

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 1027 of 2006

1. Ranjan Mongia S/o Late A.N. Mongia R/o Shiva Complex Rajpur Road, Dehradun
2. Akash Gupta S/o A.S. Gupta
3. Sapna Gupta W/o Akash Gupta
Both Are R/o 143 A, East of Kailash, New Delhi

.....Applicants

Versus

1. State of Uttarakhand
2. Chief Judicial Magistrate, Haridwar, District- Haridwar
3. Sachin Kumar Nain s/o Mahavir Singh Nain, R/o C-104, Shri Ram Nagar Colony, Jwalapur, Haridwar.

.....Respondents

Dated: 22.12.2003

Hon'ble Rajesh Tandon, J.

Heard Sri C.K. Sharma, counsel for the applicants and A.G.A. and Sri Vivek Shukla, Advocate for the respondents.

Present application under Section 482 of Cr.P.C. has been filed on behalf of the applicants challenging the summoning order dated 07.10.2006 passed by the Chief Judicial Magistrate whereby the applicants have been summoned for the offences punishable under Sec. 420, 467, 468, 471 I.P.C. in Misc case No. 331 of 2006, to face the trial.

Briefly stated the applicants no. 2 is the sole proprietor of "Air Hostess Academy" which imparts training of Air Hostess as well as the service industry, and the applicant no.3 is the wife of the applicant no.2 and is working as the consultant in the said firm and the applicant no.1 is the branch manager of Dehradun Branch of the said Air Hostess Academy. The applicants have stated that the Air Hostess Academy came into existence in the year 1997 with its

branches at Delhi and since then due to one of the best training being imparted by the said academy in the sector, has considerably grownup and its annual turn over is more than 20 crores. The aforesaid firm is running more than 25 branches in the name of Air Hostess Academy all over India including the franchise given by the applicant no.2 to the private individuals in India and more than 3000 students have been imparted training in aviation and hospitality industry.

That an FIR was lodged by the respondent no.3 against the applicants on 30.04.2006 alleging therein that on 17.10.2005 a camp was organized at Ranipur More, Near Hotel Vinayak and in the said camp the respondent no.3 deposited Rs.5200/- and thereafter Rs.15,000/- on 08.11.2005 and further deposited 2 installments of fee amounting Rs.8,125/- each on 17.12.2005 and 07.02.2006 and further alleged that he took the admission and imparted the training for about two months he himself has stated that the course was of one year and in the midst of session he came to know that the institute was neither having sufficient training arrangement as claimed nor the institute was giving such training. The respondent no.3 thereafter left the training and lodged the FIR alleging therein that he has been cheated by the applicants.

After lodging of the FIR the police concerned investigated the matter and after the investigation submitted the Final Report giving the reasons that during the investigation it was found that there was no job guarantee given as alleged by the complainant. The investigation officer further stated that during the investigation it was found that because of business rivalry some other persons are behind the complainant and on their instance the FIR was lodged. It was further found that in the campus interview of the applicants number of students have been engaged by the different institution.

Final report was submitted to the court of the Chief Judicial Magistrate, Haridwar and the Magistrate concerned was not in having been satisfied with the reasoning of the investigation officer and vide order date 07.10.2006 summoned the applicants which is the order impugned before this court.

The learned counsel for the applicants has disclosed the fact that for the same cause of action he has also filed the Criminal revision and has filed application for the withdrawal of the same. Before the court concerned. Counsel has further argued that none of the provisions mentioned in the summoning order have been made out against the applicants as the ingredients of the FIR does not discloses any such cognizable offence.

Sections 420, 467, 468 and 471 I.P.C. reads as under:

Section 420

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or any thing which is signed and sealed, and which is capable of being converted into a security, shall be punished imprisonment of either description for a term which may extend to 7 years, and shall also be liable to fine.

Section 467:

Whoever forges a document which purports to be a valuable security or a will, an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principle, interest or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life or with

imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Section 468:

Whoever commits forgery, intending that the documents and electronic record forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose shall be punished with imprisonment of either description for a term which may extend to 3 years, and shall also be liable to fine.

Section 471:

Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reasons to believe to be a forged document or electronic record shall be punished in the same manner as if he has forged such document or electronic record.

Counsel for the applicant on the basis of the aforesaid provisions has submitted that these sections are attracted only if a person dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or any thing which is signed and sealed, and which is capable of being converted into a security and forges a document which purports to be a valuable security or a will, an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principle, interest or dividends thereon, or to receive or deliver any money and commits forgery, intending that the documents and electronic record forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose and fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reasons to believe to be a forged document or electronic record.

In present case as per the allegation of the complainant itself has been alleged that he was given job guarantee for the purpose of becoming Flight Steward in a Airlines and for the purpose of the same he took the admission which runs for a period of 12 months and only for a short period of about 2 months he left the course and did not attend the whole course. It appears that the student took the admission and left the course, and for the purpose of getting the money deposited back the instant FIR has been lodged. The magistrate concerned has took the note of the past incidents whereas in the present case the magistrate ought to have taken the care of the fact that what was the material in support of the ingredients as alleged by the complainant, available on record.

Without expressing any opinion on the merits of the controversy, it will be open for the applicants to raise their objections before the magistrate concerned. The applicants are relegated back to the magistrate concerned for the purpose of raising objections.

However, the Magistrate concerned is directed to release the applicants on the same day, in view of the circumstances narrated above, on their furnishing personal bonds and two sureties to ensure their regular attendance, if required any more.

Subject to the observations made above, the application is disposed of.

Rajesh Tandon J.

Dated: 22.12.2006

*Dhyani