**(2010) 05 UK CK 0049**

**In the Uttarakhand High Court**

Naveen Agarwal and Others — APPELLANT

Vs

State of Uttarakhand and Others — RESPONDENT

**Date of Decision :** 10-05-2010

**Acts Referred:**
Penal Code, 1860 (IPC) — Section 406, 420, 467, 468, 506

**Citation :** (2010) 05 UK CK 0049

**Hon'ble Judges :** Dharam Veer, J

**Bench :** Single Bench

**Final Decision :** Dismissed

## Judgement

Dharam Veer, J.—Urgency application No. 1627 of 2010 is allowed.

2. By means of this writ petition, the petitioners have sought writ in the nature of certiorari quashing the First Information Report, registered at Police Station Rishikesh, District Dehradun as Case Crime No. 157 of 2010 relating to offences punishable under Sections 420, 467, 468, 406 and 506 IPC.

3. A further mandamus has been sought commanding the respondents not to arrest the petitioners till the pendency of this writ petition in connection with the aforesaid crime.

4. Heard learned Counsel for the parties and perused the material on file.

5. In brief, the prosecution story is that on 23.4.2010 complainant Premchandra Bahukhandi lodged a FIR at P.S. Rishikesh stating therein that in the year 2007 the complainant was willing to purchase two separate residential accommodation for both of his sons as complainant was living in a rented accommodation at Shyampur Rishikesh with his family. It is further alleged in the FIR that one relative of complainant, namely, Manoj, after coming to know about his willingness regarding purchase of property, told this fact to the petitioner Nos. 1 and 2, who in the year 2007 along with their alleged Manager Gopal came to the house of complainant and stated that they are in business of property dealing

and have made agreements in the name of petitioner No. 1 pertaining to the residential house of one Himmat Singh Negi and Mohan Lal Aswal. The petitioners also showed the said agreements on stamp papers to the complainant. It is further alleged in the FIR that the petitioners showed the said houses to the complainant and his family members from outside and stated that in lieu of the agreement of the said houses, petitioner No. 1 has given total advance of Rs. 30 Lacs for the said residential houses to their respective owners and if the complainant agrees to pay Rs. 32,90,000/- to them they will did two separate registry in the name of sons of the complainant and with intention to cheat the complainant, the petitioners obtained Rs. 2,90,000/- in cash and received four cheques amounting Rs. 30 Lacs from the complainant. The petitioner No. 1 go encashed the said cheques from the bank and in this way total amount of Rs. 32,90,000/-was taken by him from the complainant. It was assured that till March 2008 the petitioners will execute the sale deed in favour of his two sons but when till March 2008 the petitioners did not execute the sale deed, the complainant make pressure upon them for executing the sale deeds but on one pretext or another, the petitioners continued delaying the sale deed. Then in the year 2009 the complainant contacted the owners of the said houses i.e. Himmat Singh Negi and Mohal Lal Aswal who told them that they even do not know the petitioners and have never made any agreement of sale for them. When this fact was apprised to the petitioners by the complainant, the petitioners asked the complainant for purchase of another property in lieu of the consideration amount given by him but the complainant did not agree and asked to take the matter in the police station on which the petitioners, after consulting with each other, gave 13 cheques to the complainant of the account of petitioner No. 1 Naveen Agarwal with A/c No. 3907000103127357. The said cheques were amounting Rs. 32,90,000/- but as soon as the date of encashment of first cheque dated 15.3.2009 reached near, the petitioners gave Rs. 20,000 on 28.2.2009, Rs. 80,000/- on 24.3.2009 and Rs. 80,000/- on 16.3.2009, in total Rs. 1,80,000/-to the complainant. When the complainant started to submit some of the said cheques in the bank, the same got dishonoured due to insufficient funds and difference in signatures and thus the complainant did not submit remaining cheques in the bank. In this way, the petitioners, with criminal conspiracy, grabbed Rs. 32,90,000/- from the complainant, out of which only Rs. 1,80,000 has been given back to him. It is further alleged that since beginning the petitioners were having intention to cheat the complainant and now they are threatening the complainant for dire consequences. With the same averments, the FIR was lodged by complainant Premchandra Bahukhandi on 23.4.2010 at P.S. Rishikesh.

6. Learned Counsel for the petitioners argued that the dispute between the parties is purely of civil nature and as per the averments made in the FIR no offence under Sections 420, 467, 468, 406 and 506 of IPC is made out.

7. Perusal of the contents of FIR and other papers available on file, prima facie indicates that the petitioners have played fraud upon the respondent No. 3,

 

firstly, by showing residential houses of someone else to respondent No. 3 by preparing forged agreement of sale, when neither the petitioners were the owner of those houses nor they were having possession over them. Secondly, in lieu of those residential houses, which were the property of someone else, petitioners grabbed Rs. 32,90,000/- from the respondent No. 3, and thirdly by issuing cheques to him with the account of petitioner No. 1 Naveen Agarwal which got dishonoured due to insufficient funds and difference in signatures. Keeping in view all the aforementioned facts and circumstances, gravity and seriousness of the crime, the petitioners are not entitled for any relief by this Court.

8. The writ petition is devoid of any merits and the same is dismissed in limine. (Stay Application No. 3082 of 2010 is also dismissed).

 