

(2011) 08 UK CK 0117

In the Uttarakhand High Court

Case No : Stay Vacation Application No. 1022 of 2010 in Criminal Miscellaneous Application (C-482) No. 514 of 2010

Sri Rakesh Thapa

APPELLANT

Vs

Sri Pratap Singh Chauhan

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2011) 08 UK CK 0117

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—Heard.

2. By means of this petition, moved u/s 482 of Code of Criminal Procedure, 1973, the Petitioner has sought quashing of the proceedings of Criminal Complaint Case No. 5316 of 2009 Pratap Singh V. Rakesh Thapa, relating to offence punishable u/s 138 of Negotiable Instruments Act, 1881, pending in the court of Judicial Magistrate Ist, Dehradun.

3. Brief facts of the case are that, an agreement is said to have entered on 05.02.2006, between the Respondent, and the Petitioner that the Respondent shall sell the land of Khasra No. 859 situated in Hope Town Pargana Pachwadun, District Dehradun, to the Petitioner on payment of consideration at the rate of Rs. 9,50,000/-per beegha. A cheque No. 886879 dated 12.04.2009, said to have been issued by the Petitioner for payment of amount of Rs. 9,00,000/-from HDFC Bank, Rajpur Road, Dehradun. However, said cheque was got dishonoured on 16.04.2009, with the endorsement "funds in sufficient". Thereafter, the Respondent appears to have served a notice through his counsel on the petitioner, and filed criminal complaint.

4. Learned Counsel for the Petitioner submitted that though the agreement was entered between the parties, but the Respondent did not execute the sale deed in favour of the Petitioner, as such, he was not entitled to payment of any consideration. In reply to this learned Counsel for the Respondent stated that sale deeds were executed in favour of the various persons nominated by the Petitioner on his instruction.

5. The above controversy is factual in nature which can not be examined of this Court in its jurisdiction u/s 482 of Code of Criminal Procedure It is desirable that such pleas be examined by the trial court if raised before it, after recording the evidence in the case.

6. Therefore, without expressing any opinion as to final merits of the case, this petition u/s 482 of Code of Criminal Procedure, is dismissed with the observation that Petitioner may raise the pleas of his defences before the trial court. Interim order dated 09.06.2010, stands vacated.