Sections 420, 467, 468, 471 of IPC and also quashing of charge sheet dated 9.3.2005. It is further prayed for quashing of entire proceedings of the criminal case No. 2121 of 2005.

5. Heard learned Counsel for the parties and perused the entire material available on file.

6. Brief facts of the case are that respondent No. 2 George Renato Bader filed a complaint against the applicants in the court of Special Judicial Magistrate, Tehri Garhwal with the allegations that the complainant is a Swiss National and was an employee in Union Bank of Switzerland. Applicant Vinod Kumar Walia met the complainant in 1991 at Switzerland and developed friendship with him. In 1996, the complainant visited India and stayed at Kripalu Yoga Ashram for three weeks. Thereafter, he went back to Switzerland and there the applicant V.K. Walia again met him and persuaded him that he would purchase some property near Kripalu Yoga Ashram for the complainant. On the persuasion of the applicant, the complainant paid to him 7000 dollars (Rs. 3,50,000/-) on 10.12.1997 by transferring the money in the account of applicant V.K. Walia at S.B.I. Dehradun. The complainant again paid 8000 dollars (Rs. 4.00 lacs) to the applicant in the same manner. Thereafter, in 1998, the complainant came to India and the applicant V.K. Walia showed some land in Raiwala to the complainant and told that the same has been purchased for the complainant. But since the complainant was a foreign national and could not property in India in his name, as such, the applicant V.K. Walia purchased the said property in his own name. Thereafter, in October 2000, the complainant again came to India and stayed till April 2001 in Kripalu Yoga Ashram Tapowan. During this stay, the applicant V.K. Walia told the complainant that he had taken loan for construction of the Ashram and if the complainant pays him the money, he would make the complainant a partner in the Ashram. Thereafter, in the month of October 2001, the applicant V.K. Walia came to the complainant in Switzerland and showed some papers bearing a trust deed dated 28.8.2001 in which the complainant was mentioned as Vice President of the trust known as "Kripalu Network Healing Trust" and also told that he (applicant V.K. Walia) will put all his property in this trust. The applicant demanded Rs. 4,50,000/- in cash which was paid by the complainant to the applicant on 18.10.2001 from his bank account and also transferred Rs. 10,50,000/- from his account to the account of the applicant V.K. Walia in the same bank, which the applicant later on transferred to his account at S.B.I. Dehradun. Thereafter, the complainant along with his girlfriend Susain came to India in the same month i.e. Oct. 2001 and stayed in the above-named Ashram for about 6 months. In Dec.2001, the complainant paid Rs. 5.00 lacs in cash to the applicant V.K. Walia for constructing a Yoga Hall in Kripalu Yoga Ashram. It is alleged that the applicant Murari Lal Agarwal was in-charge for constructing the hall. It is further alleged that on 27.2.2002, the complainant made a F.D. Account in BOA Tapovan for one year for Rs. 5.00 lacs in the joint name of the complainant and the applicant Murari Lal but the applicant Murari Lal took a loan of Rs. 4.00 lacs on that F.D. account and not deposited the same in F.D. account. The complainant asked him to deposit the amount but the applicant Murari refused for the same. On 28.2.2002, the complainant gave a cheque of Rs. 1,10,000/- for construction of building and on 22.10.2002 a cheque of Rs. 1.00 lac to the applicant Murari Lal and further gave a cheque of Rs. 9.00 lacs to the applicant V.K. Walia on the same date. On 1.10.2002, a cheque for Rs. 4.00 lacs was also given by the complainant to applicant Murari Lal. It is further alleged

