(2013) 06 UK CK 0014

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C-482) No. 78 of 2008

Rajnikant Bajpai APPELLANT

Vs

State of Uttarakhand and Others RESPONDENT

Date of Decision : 24-06-2013

Acts Referred:

Citation : (2013) 2 NCC 683

Hon'ble Judges : Umesh Chandra Dhyani, J

Bench : Single Bench

Advocate : Naresh Pant, for the Appellant; S.K. Chaudhary, Addl. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Umesh Chandra Dhyani, J.—The applicant, by means of present application/ petition u/s 482 of Cr.P.C., seeks to quash the proceedings of criminal case No. 276 of 2000, pending in the court of Chief Judicial Magistrate, Dehradun as also the chargesheet dated 18.07.2002, filed in case crime No. 124 of 2002, under Sections 420, 467, 468, 471, 120B of IPC, falling within the jurisdiction of police station Dalanwala, District Dehradun. An FIR was lodged by respondent No. 3 against five accused persons, including the applicant, on 28.03.2000, which was registered as case crime No. 276 of 2000, in respect of the offences punishable under Sections 420 and 471 of IPC, in police station Dalanwala. The accused-applicant was arrayed as accused No. 5 in the FIR lodged by respondent No. 3. The accused Nos. 1 to 4 in the FIR were the partners of the Firm M/s. Rush Food (respondent No. 4). The informant was guarantor mortgagor of the loan. The loan was dispersed to respondent No. 4, which was having four partners, which have been arrayed as accused in the FIR. The allegation against the accused-application is that he colluded with all the partners of the Firm in order to obtain a loan in favour of respondent No. 4 in the year 1995. It is also the allegation that accused-applicant forged the signatures of respondent No. 3 on the mortgage deed and other documents. After the investigation, a chargesheet in respect of offences punishable under Sections 420, 467, 468, 471 and 120B of IPC was submitted against the accused. Cognizance of the same was taken. Aggrieved against the same, present application u/s 482 of Cr.P.C. was moved.

2. Learned counsel for the applicant contended that the applicant was Regional Manager in U.P. Finance Corporation and was posted at Dehradun. He has now retired. FIR was lodged by respondent No. 3 against the applicant because recovery proceedings were started against him in respect of mortgaged property, which was mortgaged in favour of U.P. Finance Corporation. The loan was taken by respondent No. 3 in the year 1995. An agreement-cum-Hypothecation deed was also executed. Original title deed was with U.P. Finance Corporation. The property was mortgaged as collateral security with the U.P. Finance. Corporation. Recovery proceedings were initiated against respondent No. 3 on 02.12.1999. Whereas other accused except accused No. 1 and applicant were chargesheeted as absconders, accused No. 1 and the applicant were summoned to face the trial in respect of offences complained of against them.

3. It may be noted here that accused Manisha Khanna is not the applicant before this Court. It is only Rajnikant Bajpai, the then Senior Manager (Technical) of U.P. Finance Corporation, who is the applicant before this Court.

4. The most important thing in the context of the present petition is the affidavit filed by respondent No. 3. Para No. 2 of said affidavit, which is enclosed as Annexure-2 to the petition, is reproduced here-in-below for ready reference:

That we, the said deponents, (Vinod Kumar as well as Manisha Khanna) confirm that we have deposited at Dehradun on 31.03.1997 with the said Corporation all the documents of title in our possession of power relating to our property with intent to create an equitable mortgage: in favour of said Corporation to secure the repayment of the amount due to the said Corporation under the agreement Cum Hypothecation deed executed on 31.03.1997 on behalf of the firm in favour of the Corporation.

5. When, in the affidavit, respondent No. 3 has admitted that he submitted the title deed, how could he now say that his signatures were forged by the accused-applicant? If he did not append his signatures on the documents given in the custody of UPFC, how the title deed came into custody/possession of UPFC? It appears that he wants to get rid of his liability by falsely implicating the accused-applicant, who was an employee of UPFC, which Corporation provided the loan to M/s. Rush Food (respondent No. 4). There is a sense in the argument of learned counsel for the applicant that the present FIR was a counterblast to the recovery proceedings initiated against respondent No. 3. It was held by Hon''ble Apex Court in Amit Kapoor Vs. Ramesh Chander and Another, that where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied. The court should apply the test as to whether the uncontroverted allegations as made from

the record of the case and the documents submitted therewith prima facie establish the offence or not. The High Court should not unduly interfere. But, if the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the court may interfere. Such power can be exercised to prevent abuse of the process of any Court. The instant case is squarely covered by the above principle laid down by the Hon''ble Supreme Court. Accordingly, the application/petition u/s 482 of Cr.P.C. is allowed. The proceedings of criminal case No. 276 of 2000, pending in the court of Chief Judicial Magistrate, Dehradun as also the chargesheet dated 18.07.2002, filed in case crime No. 124 of 2002, under Sections 420, 467, 468, 471, 120B of IPC, falling within the jurisdiction of police station Dalanwala, District Dehradun are hereby quashed.