(2010) 10 UK CK 0088

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 955 of 2010

Ram Bilash Mandal APPELLANT

Vs

Superintendent of Police, CBI RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120, 419, 420, 467, 468
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2010) 10 UK CK 0088

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dharam Veer, J. 1. Heard Mr. Pardeep Hairiya, Advocate for the applicant and Mr. Arvind Vashishtha, Advocate for the respondent.

2. By means of this petition, moved u/s 482 of Cr.P.C., the petitioner/applicant has sought quashing of the charge sheet as well as the summoning order dated 25.6.2010 passed by Special Judge, Anti-corruption, CBI, Dehradun, in CBI case No. 7 of 2010, CBI v. N.C. Arya and Ors., under Sections 120B, 419, 420, 467, 468, 471 of IPC r/w 13(2), 13(1)(d) P.C. Act.

3. Brief facts of the case are that Kishan Kumar Sharma, Senior Branch Manager, Bank of Baroda, Nainital Road, Haldwani, lodged a FIR before SPE CBI, Dehradun against co-accused N.C. Arya, the then Sr. Manager and 21 other private persons and other unknown persons, alleging therein that co-accused N.C. Arya had entered into a criminal conspiracy with 10 borrowers of housing loan, 4 middle man and other unknown persons and in furtherance to that conspiracy co-accused N.C. Arya, sanctioned and disbursed housing loan to ten borrowers on the basis of forged and fake documents. The property which was shown as financed by the bank was in fact never transferred in the name of the borrowers and the so-called owners/sellers of the property had been impersonated to

secure the loan in fraudulent manner. In most of the cases the property remained with the original genuine owner who had not executed the sale agreement or the sale deed. Fake sale agreement/sale deed were created by impersonating the actual owner and the loan were financed on such documents. In some cases the property shown to be financed is not in existence. Thus, the bank has suffered a loss of Rs. 1.11 Crore. With the same averments, the FIR was lodged by Senior Branch Manager, Bank of Baroda. After lodging of the FIR, the matter was investigated by Anil Kumar Singh, Inspector of Police, CBI, Dehradun, who on completion of investigation, filed the charge sheet against the present applicant and others, under Sections 120B, 419, 420, 467, 468, 471 of IPC and 13(2) r/w 13(1)(d) P.C. Act. On the basis of charge sheet, learned Special Judge, Anti-corruption (CBI), Dehradun, vide order dated 25.6.2010, took the cognizance of offence and also summoned the applicant and others. Against the said summoning order dated 25.6.2010, the applicant has preferred the present application u/s 482 Cr.P.C. before this Court.

4. Learned Counsel for the applicant argued that the applicant has been falsely implicated in the said case and he has no concern whatsoever in the matter. Contrary to this, learned Counsel for CBI argued that in the charge sheet the applicant Ram Bilash Mandal has been mentioned as an accused at serial No. 4 and in the said charge sheet it is alleged that the loan for ` 7.8 lacs has been sanctioned and disbursed to Sudarhshan Kumar, Nawal Rajoria and Nanda Rajoria as the borrowers for purchase of a house situated in Talli Haldwani, D-Class Haldwani from the applicant Ram Bilash Mandal. The sale deed has been shown executed between Sudarhshan Kumar, Naval Rajoriya and Ram Bilash Mandal. It is further alleged that the sale deed has actually been executed by one Virendra Pratap Singh @ Boby by forging the signatures as Ramvilash Mandal. The loan amount of ` 7.28 lacs was sanctioned on 11.3.2006 to the borrowers and was disbursed on 13.3.2006 through loan account No. 09670600000190 from which bankers cheque No. 431411 for ` 7.25 lacs in favour of the applicant was issued and the remaining amount of Rs. 55,000/- was credited in the saving bank account No. 09670100007512 of Sudarshan Kumar (borrower), in violation of the housing loan scheme, as the entire loan amount is to be disbursed in favour of the seller only in case of outright purchase of the property. It has been further alleged that the banker cheque No. 431411 for ` 7.25 lacs was credited on 17.3.2006 in account No. 18490100002791 of Bank of Baroda, Naveen Mandi, Haldwani in the name of the applicant, whereas he has sold his property to one Gopal Singh Bisht. The above facts revealed that the loan amounting to Rs. 7.80 lac was misappropriated by way of withdrawal of money and submission of the fake sale deed to the bank.

5. From a perusal of the First Information Report and the charge sheet, I am of the view that prima facie a case under the aforesaid sections is made out against the applicant.

6. 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. It is well settled that while exercising jurisdiction u/s 482 of the Cr.P.C., this Court would not ordinarily embark upon the enquiry as to whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial court. If the allegations made in the FIR and the charge sheet are taken at their face value and accepted in their entirety, I am of the view that the applicant is rightly summoned by the trial court. The trial court will decide the case after recording the evidence adduced before it. I am of the view that in the present case there is neither any miscarriage of justice nor any abuse of process of court.

7. For the reasons recorded above, there is no force in the application. The C482 application, being devoid of merit, is dismissed in limine.

