

(2011) 09 UK CK 0081

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C-482) No. 379 of 2011 and Stay
Vacation Application No. 685 of 2011

Vankos and Company

APPELLANT

Vs

T.C. Bhandari, Chief Executive, Associated Representative
and Judicial Magistrate

RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 205, 305, 305(2)
Penal Code, 1860 (IPC) — Section 420

Citation : (2011) 09 UK CK 0081

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Judgement

Prafulla C. Pant, J.—Heard.

2. Both these petitions, moved u/s 482 of Code of Criminal Procedure, 1973, the Petitioners have sought quashing of the order dated 18.03.2011, passed by Judicial Magistrate, Ist Dehradun, in Criminal Complaint Case No. 943 of 2009, whereby the application moved by the Petitioners u/s 205 and 305 of Code of Criminal Procedure, are dismissed, and non boilable warrants were directed to be issued.

3. Heard Learned Counsel for the parties, and perused the affidavit.

4. Brief facts of the case, are that, M/s Vankos & Company has its Head Office in Patna, Bihar. They are manufacturers of hydraulic cylinders, jacks and other equipment and supply the same to the various organizations. Complainant (present Respondent No. 2), in the year 1999, on behalf of the M/s Associated Representatives requested for agency of liaison which was allowed on the term of 10 percent commission of the profit. Later in the year 2000, the Petitioners wrote to the Respondent No. 2 (complainant) that they can only afford 5 percent commission in future. Said term was stated to be accepted by the complainant. However, in the year 2002, it appears that some dispute arose relating to

outstanding dues, and a legal notice was given by the complainant to the Petitioners claiming Rs. 1,40,958.75/-. In response to said notice a reply was given by the Petitioners stating that the outstanding dues do not exceed amounting Rs. 92,992/- out of which a demand draft of Rs. 80,000/- was sent. However, dissatisfied with the reply, the Respondent (complainant) filed criminal complaint on 30th of May, 2002, before Judicial Magistrate, Ist Dehradun, against the Petitioner's company and his officers namely Mr. Saifuddin (Chief Executive), Mr. S.K. Sinha (the then Manager Services), Mr. S.S. Prasad (the then Senior Sales Officer) and Mr. Vikas Kumar (the then Marketing Manager). It appears that the Magistrate summoned the accused to face the trial after recording statement u/s 200/202 of Code of Criminal Procedure. Earlier Petitioners filed Criminal Misc. Application (C-482) No. 111 of 2004, challenging the proceedings. Said petition was dismissed vide order dated 28.12.2007. It appears that the Petitioners moved an application u/s 205 of Code of Criminal Procedure., for exemption through their counsel during the proceedings of the case, and they further moved an application seeking that the Petitioner's company allowed to be represented by Mr. Saifuddin (Chief Executive). Both the applications were rejected by the trial court. Hence this petition.

5. A preliminary objection was raised by Shri Ramji Srivastava, Learned Counsel for their Respondent No. 1 that the second 482 petition is not maintainable. Though, after hearing the parties, and going through the papers on record, this Court is of the view that the impugned criminal compliant case relates to civil dispute between the parties, and it is not very clear, if the ingredients of the offence punishable u/s 420 of I.P.C., are made out but since earlier the petition u/s 482 of Code of Criminal Procedure., has been dismissed, this Court can not sit in appeal or hold that the proceedings can not be continued. However, about the maintainability of the said present petition, this Court has no hesitation in observing that by means of this petition the proceedings of the criminal complaint are not challenged. What is only challenged is the order dated 18.03.2011, passed by the trial court i.e. subsequent to the dismissal of the earlier petition. As such, it can not be said that what was agitated by the Petitioners earlier, is being re- agitated in the present petition.

6. Section 305 of Code of Criminal Procedure provides procedure when a corporation is an accused. Sub-section (2) of Section 305 of the code allows the corporation to appoint the representative for the purposes of inquiry and trial. In the opinion of this Court, the trial court has committed grave error of law in rejecting the application u/s 305 of the Petitioner, i.e. Vankos & Company, which is a corporation.

7. As far as, the rejection of the application u/s 205 of Code of Criminal Procedure., is concerned, I do agree that only after the accused has put in appearance before the court, his presence could have been exempted through the counsel. Since the Petitioners, have been summoned, they have to put in their appearance before the trial court, and they may be required to file a bail

bonds if directed by the trial court.

8. For the reasons as discussed above, having considered submissions of Learned Counsel for the parties, both these petitions u/s 482 of Code of Criminal Procedure. are disposed of, keeping in mind the facts and circumstances of the cases and nature of the offences, with following directions:

(i) The impugned order dated 18.03.2011, passed by Judicial Magistrate, Ist Dehradun, in Criminal Complaint Case No. 943 of 2009 T.C. Bhandari v. Vankos and Company is hereby set aside.

(ii) The application moved u/s 305 of Code of Criminal Procedure., moved by the Petitioner is allowed, and the Petitioner Vankos & Company is allowed to be represented through Shri Saifuddin Hussain (Chief Executive) as Shri S.K. Sinha (Manager Services) is said to have left the company meanwhile.

(iii) As far as, the application u/s 205 of Code of Criminal Procedure., moved before the trial court is concerned, for exemption from personal appearance through counsel, the Magistrate may consider the same after the Petitioner company appears before it through its representative (Shri Saifuddin Hussain), and bail bonds are filed.

(iv) If the bail application is moved by the Petitioner company through its representative as mentioned above, the same shall be heard and disposed of without unreasonable delay, in the light of the observation already made above by this Court and keeping in mind that it is complaint case which has arisen out of civil dispute, without insisting for local sureties, as it may deny the right of bail to the Petitioner, who is a company, having its Head Office in Patna, Bihar. Same shall apply to other accused in the case.