
(2010) 09 UK CK 0241

In the Uttarakhand High Court

Case No : Criminal Application No. 18 of 2006 (U/s 482 of Code of Criminal Procedure)

P.R. Kathuria

APPELLANT

Vs

State of Uttaranchal and Another

RESPONDENT

Date of Decision : 23-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 415, 420

Citation : (2010) 3 UC 1684

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Advocate : Sri Vinod Sharma, for the Appellant; Sri Amit Bhatt, Addl. GA for the State/ Respondent No. 1 and Sri Pawan Mishra, for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Dharam Veer, J.—This criminal application, preferred u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as Code of Criminal Procedure), is directed for quashing the Criminal Case No. 602 of 2005, Rajeshwar Upadhyaya v. Smt. Usha Kathuria and Ors., u/s 138 of the Negotiable Instruments Act, 1881 [hereinafter to be referred as the Act] and u/s 420 of the Indian Penal Code, 1860 [hereinafter to be referred as Indian Penal Code], pending before Special JM II, Dehradun.

2. Heard Learned Counsel for the parties and perused the material on record.

3. The case of the Respondent No. 2 is that he gave Rs. 75000/- to the Petitioners as a loan for which a Cheque No. 998076 dated 31.3.2005 for Rs. 75,000/- was given by them to the complainant with the assurance that when it will be presented, the same would be encashed. That cheque was presented in the bank on 2.5.2005 but it was returned through his Banker State Bank of Patiala, Dehradun with the endorsement at Sr. No. 31 "Date written in year not

clear" and at Sr. No. 32 "Correct account number required" on the cheque return memo dated nil. The complainant received registered letter on 21.5.2005 from SBI Birpur Dehradun. On the receiving information about dishonor of cheque, on 8.6.2005, a legal notice was sent to the Petitioners by the complainant through his counsel which was served upon them on 9.6.05. On 14.6.05 the Petitioners submitted reply denying the contents of notice. But the amount of cheque was not made good to the complainant. Hence this complaint was filed.

4. A supplementary counter affidavit has been filed on behalf of the Respondent No. 2 wherein he states that he does not want to prosecute the Petitioners u/s 420 Indian Penal Code and he only wants to prosecute the Petitioner No. 2 u/s 138 of the Act. Even otherwise, on a bare perusal of the complaint lodged by the Respondent No. 2, (no ingredient of Cheating, as defined u/s 415 Indian Penal Code, which is punishable u/s 420 Indian Penal Code, is made out against the Petitioners. Consequently, the further proceedings before the court below u/s 420 Indian Penal Code against the Petitioners PR Kathuria and Smt. Usha Kathuria are quashed.

5. So far as the offence punishable u/s 138 of the Act is concerned, the same is patently a disputed question of fact which cannot be decided by this Court at this stage with a half baked evidence. Prima face on the basis of the material available on record, the necessary ingredients of the offence punishable u/s 138 of the Act against the Petitioner Smt. Usha Kathuria are clearly made out. Even otherwise, the trial court will decide the case after recording the evidence of the complainant as well as of the accused and also on the basis of the appreciation of the evidence as per law. That is the function of the trial court. The trial court will decide the case after recording the evidence adduced before it.

6. Thus, for the reasons as aforesaid, the C482 petition is partly allowed. The proceedings against the Petitioners PR Kathuria and Smt. Usha Kathuria u/s 420 Indian Penal Code are quashed. However, it is clarified that the proceedings u/s 138 of the Act against the Petitioner Smt. Uma Kathuria shall continue as per the order dated 20.09.2005 pending before Special JM II, Dehradun. Interim order dated 04.01.2006 is vacated accordingly.