(2013) 01 UK CK 0009

In the Uttarakhand High Court

Case No : Writ Petition (Criminal) No. 15 of 2013

Vijay Kushwaha APPELLANT

Vs

State of Uttarakhand and Others RESPONDENT

Date of Decision : 04-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 420

Citation : (2013) 01 UK CK 0009

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Advocate : Rakesh Thapliyal and Mr. Lalit Sharma, for the Appellant; P.S. Danu, Brief Holder for the State, for the Respondent

Judgement

Hon''ble Servesh Kumar Gupta, J.—Since both are matters are cognate, arising out of same FIR, hence, both the petitions are clubbed and heard together. Having heard learned counsel for the parties, it transpires that in Dehradun city, South Indian Bank Limited having its head office somewhere in Kerala is operating its Branch. Petitioners Sanjay Minocha and Vijay Kushwaha are two big businessmen and they were having their saving as well as loan accounts in the said bank. Limit of the loan account was Rupees Four Crore for either of the petitioners. The Bank settled such limit after mortgaging the properties of both the petitioners.

2. The facts as have been unfolded before this Court are almost identical, however, figures of the pecuniary amount may differ in either case. During the course of transactions, Mr. Vijay Kushwaha noticed that the amount of Rs. 40,09,000/- were withdrawn by the Bank to credit such amount in loan Account No. .... (number was not mentioned). When Mr. Vijay Kushwaha sensed this withdrawal, he inquired from the Bank Manager and other officials time and again, but they could not give any convincing response to Mr. Kushwaha. Since it was a handsome amount, so Mr. Kushwaha was constrained to make a complaint

on 18.11.2012 to SHO, Kotwali, Dehradun. It was a detailed complaint having as many as 13 paragraphs wherein a request was made to lodge First Information Report regarding the amount so missing from his saving Bank Account. When SHO did not register the case, then Mr. Kushwaha approached the Senior Superintendent of Police, Dehradun with the same prayer stating the contents, in short, which he disclosed in his earlier complaint to SHO.

3. Meanwhile, Bank Officer in order to meet the trouble half way lodged an FIR dated 23.12.2012, which is impugned in this petition.

4. Further in paragraph 18 of the petition, it has been stated that from another saving Bank Account last digits whereof are 756, Mr. Kushwaha drew three cheques of Rs. 29,40,250/-, Rs. 57,90,910/- and Rs. 38,20,150/- and issued to M/s Laptop Zone and M/s Mantra Info System but the said amount was found withdrawn from the Bank Account however, never got received by the parties concerned. Ultimately, being so perturbed from the non-effective and reckless functioning of the Bank, he moved an application u/s 156(3) Cr.P.C. on 01.01.2013 to the Magistrate concerned asking for registration of the case with all the facts afore-stated.

5. In the backdrop of above facts and circumstances, this Court is inclined to grant arrest stay to both the petitioners. Accordingly, it is directed that till filing of counter affidavit by respondent No. 3, both the petitioners shall not be arrested during the course of investigation pursuant to First Information Report No. 389 of 2012 u/s 420 IPC, police station Kotwali Dehradun, District Dehradun provided they cooperate with the Investigating Agency. Stay applications No. 214 and 241 of 2013 stand disposed of.

6. Admit both the petitions.

7. Issue notice to respondent No. 3, who may file his counter affidavit within six weeks. List this case in the week commencing 04.03.2013.