

(2011) 02 UK CK 0007

In the Uttarakhand High Court

Case No : Recall/Restoration Application No. 77 of 2011 In Criminal
Miscellaneous Application (C-482) No. 957 of 2005

Naresh Kumar Jindal

APPELLANT

Vs

Sri Pawan Kumar Poddar and State of Uttaranchal (Now State
of Uttarakhand)

RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 420, 504, 506

Citation : (2011) 02 UK CK 0007

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—This is Recall/Restoration Application MCRC No. 77 of 2011, for restoration of Criminal Misc. Application (C-482) No. 957 of 2005, which was dismissed for non-prosecution by this Court, on 03.09.2010.

2. Delay in filing the application is condoned.

3. Heard on restoration application and perused the affidavit filed with the application, in which absence on 03.09.2010, is sufficiently explained in the affidavit filed by Naresh Kumar Jindal.

4. In view of the principle of law laid down in Madhumilan Syntex Limited and Ors. v. Union of India and Anr. AIR 2007 S.C.W. 1971, the restoration application is allowed, on the condition that the Petitioner shall argue today on the merits of the petition u/s 482 of Code of Criminal Procedure

5. The Criminal Misc. Application (C-482) No. 957 of 2005 is restored to its original number.

6. Also, heard on the petition filed u/s 482 of Code of Criminal Procedure , on

merits

7. Brief facts of the case are that Respondent No. 1 Pawan Kumar Poddar filed a criminal complaint No. 577 of 2004 before the Judicial Magistrate (CBI), Dehradun, alleging that the Petitioner and his other family members got medical treatment from his father late Sri Mahavir Prasad Poddar. It is further alleged in the criminal complaint that the outstanding bills of his father were not paid by the accused (Petitioner).

8. Learned Counsel for the Petitioner submitted that even if the contents of the criminal complaint are taken to be true, it is nothing but a case of pure civil liability, and there is no element of dishonesty which is a necessary ingredient for the purposes of cheating. It is further contended that it is abuse of process of law on the part of the complainant to implicate the Petitioner in criminal case.

9. Perusal of the copy of the criminal complaint shows that complainant's father was an Ayurvedic Naturopath. It is alleged that he (complainant's father) medically treated the accused, including the present Petitioner. It is further alleged in the criminal complaint that outstanding dues with medical bills were not cleared. Having gone through the contents of the criminal complaint, this Court finds that it is a case purely of civil nature, even if the prosecution case is taken to be true, the ingredients of the offences punishable u/s 420, 504, 506 of I.P.C. are not made out. In these circumstances, this Court is of the view that it is abuse of process of law to implicate the accused, including the Petitioner, in a criminal case.

10. For the reasons as discussed above, the petition u/s 482 of Code of Criminal Procedure, is allowed. The proceedings of the criminal complaint case No. 557 of 2004, Pawan Kumar Poddar v. Naresh Kumar Jindal and Ors., pending in the court of Judicial Magistrate (CBI), Dehradun, are hereby quashed.