(2012) 04 UK CK 0121

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 625 of 2005 (U/s 482 Cr.P.C.)

Vikas Dubey and others — APPELLANT

Vs

State of Uttaranchal and others — RESPONDENT

Date of Decision : 19-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2012) 04 UK CK 0121

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Advocate : Menka Tripathi, for the petitioners, for the Appellant; Mamta Bisht, AGA for the State/respondent nos. 1, 2, 4 and 5 None, for the Respondent

Final Decision : Allowed

Judgement

Servesh Kumar Gupta, J.—At the outset, it is pertinent to mention that this Court has rendered hearing to learned counsel for the petitioners as well as learned AGA for the State, however none has turned up on behalf of private respondent - Rajeev Gupta even in the revised call after lunch, though his counsel''s name is appearing in the cause list. By means of this petition, a prayer has been advanced to quash the proceedings of criminal case no.4562 of 2005 depicting the crime no.245/2004, founded on the basis of submission of chargesheet no.60/2005, P.S. Ranipur, District Haridwar, titled as State Vs. Harsh Mavewala and others.

2. Having been heard, it transpires that complainant Rajeev Gupta was the distributor of hair oil known as ''Hair & Care'' being manufactured by ''Marico Industries Ltd.'' having its registered office at Mumbai. In order to ensure the payments to the manufacturing company, he issued blank cheques in the name of said Industry which he drawn from his banker State Bank of India, Jwalapur, Branch Haridwar from his account no.01050037375. These cheques were 10 in number bearing Nos.446563 to 446572; all were account payee, crossed one and

bore the signatures of complainant on behalf of his firm M/s Rajeev Agencies. The business transactions went on amicably for certain years but with the passage of time, the differences between the two cropped up on account of negligence or the lapse of payment due upon the complainant or on account of receiving less or substandard quantity of the Hair Oil supplied by the company to the distributor. A lot of correspondence was made regarding the above issues between the parties but the same could not yield any result, so the complainant filed a civil suit no.117/2002 on 29.4.2002 in the court of Civil Judge (S.D.) Haridwar. The relief sought therein was to restrain the company not to hamper the plaintiff for doing business as a distributor in Haridwar or Jwalapur town by impeding the supply of hair oil. In that civil suit, the company filed its written statement, wherein it accepted the receipt of Rs. 50,000/- in advance and 10 blank Cheques as well but at the same time, it was also averred that for the full and final settlement of issues, the company sent its Officer/Area Sales Manager but the complainant/plaintiff did not pay any heed. On the other hand, he threatened that he would get revived his distributorship from the company by way of litigation, and thus the matter could not be settled.

3. In order to impel the company, complainant moved an application u/s 156(3) Cr.P.C. on 26.3.2003 making allegations of Section 420/406 IPC against all the petitioners who occupied different portfolios of the company, inasmuch as, they were the office bearers of the same. The Magistrate concerned called for a report from the concerned police station. After making a preliminary enquiry, a final report was submitted on 2.4.2003 divulging that the controversy, in question, between the parties is of civil in nature and has arisen out of the business transaction. Further, no criminal element of cheating was found to have been entailed in the entire controversy between the parties. However, it appears that at the instance of complainant, the Magistrate registered the said application as a complaint case no.4/2004 on 4.4.2003 and after recording the statement of complainant u/s 200 Cr.P.C. and that of his two witnesses, namely, Bal Kishan Gupta and Mukesh Goyal, passed the order of cognizance on 27.1.2004 asking the petitioners to stand trial for the offence of Sections 406/420 IPC.

4. The company preferred a revision no.111 of 2004 on 13.5.2004 which was admitted by learned Sessions Judge for hearing on 11.6.2004 and notices were issued to Sri Gupta for advancement of his case before the court. It transpires that the said revision was disposed of by Additional Sessions Judge, Haridwar with the direction to the Magistrate to pass order on the initial application dated 26.3.2003 which was moved u/s 156(3) Cr.P.C. As such, learned Special Judicial Magistrate, Haridwar directed the matter to be registered and investigated on 6.10.2004.

5. In pursuance of the said order of Magistrate, the FIR No. 216 of 2004 was lodged on 30.10.2004 pertaining to crime no.245/2004. Thereafter the matter was investigated which resulted into the submission of chargesheet against all the petitioners for the offence of Sections 420/406 IPC. One accused A.K. Dixit

was also named in the chargesheet but he was not challaned by the police. Another accused Anand Venkatesan was also not challaned by the police but he has also impleaded himself as petitioner no.2 before this Court.

6. It has been apprised that Rajeev Mittal, against whom the chargesheet was submitted in the capacity of Regional Sales Manager, has now left the company.

7. Learned counsel for the petitioners, by showing the fair play and clean handedness on the part of company, placed before the Court all the blank Cheques as aforementioned. The Company has also submitted a Demand Draft of Rs. 75,797.10 prepared by ICICI Bank, New Friends Colony, Delhi on 1.5.2007, but that was valid only for six months. It has been contended that this draft amount is inclusive of a sum of Rs. 50,000/-, which was initially deposited with the company by the complainant as well as certain other amount in lieu of return of some of the goods from complainant''s end to the company. It has been further argued that complainant was asked to attend the office of company at his convenience, either at head office or the regional office to settle full and final accounts between him and the company but he turned deaf ears, rather he took recourse firstly to the civil litigation, as stated above, and then in order to make succumb the office bearers of the company, initiated the criminal prosecution which is under challenge. This is obviously an attempt on the part of complainant in blackmailing the office bearers of the company and since all of them hail from Bombay, he has managed the favour, either of the I.O. or his superiors in submitting the chargesheet before the court. It is also relevant that Sri S.K. Dixit, a resident of Dehradun/Haridwar, being a local man, has been spared. The Court thus, feels that there is no element of cheating on the part of company against the complainant on the basis of aforesaid facts and circumstances of the case, as disclosed above. If the differences have been escalated between the company and the distributor on account of cancellation of distributorship, the element of cheating cannot be attributed on the part of the company. The scores can be settled by way of civil litigation which has already been taken recourse to by filing the civil suit no.117 of 2002 in the concerned court. This way, the petition is acceptable. As such, the impugned order of cognizance and the proceedings of complaint case no.4562/2005, aforestated, as well as the chargesheet no.60/2005 pertaining to crime no.245 of 2004, P.S. Ranipur, Distt. Haridwar, are hereby quashed. Petition is allowed accordingly.