that on 8.8.2002, the complainant again transferred Rs. 15.00 lacs from his account into the account of the applicant V.K. Walia. It is further alleged that the applicant Murari Lal with the consent and connivance of the applicant V.K. Walia persuaded the complainant and his girlfriend Susan to register a company "BMS Motels Pvt. Ltd." for construction of a Hotel and Restaurant at Tapovan in which the complainant and his girlfriend Susan paid Rs. 11.25 lacs. Applicant Murari Lal took the complainant to Indian Overseas Bank Muni-ki-Reti for opening a joint account for above motels and he made the complainant to sign certain papers and he told the complainant that the same account has been opened bearing No. 146. The complainant paid Rs. 6,45,000/- in the name of BMS Motels by transfer on 12.8.2002. It is further alleged that the accused Murari Lal Agarwal withdrew the amount from the above account leaving only Rs. 1,000/-. The complainant came to India in September 2002 and asked the accused Murari Lal Agarwal about the progress of BMS Motels but the applicant Murari Lal Agarwal avoided the things. Then the complainant suspected the so-called agreement of the BMS Motels and went to the Indian Overseas Bank and enquired about the account. It was told by the bank authorities that there is no such account in the joint name of complainant and the applicant Murari Lal instead the said account is in the name of applicant Murari Lal and his wife. On this, the complainant sent a letter to the applicant Murari Lal on 9.8.2003 informing him that the complainant is not willing to join the so-called Motels and asked him to return back Rs. 6,96,762/- with interest. It is alleged that the applicant Murari Lal promised to return the money but he did not return the same. It is further alleged that the applicant Murari Lal never gave any papers showing that "BMS Motels Ltd." has been registered. It is further alleged that the applicants cheated the complainant for a sum of Rs. 80.00 Lacs on various pretexts. With the same averments, the complainant filed the complaint in the court of Special Judicial Magistrate, New Tehri, Tehri Garhwal against the applicants, which was registered as Complaint Case No. 1241 of 2003. The complainant in support of his complaint examined himself u/s 200 Cr.P.C. and u/s 202 Cr.P.C. Kamal Krishna Gairola was got examined. After hearing learned Counsel for the complainant and perusing the material available, learned Special Judicial Magistrate, vide order dated 18.11.2003 summoned the applicants under Sections 420/467/468/471/506 of IPC. Against the said order dated 18.11.2003, the applicants preferred a revision in the court of Sessions, which was dismissed by learned Addl. Sessions Judge, Tehri Garhwal on 4.10.2004.

7. On 30.10.2004, on the basis of same allegations made in the above complaint, the complainant again made two complaints against the applicants, one got registered as FIR No. 844 of 2004 with P.S. Muni-ki-Reti, District Tehri Garhwal Under Sections 406/420, 467 and 468 of IPC and another got registered as FIR No. 845 of 2004 at P.S. Muni-ki-Reti, District Tehri Garhwal Under Sections 420, 467, 468 and 471 of IPC. On completion of the investigation in respect of both the FIRs, the I.O. submitted charge sheets against the applicants. On the basis of aforesaid charge sheets, the trial court vide orders dated 19.5.2005 taken the

cognizance and summoned the applicants in criminal case No. 2122 of 2005 regarding Case Crime No. 844/05 and further taken the cognizance and summoned the applicants in criminal case No. 2121 of 2005 regarding case crime No. 845/05.

8. From a perusal of the contents of the complainant as well as the First Information Reports and after going through other papers available in file, it reveals that the disputed questions of facts are involved in the instance case. This Court while exercising its jurisdiction u/s 482 Cr.P.C. cannot decide the factual disputes. That is a function of the trial court, who will decide the case after recording the evidence adduced before it and also on the basis of the appreciation of the evidence as per law.

9. Learned Counsel for the applicants submitted that since all the three cases i.e. complaint case No. 1241 of 2003, criminal case No. 2122 of 2005 and criminal case No. 2121 of 2005 are based on the same set of allegations, hence, they may be permitted to move an application u/s 210 Cr.P.C. before the trial court and the trial court may be directed to decide the application.

10. Prayer made is innocuous in nature and deserves to be accepted.

11. The applications u/s 482 Cr.P.C. are disposed of with the observation that if the applicants move an application before the trial court u/s 210 Cr.P.C., the trial court shall decide the application after examining all the facts and circumstances as per law.

