
(2010) 09 UK CK 0025
In the Uttarakhand High Court
Case No : C-482 No. 1036 of 2006

Shri Mahendra Kumar Agarwal	Vs	APPELLANT
State of Uttaranchal and Others		RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Penal Code, 1860 (IPC) — Section 419, 420, 467, 468, 471
Uttar Pradesh Agricultural Credit Act, 1973 — Section 6

Citation : (2010) 3 UC 1685 : (2010) 3 UC 1642

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Judgement

Sudhanshu Dhulia, J.—Heard learned Counsel for the applicant as well as learned Counsel for the respondents.

2. This application u/s 482 of Cr.P.C. has been filed by the applicant challenging the charge sheet and the proceedings in Case No. 3671 of 2004 pending before the Chief Judicial Magistrate, Rudrapur arising out of FIR No. 84 of 2003 under Sections 419, 420, 467, 468 and 471 of I.P.C.

3. Brief facts of the case are as follows:

The applicant is the managing partner of a firm known as "Agarwal Auto Traders". The firm is the exclusive dealer of the tractors known as "John Deere". Their place of business is in Kashipur and other places in Uttaranchal.

4. The facts which have given rise to the present case before this Court are as follows:

Three persons, who are presently respondent Nos. 2, 3 and 4 respectively, in the present case had approached the Jaspur Branch of Nainital Bank Ltd. for advance of loan for purchasing of tractors namely "John Deere" tractors. The loan was subsequently given to these persons and because of this financial assistance, they purchased three tractors, from the dealer which is the present applicant.

Subsequently, respondent Nos. 2, 3 and 4 failed to pay the EMI to the Bank and consequently on an inquiry of the Bank, it was found that respondent Nos. 2, 3 and 4 had impersonated themselves as "Balbir Singh" "Kashmir Singh" and "Sher Singh", respectively and therefore an FIR was lodged by the Bank against these three persons and also against the applicant in his capacity as a partner of the firm, which was dealing in selling of such tractors.

5. The short contention of the learned Counsel for the applicant is that no case is made out against the applicant firm inasmuch as only allegation by the Bank against the applicant firm is that he was a witness to a documents, submitted by the defaulters (to the loan). As per the contention of the FIR, the applicant had introduced these persons to the Bank and had also persuaded the Bank to release loan to them and the applicant was witness to a declaration given u/s 6 of the U.P. Agricultural Credit Act, 1973. This document has been examined, the applicant was only a witness to the deed. On the merits, therefore, the arguments of the counsel for the applicant that no offence u/s 419, 420, 467, 468, 471 is alleged to have been made by the applicant firm is not without merit.

6. The petitioner has cited a decision of the Supreme Court in M. L. Abdul Jabbar Sahib Vs. M. V. Venkata Sastri and Sons and Others, in which it has been stated that a person who is identifying the documents as also identifying that the signatures are being made at the document/deed before him, he has no liability as he is only the witness of the signing of the document.

7. Moreover, subsequently these three tractors which had come to the applicant's service station the applicant reclaimed possession of these tractors and offered them to the Bank so that the matter comes to an end. However, the Bank insisted on the entire payment being made i.e. the entire loan being repaid to the Bank. This was also done by the applicant and a sum of Rs. 13,50,000/- (Thirteen Lac Fifty Thousand) was paid to the Bank. Consequently, a compromise has been reached between the Bank and the applicant firm and all the civil liabilities as regarding the applicant firm had come to an end. The only matter, which is pending before the Chief Judicial Magistrate, Rudrapur is the criminal proceedings u/s 419, 420, 467, 468 and 471 of I.P.C. The counsel for the applicant has stated that he agreed to repay the loan even though he suffered financial loss while doing so, as he does not want to spoil his relation with the Bank, as he has regular business and commercial transactions with the Bank.

8. The Bank i.e. respondent No. 5 is also represented before this Court by Sri Anil Joshi, Advocate. He has also given a statement that he does not want to pursue the criminal case (FIR No. 84 of 2003), which is pending before the Chief Judicial Magistrate, Rudrapur, Udham Singh Nagar under Sections 419, 420, 467, 468, 471 I.P.C. against the applicant firm. Apart from this, since the matter stands settled between the parties, and in view of B.S. Joshi and Others Vs. State of Haryana and Another, and Nikhil Merchant Vs. Central Bureau of Investigation and Another, , on the strength of the material available before the High Court, it can be said that no useful purpose will be served if the criminal

proceedings remain pending before the Court below. There is another aspect based on the available material and evidence particularly when the complainant himself does not want to pursue the matter any further, the criminal proceedings must come to an end. Although Sections 467, 468, 471 are not compoundable offences u/s 320 of the Cr.P.C., but taking into the entire facts and circumstances of the case and in view of the law laid down in B.S. Joshi's case (supra) and Nikhil Merchant's case (supra), it is necessary that the Court must exercise its inherent powers u/s 482 of Cr.P.C. In order to secure the ends of justice, the proceedings in Case No. 3671 of 2004 pending before the Chief Judicial Magistrate, Rudrapur arising out of FIR No. 84 of 2003 under Sections 419, 420, 467, 468 and 471 of I.P.C. are hereby set aside.

9. The instant C-482 application is disposed of in the aforesaid terms. No order as to costs.

10. The Registry is directed to send a copy of this order to the Court concerned for necessary compliance.