
(2007) 10 UK CK 0024

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 269 of 2004

Narendra Pandit

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 24-10-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 420, 504, 506

Citation : (2008) 8 UC 1175

Hon'ble Judges : B.C. Kandpal, J

Bench : Single Bench

Advocate : Alok Singh, assisted by, Mamta Joshi, for the Appellant; Lalit Sharma and Learned A.G.A. for State, for the Respondent

Final Decision : Allowed

Judgement

B.C. Kandpal, J.—By means of this petition the Applicant, who is an Officer in M/S Ashok Leyland Finance Limited Lucknow, has challenged the impugned order dated 23-2-2004, the charges dated 4-5-2004, as well as the entire proceedings of criminal case No. 2003 of 2004 State v. Narendra Pandit, under Sections 406, 420 and 506 I.P.C., pending before the Respondent No. 2, i.e. the Judicial Magistrate Haldwani, District Nainital.

2. Brief facts of the case are that the Applicant is posted as Area Officer in M/S Ashok Leyland Finance Limited Lucknow (hereinafter referred as "Company") and at the relevant time he was posted as Field Officer at Bareilly. First information report was lodged by Respondent No. 3 under Sections 420, 504 and 506 I.P.C. with P.S. Haldwani, District Nainital against the Applicant as well as certain other Officers of the Company with the allegation that the Company has financed several vehicles sold by M/S Megha Motors and the Officers of the Company had not paid the money to Megha Motors as well as they have not taken delivery of the Nexia Car. The further allegation is that the Officers of the Company have given the threat to the complainant.

3. After lodging the First Information Report the Officers of the Company challenged the F.I.R. by way of filing the petition and the petition was finally disposed of by this Court vide order dated 13-5-2002 observing therein that the Petitioner shall surrender before the Court concerned in order to seek his bail. The police after completion of the investigation submitted charge sheet against the Applicant on 14-6-2002. It is made clear that a separate charge sheet was filed by the police subsequently against the other Officers of the Company.

4. The learned Magistrate after filing of the charge sheet took the cognizance vide order dated 27-7-2002. The learned Magistrate thereafter framed the charges against the Applicant on 4-5-2004.

5. The Petitioner has challenged the order of framing the charges against him by way of this petition. He has also sought the relief for quashing the entire criminal proceedings of the criminal case pending against him before the court concerned.

6. The Respondent No. 3, i.e. the complainant filed his counter affidavit denying the averments made in the petition. The contention of the Respondent No. 3 in the counter affidavit is that the prima facie case under Sections 420, 504 and 506 I.P.C. is made out against the Petitioner and this petition is liable to be dismissed as there is no abuse of process of court and no flagrant injustice is being caused to the Petitioner.

7. The Petitioner has thereafter filed the rejoinder affidavit reiterating the facts narrated in the petition.

8. Heard Sri Alok Singh, Senior Advocate, assisted by Ms. Mamta Joshi, learned Counsel for the Petitioner and Sri Lalit Sharma, learned Counsel for the Respondent No. 3 and perused the record.

9. Learned Counsel for the Petitioner has submitted that from a bare perusal of the F.I.R. no offence is disclosed against the Petitioner. He has submitted that there has been no entrustment of the property with the Company and there is no mens rea on the part of the Petitioner, therefore, the Petitioner by any stretch of imagination can not be held liable for the offence u/s 420 and 406 I.P.C. He has also submitted that the ingredients of Section 506 I.P.C. are also not fulfilled, therefore, the cognizance taken by the learned Magistrate summoning the Petitioner for facing the trial u/s 506 I.P.C. is also illegal and is liable to be set aside.

10. It is not disputed between the parties that the Petitioner is an Officer of M/S Ashok Leyland Finance Limited Lucknow, therefore, it is quite clear that the Petitioner has no mens rea in the case. A bare perusal of the facts of this case reveal that the instant matter pertains to a dispute which is purely civil in nature. In the First Information Report no specific allegation against the Petitioner as to how the offence Under Sections 420 and 406 I.P.C., as has been alleged by the complainant/Respondent No. 3, has been committed.

11. In order to establish the offence u/s 420 I.P.C. there should be material that

the accused had dishonest or fraudulent intention at the time of inception of transaction and in the present case there is no such allegation levelled against the Petitioner. Unless the complaint shows that the Petitioner had dishonest or fraudulent intention at the time the complainant parted with the money it would not amount to offence u/s 420 I.P.C. The guilty intention of an accused attracting the essential ingredients of the offence of cheating is the mens rea which must be established in order to constitute the offence of cheating and the intention to deceive should be in existence at the time when the inducement was offered. I am unable to reach to the conclusion that there is any unlawful gain to the Petitioner in the instant case. Further at most in case if it is a breach of contract between the parties, even then the same cannot give rise to the criminal prosecution for cheating, unless fraudulent and dishonest intention is shown right from the beginning of the offence, i.e. at the time when the offence is said to have been committed. The Hon''ble Supreme Court in the case of S.W. Palanitkar and others Vs. State of Bihar and another, , has held that the fraudulent or dishonest intention must be shown to exist at the time of making of inducement otherwise mere failure to keep up the promise subsequently cannot be presumed as an act leading to cheating. The Hon''ble Apex Court in another case of Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and Another, , has also held that in case if the allegation in the complaint as a whole not indicating expressly or impliedly any intentional deception on the part of the accused right from the beginning of the transaction, would not make out an offence punishable u/s 420 I.P.C. or allied offences. The perusal of the record shows that the Respondent No. 3 has a civil remedy in order to procure his money which he could have availed by seeking the civil remedy before the competent court of civil jurisdiction, but the criminal proceeding against the Petitioner amounts to the harassment which is not permissible under the law.

12. The record further nowhere reveals that the vehicles were in fact delivered to the Company where the accused/Applicant had been working as an Officer. It is not the case that the Company has illegally transferred the vehicles to the purchasers, rather the case of the complainant is that the vehicles were delivered to the purchasers, therefore, there is no question of criminal breach of trust and under these circumstances the ingredients of Section 406 I.P.C. are also not attracted against the Petitioner.

13. As far as the offence u/s 506 I.P.C. is concerned, the record further nowhere reveals that what are the actual words uttered by the Petitioner to the complainant at the time of commission of offence. In order to attract the provisions of Section 506 I.P.C. it is necessary for the complainant to aver the exact words amounting to criminal intimidation in the report and in absence of the specific words alleged to have been uttered by the Petitioner, the offence u/s 506 I.P.C. is also not made out.

14. In view of the aforesaid, I come to the conclusion that the complaint filed by Respondent No. 3 does not fulfil the ingredients of the offences under Sections

420, 406 and 506 I.P.C. The order dated 4-5-2004 framing charges against the Petitioner is liable to be quashed. Under these circumstances if the criminal proceedings against the accused/Petitioner is continued the same would amount to an abuse of process of court.

15. Accordingly the petition is allowed. The impugned order dated 4-5-2004 framing the charges against the Petitioner under Sections 406, 420 and 506 I.P.C, as well as the proceeding of the criminal case No. 2003 of 2004, State v. Narendra Pandit pending in the Court of Judicial Magistrate, Haldwani, are hereby quashed, as far as it relates to the Petitioner.