
(2012) 01 UK CK 0018

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 316 of 2008

Smt. Malti Nautiyal

APPELLANT

Vs

State of Uttarakhand and another

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482, 483, 483
Negotiable Instruments Act, 1881 (NI) — Section 118, 138, 138(b)
Penal Code, 1860 (IPC) — Section 420

Citation : (2012) 2 NCC 74 : (2012) 1 UC 352

Hon'ble Judges : Servesch Kumar Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Servesch Kumar Gupta, J.—By means of this petition moved u/s 482/483 Cr.P.C., a prayer has been made to quash entire proceedings Criminal Case No. 857 of 2007 titled as Murlidhar Tiwari Vs. Malti Nautiyal pending in the court of Judicial Magistrate, Haridwar. In the said case, order of cognizance was passed on dated 05.10.2007 asking Malti Nautiyal to stand trial for the offence u/s 138 of the Negotiable Instruments Act, 1881 (hereinafter called as "Act").

2. Having heard learned counsel for both the parties, it transpires that cheque no. 436712 drawn from Oriental Bank of Commerce, Ranipur, Haridwar worth Rs. 1,00,000/- was given by Malti Nautiyal to Murlidhar Tiwari in consideration of work, which had to be done by Murlidhar Tiwari pertaining to supply of electricity, water and road construction in certain area of village Jwalapur bearing plots no. 10, 11, 31, 9, 52. This cheque was handed over under an unregistered agreement executed on 30.12.2006 on the revenue stamp paper of Rs. 100. Murlidhar Tiwari was rendered a liberty to present this cheque for encashment, as and when, above stated work is completed by him. It is alleged that the said cheque was undated and Murlidhar Tiwari mentioning the date 13.07.2007 presented the same for encashment through his banker on 23.07.2007. The

cheque returned unpaid on 25.07.2007 with an endorsement insufficiency of fund in the concerned Account No. 1335.

3. Murlidhar Tiwari issued a notice as envisaged u/s 138(b) of the Act on dated 08.08.2007, which was not soon replied by Malti Nautiyal so he filed Criminal Case No. 857 of 2007 on dated 04.09.2007 u/s 138 of the Act and 420 IPC. Learned Magistrate, having gone through the contents of the complaint as well as statement of Murlidhar Tiwari and the documentary evidence, took cognizance of the matter for the offence u/s 138 of the Act and did not find any sufficient reason to summon accused person for the offence u/s 420 IPC.

4. This order of cognizance as well as complaint mentioned hereinabove is under challenge. It has been contended on behalf of petitioner that Murlidhar Tiwari did not complete the desired and agreed task in lieu whereof undated cheque was issued to him, so she was constrained to file complaint no. 374 of 2007 in the Consumer Forum on 20.12.2007 asking Murlidhar Tiwari to complete the task of supplying electricity, water and road construction. That complaint was favourably adjudicated by the Forum by its judgment dated 05.03.2008. Murlidhar Tiwari has still not accomplished the agreed work so he is not entitled to take payment of the cheque, in question.

5. Arguments, put forth on behalf of the petitioner, do not impress this Court. Firstly, it is not acceptable that cheque was undated. Had it been so, then nothing prevented Murlidhar Tiwari to get the cheque encashed through his banker soon after the agreement, which was executed between the parties on 30.12.2006. Instead, Murlidhar Tiwari presented this cheque after 6? months for encashment so this can be discerned that in this span of time Murlidhar Tiwari might have done the work regarding supply of electricity, water and road construction, which was agreed for, in the Covenant drafted on 30.12.2006.

6. There may be possibility that task done by Murlidhar Tiwari might not have been to the satisfaction of Malti Nautiyal so she was constrained to file complaint in Consumer Forum, which decided the same in her favour. This is a separate issue and she is free to get redress from Consumer Forum and then, she is free to execute the judgment of Forum and compel Murlidhar Tiwari to do the task to her satisfaction but she cannot prevent Murlidhar Tiwari to encash the cheque even after 6? months of its issuing. There is presumption u/s 118 of the Act that until the contrary is proved the cheque, which is a negotiable instrument, will be made to have drawn for consideration.

7. In view of the above, this petition is without merits and liable to be dismissed. The petition is, accordingly, dismissed. Stay order dated 21.05.2008 passed by this Court is hereby vacated. Inform the court below to proceed ahead in the matter.