
(2012) 01 UK CK 0008

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 593 of 2006

Shyam Sunder

APPELLANT

Vs

State of Uttarakhand and another

RESPONDENT

Date of Decision : 06-01-2012

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 482

Citation : (2012) 1 BC 632

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Judgement

Hon"ble Servesh Kumar Gupta, J.—By way of this petition moved u/s 482 IPC, a prayer has been made to quash the summoning order dated 23.06.2004 passed by Chief Judicial Magistrate, Dehradun in Criminal Complaint Case No. 547 of 2004 titled as Vinod Prasad Raturi Vs. Shyam Sunder. The said order of cognizance was passed for the offence u/s 138 of the Negotiable Instruments Act, 1881 (for brevity hereinafter called as "Act").

2. In brief, the facts are that Shyam Sunder drew two cheques from his bankers and gave them to Vinod Prasad Khanduri, as a measure of security. First cheque dated 20.01.2004 worth Rs. 15,000/- was drawn from State Bank of India, Rajpur Road, Dehradun and second one dated 07.09.2003 worth Rs. 4,000/- drawn from State Bank of India, Dharampur Branch, Dehradun. These cheques were issued in lieu of debt of Rs. 19,000/- taken by Shyam Sunder from Vinod Prasad Khanduri. Vinod Prasad Khanduri submitted first cheque through his banker for encashment, which was returned on 22.01.2004 with a memo of dishonour due to insufficiency of fund. So he issued a notice on dated 05.02.2004, as envisaged u/s 138(b) of the Act. The second cheque was returned on 06.02.2004 with an endorsement of insufficiency of fund. On 13.02.2004, a separate notice was issued u/s 138(b) of the Act demanding the money. Both the notices could not yield any result then he filed impugned Criminal Complaint Case on 22.03.2004. Learned Magistrate, having gone

through the contents of the complaint as well as statement of complainant nay other documentary evidence, passed the impugned order dated 23.06.2004.

3. It has been contended on behalf of the applicant that there were two causes of action arose by dishonour of two different cheques, bearing different dates and dishonoured by two different banks. Two separate notices were issued u/s 138(b) of the Act so one complaint for two causes of action cannot be filed.

4. This argument has been refuted by learned counsel for the respondent no. 2 with a contention that liability for discharge, by issuing two cheques, was single so this way there was a single cause of action and there is nothing wrong in filing a single complaint for dishonour of two cheques, as stated above.

5. This Court is unable to agree with the contention of learned counsel for respondent no. 2. Obviously, there are two causes of action for dishonour of two different cheques, issued on two different dates, from two different banks, therefore, the petition deserves to be allowed. The petition is allowed. Impugned order of cognizance dated 23.06.2004 as well as proceedings of the Criminal Complaint Case No. 547 of 2004 pending in the court of 1st Special Judicial Magistrate, Dehradun are hereby quashed. However, respondent no. 2 is accorded a liberty to file fresh complaint, if he so likes with a request to the trial Judge for condoning the delay.