

(2010) 05 UK CK 0075

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C482) No. 401 of 2010

Parmanand @ Prem Ballabh

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 10-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2010) 2 UC 764

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Mahesh Chandra Bansal, for the Appellant; M.A. Khan, Brief Holder, present for the State and Shri B.B.S Negi, Advocate, present for the complainant/Respondent No. 2., for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Prafulla C. Pant, J.—Heard Learned Counsel for the parties.

2. By means of this petition moved u/s 482 of Code of Criminal Procedure 1973(for short Code of Criminal Procedure.) the Petitioners have sought quashing of the proceedings of criminal case No. 131 of 2010, State v. Parmanand and Ors., relating to offences punishable u/s 420, 467, 468, 471 & 120-B I.P.C., pending in the court of Judicial Magistrate, Ramnagar, District Nainital.

3. Earlier similar petition was filed before this Court in respect of same criminal case which was registered as criminal misc. application (C482) No. 194 of 2010, and dismissed after hearing the Petitioners on 09.03.2010. The present Petitioners have disclosed said fact and filed the copy of said order as Annexure-11 to this petition.

4. The ground on which new petition u/s 482 of Code of Criminal Procedure., has been moved is that vide judgment and decree dated 17.03.2010, Civil Judge (Sr.

Div.) Nainital, in civil suit No. 123 of 2008, has dismissed the Plaintiff's suit for injunction against the Petitioners.

5. Brief facts of the case are that the Plaintiff/respondent No. 2 has alleged in the first information report that he was cheated of more than rupees thirty two lacs (32,00,000/-) at the hands of the Petitioners and other accused who projected themselves that the land in which Petitioners were recorded in class IV in the revenue record, could be transferred to the complainant, and accepted the aforesaid amount. It is pleaded by the Petitioners that neither the Petitioners were Bhumidhars of the land nor any registered agreement was executed by the Petitioners as such on the face of it the prosecution story is false. In support of the present petition now Petitioners are armed with copy of judgment and order dated 17.03.2010 (copy Annexure- 12 of this petition) passed by Civil Judge (Sr. Div.) Nainital, in civil suit No. 123 of 2008, whereby the said court has dismissed the suit of the complainant/respondent No. 2 for injunction against the Petitioners and other accused, directing them not to interfere in the possession of the Plaintiff/ complainant.

6. No doubt as far as the title of the Petitioners and their right to transfer the land to anyone is concerned, finding of the civil court does have an effect over the proceedings in the criminal case. The finding that no registered agreement was executed by the Petitioners is also binding on the criminal court. But the question as to whether Petitioners (accused) received an amount of rupees thirty two lacs (32,00,000/-) from the complainant, and whether the complainant got cheated is a question of fact, which can be examined by the criminal court (trial court).

7. Having heard Learned Counsel for the parties and after going through the papers on record this Court is not inclined to interfere with the criminal proceedings in question, in the circumstances as mentioned above. Therefore without prejudice to the rights of the parties this petition u/s 482 of Code of Criminal Procedure. is dismissed, with the observation that if the Petitioners surrender before the court concerned and move bail application, their bail application shall be heard and disposed of by the court concerned without unreasonable delay.