

(2006) 08 UK CK 0049

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 534 of 2006

Standard Chartered Bank and Others

APPELLANT

Vs

Civil Judge (Junior Division) and Others

RESPONDENT

Date of Decision : 07-08-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2007) NCC 340 : (2007) 1 UC 94

Hon'ble Judges : B.C.Kandpal, J

Bench : Single Bench

Advocate : Alok Singh, assisted by, Dharmendra Barthwal, for the Appellant; Kamana Vohra, Lalit Sharma for Respondent No. 2, V.K. Bisht assisted by, Sudhir Singh, for Respondents Nos. 3 to 8 and Nandan Arya, A.G.A. for State, for the Respondent

Final Decision : Allowed

Judgement

B.C. Kandpal, J.—By means of this petition the Applicants, who are the Standard Chartered Bank and its Officers, have challenged the order dated 22-5-2006 passed by the Judicial Magistrate, Haldwani taking cognizance in criminal complaint case No. 444/2006, Under Sections 420, 406, 120-B I.P.C. against the Applicants.

2. Brief facts of the case are that the Applicant No. 1 is the Standard Chartered Bank, a Company incorporated in England by Royal Charter, and having its principal office at 1, Aldermanbury Square, London and one of its branch offices in India at Mumbai. The Applicants Nos. 2 and 3 are the Officers of the Bank.

3. The Respondent Nos. 2 M/S Mega Motors Limited is a partnership firm and an approved dealer of Respondent No. 3 M/s Tata Motors Limited having its office at Tikonja, Nainital Road, Haldwani, Uttarakhand, a criminal complaint before the court of Judicial Magistrate, Haldwani Under Sections 406, 420 and 120-B I.P.C.

against the Tata Motors Ltd. and its Officers as well as the Petitioner Bank.

4. The statement of the complainant was recorded u/s 200 Code of Criminal Procedure and thereafter the statement of the witness of the complainant was recorded u/s 202 Code of Criminal Procedure. The Judicial Magistrate after having perused the complaint as well as the statement of the complainant and his witness passed an order on 22-5-2006 taking cognizance in the matter by issuing summons to the Petitioners.

5. The Petitioners have thus challenged the summoning order as well as the proceedings of the criminal complaint case No. 444/2006, pending in the court of Judicial Magistrate, Haldwani, by way of this petition.

6. The Respondent No. 2 has filed the counter affidavit denying the allegations made in the petition.

7. Heard learned Counsel for the parties and perused the record.

8. learned Counsel for the Petitioners has submitted that from a bare perusal of the complaint no offence is disclosed against the Petitioners. It has also been submitted that there has been no entrustment of the property with the Bank as it is an interse dispute between Tata Motors Ltd. and the Mega Motors Ltd. The record reveals that on the request of Respondent No. 2 the Bank provided flexi loan facility under channel finance programme upto a maximum amount of Rs. 50 Lakhs for their purchases of products for domestic sales from Tata Motors Limited. The Petitioner has filed the copy of the loan agreement along with the petition. The record further reveals that the complainant, who is Respondent No. 2 in this case, was in possession of 11 commercial vehicles and Tata Motors Ltd. issued a letter dated 18-5-2005 to the complainant in order to take re-possession of the unsold vehicles and it was stated in that letter that the proceeds from the sale of above said vehicles will be adjusted towards the over dues of the Bank. The letter is contained as Annexure-P-2 to this petition. The complainant thereafter wrote a letter on 13-7-2005 stating therein that M/S Tata Motors had taken back 11 CVs with their invoices and accessories etc. and it was agreed by them that the above said amount would be adjusted against their trade advance overdue account with the Bank. This letter has been annexed as Annexure-P.3 to the petition. Thereafter the Petitioner No. 3, who is head of Supply Chain Financing in the Bank wrote a letter to Chief Executive Officer of M/ S Tata Motors Finance with the request to sell off 11 CVs repossessed by them from the complain ant and remit the proceeds of the sale towards part payment of the outstanding dues of the Bank. The copy of the letter is also annexed as Annexure-P-4 to the petition.

9. The contention of the Bank is that the Respondent No. 2 who is the complainant had deposited post dated cheques with the Bank towards repayment of the financial facility and since the amount of Rs. 52,15,610 : 73 P. was due against the complainant as on 20-10-2005 and the complainant failed to pay the same, the Bank deposited the aforesaid cheque. The cheque got dishonoured on

presentation, therefore the Bank through its counsel issued a legal notice to the complainant M/S Mega Motors Ltd. The Bank again wrote a letter to the complainant on 13-3-2006 thereby stating that the current outstanding amount against him was Rs. 37,16,092 : 81 P. which was to be paid by the complainant, copy of this letter has been annexed as Annexure P-11. The contention of the Petitioners is that the criminal complaint filed by the complainant/Respondent No. 2 is a counterblast to the proceedings initiated by the Bank u/s 138 of the Negotiable Instruments Act.

10. learned Counsel for the Respondent No. 2 has argued that in case if the factual foundation for the offence has been laid in the complaint, then the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated in detail.

11. From bare perusal of the complaint, it is quite clear that there are no specific allegations against the Petitioner/Bank and its Officers as to how the offence as alleged has been committed by them. Unless the complaint shows that the Petitioners had dishonest or fraudulent intention at the time the complainant parted with the money, it would not amount an offence u/s 420 I.P.C. and it may only amount to breach of contract. The guilty intention is an essential ingredient of the offence of cheating and therefore to secure conviction "mens rea" on the part of the accused must be established in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when inducement was offered. I, myself, am unable to reach to the conclusion that there is any unlawful gain to the Petitioners in the instant case. Mere breach of contract cannot give rise to the criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the prosecution, i.e. the time when the offence is said to have been committed.

12. On the basis of the aforesaid discussion, I come to the conclusion that the complaint filed by the Respondent No. 2 M/S Mega Motors Ltd. is not maintainable. The order dated 22-5-2006 passed by the Judicial Magistrate, Haldwani, summoning the Petitioners for the offences Under Sections 406, 420, 120-B I.P.C. is also liable to be quashed. I am of the view that in case if the proceedings of the criminal case are allowed to continue against the Petitioners, the same would amount to miscarriage of justice and a sheer abuse of process of court.

13. Accordingly the Petitioner is allowed. The impugned order dated 22-5-2006, as well as the proceedings of criminal complaint case No. 444/2006, Mega Motors Limited v. Tata Motors Limited and Ors. Under Sections 406, 420 and 120-B I.P.C. pending in the Court of Judicial Magistrate, Haldwani, District Nainital are hereby quashed as far as it relates to the Petitioners.