
(2012) 03 UK CK 0119

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 623 of 2005

Shyam Sunder Jaiswal

APPELLANT

Vs

State of Uttaranchal and Another

RESPONDENT

Date of Decision : 23-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 406, 420, 467, 468

Citation : (2012) 03 UK CK 0119

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Advocate : Ramji Srivasatava, for the Appellant; H.O. Bhakuni, Brief Holder for the State, Mr. Sandeep Tandon, Ms. Deepa Arya and Ms. Tejaswina, for the Respondent

Judgement

Hon'ble Servesh Kumar Gupta, J.—By means of this petition, a prayer has been advanced to quash the charge sheet dated 14.02.2005 giving rise to the criminal case no. 586 of 2005 titled as State of Uttaranchal Vs. Shyam Sunder Jaiswal, pending in the court of Chief Judicial Magistrate, Dehradun. On the basis of FIR lodged by Suresh Chandra Pal on 26.12.2004, after investigation, the said charge sheet was submitted by the police against petitioner Shyam Sunder Jaiswal and the learned Magistrate has taken cognizance of the said charge sheet and asked the petitioner to stand trial for the offence u/s 420, 467, 468 IPC. Having heard the submissions put forth on behalf of either party, it appears that petitioner entered into an agreement with respondent no. 2 Suresh Chandra Pal, to sell his house bearing No. H-186 located in Nehru Colony, Dehradun for a total consideration of Rs. 6,25,000/-. Later on, the said transaction could not be finalized because petitioner has changed his mind and refused to sell the same. Resultantly, respondent no. 2 demanded Rs. 3,20,000/-, which he had given to the petitioner in advance, as a consideration for the same. Petitioner issued three cheques bearing nos. 471935, 471936 and 471937 of dated 30.07.2004,

15.08.2004 and 30.08.2004 respectively, each worth of Rs. 1,00,000/- drawn from State Bank of India, Doiwala Branch, Dehradun with an assurance to respondent no. 2 that the same will be encashed from the Bank on presentation. When respondent no. 2 presented these cheques through his Banker, the same were dishonoured and it came out that above numbered cheques were, in fact, drawn from the cheque book issued to one Amar Singh and the account number, as displayed on each cheque, was never in the name of petitioner and this account of Amar Singh was not having sufficient fund.

2. When the said fact of dishonouring of cheques was complained to petitioner, then he again issued four cheques drawn from his Banker Punjab National Bank each valued of Rs. 75,500/- and these cheques were of dated 11.08.2004, 21.08.2004, 10.09.2004 and 01.10.2004. Out of these four cheques, one of the cheques was issued to one Rajesh Nanda and not to petitioner.

3. It has been argued on behalf of petitioner that one cheque was issued to Rajesh Nanda, at the instance of Suresh Chandra Pal himself. Unfortunately, these cheques were also dishonoured by the Bank concerned on account of "insufficiency of fund" in the account of petitioner. So respondent no. 2 issued notices u/s 138 of the Negotiable Instruments Act, 1881 (hereinafter called as the "Act") on different dates through his Advocate Yashpal Singh Pundir. Rajesh Nanda also approached the same Advocate for issuing Notice to petitioner u/s 138 of the Act and separate complaints were filed for default of payment for each cheque u/s 138 of the Act and the details of these four complaints have been stated in paragraph 6 of the rejoinder affidavit. It also appears that petitioner filed separate criminal misc. applications challenging the orders of cognizance passed by trial court asking him to stand trial for the offence u/s 138 of the Act but later on, these petitions were endorsed as "not pressed" on 06.07.2010 by the counsel for Shyam Sunder Jaiswal and got them dismissed in the High Court.

4. Petitioner has again come up before this Court challenging the impugned order passed on the basis of aforesaid charge sheet. His main contention before this Court is that had there been any act of cheating or fabrication, then he cannot be asked to face two trials at a time because offence, if any, allegedly committed by him was pertained to same transaction of selling of house and issuing of cheques for the same.

5. This contention is wholly unsubstantial and untenable because earlier three cheques of Rs. 1,00,000/- each, issued by petitioner, were of State Bank of India and his contention that cheque book of Amar Singh, his partner in business, was lying in his office and he mistook the same, as of his own, is totally a farce contention and not believable at all. Statement of Amar Singh recorded by the Investigating Officer u/s 161 Cr.P.C., which is available with this petition, is enough to show the mala fide intentions on the part of the petitioner. The precedent of Hon"ble Apex Court in the case of G. Sagar Suri Vs. State of U.P. reported in 2000 SCC (Cri.) 513 relied by learned counsel for the petitioner is not applicable in the present controversy because the Hon"ble Apex Court has

expressed its view that if offence u/s 406, 420 IPC could have been added in the complaint filed u/s 138 of the Act then a separate FIR could not be lodged for the offence punishable u/s of the Indian Penal Code. Here, the facts are different. Offence whereof charge sheet has been submitted against the petitioner is not for the same cheques, for which separate complaints have been filed under the Act. These offences allegedly committed by Shyam Sunder Jaiswal are in a quite distinct manner. So this petition is meritless and liable to be dismissed. The petition is accordingly dismissed. Stay order dated 20.09.2005 granted by this Court is hereby vacated. It is further made clear that by resorting to file this petition u/s 482 Cr.P.C. is sheer abuse of process of law. Trial has already been delayed due to filing of this petition. Lower Court is directed to expedite the trial as far as possible. Stay vacation application no. 1041 of 2008 stands disposed of.