

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
CRIMINAL MISC. APPLICATION NO.79 OF 2010
(U/s 482 of Cr.P.C.)

Pankaj Bakshi

.....Applicant

Versus

State of Uttarakhand and another

.....Respondents

Dated: July 30, 2010

Mr. Manish Arora, Advocate for the applicant

Mr. Amit Bhatt, Addl. GA for the State

None for respondent no.2

HON. DHARAM VEER, J.

By means of this petition, moved under Section 482 of The Code of Criminal Procedure, 1973 (for short Cr.P.C.), the petitioner/applicant has sought quashing of the summoning order dated 4.7.2008 passed by Judicial Magistrate, Roorkee in Complaint Case No.824 of 2008, Prateek Arora v. Pankaj Bakshi, u/s 138 of The Negotiable Instruments Act, 1881 (for short, the Act).

Heard learned counsel for the parties and perused the entire material available on file.

In brief, the facts of the case are that Prateek Arora (respondent no.2) filed a complaint against the applicant in the court of Judicial Magistrate, Roorkee, stating therein that the complainant/respondent no.2 and the applicant were having good relations with each other and, on the basis of this, the applicant asked Rs.1.00 lac from the complainant. On 10.01.2008, the complainant gave Rs.1.00 lac cash to the applicant on the assurance that he will return the same within two months but after lapse of two months the applicant did not return the amount of the complainant and kept lingering on the payment on various

pretexs. Thereafter, after making requests repeatedly, the applicant gave Rs.17,415/- in cash and for rest of the amount, he issued a cheque bearing no.142088 dated 28.3.2008 in favour of the complainant. It is alleged that when the said cheque was presented in the bank, the cheque was returned by the bank with the endorsement "Payment has been stopped" about which he came to know on 5.5.2008. Thereafter, on 13.5.2008, the complainant sent a registered notice through his counsel to the applicant requesting to refund the amount within 15 days, which was also served on the applicant. But even after service of the notice, the applicant did not refund the money of the complainant. With these averments, respondent no.2 Prateek Arora filed a complaint against the applicant in the court of Judicial Magistrate, Roorkee, which was registered as Case No.824 of 2008 under Section 138 of N.I. Act. The complainant in support of his case got himself examined u/s 200 Cr.P.C. and u/s 202 Cr.P.C. he filed the copies of original cheque, deposit slip, memorandum slip, receipt of registry and notice. After hearing learned counsel for the complainant and perusing the entire material available, learned Judicial Magistrate, Roorkee vide his order dated 4.7.2008, took the cognizance of the offence and also summoned the applicant. Feeling aggrieved by the said order dated 4.7.2008, the applicant has preferred the present C482 application before this Court.

From a perusal of the contents of the complaint as well as the statement of the complainant Prateek Arora recorded u/s 200 Cr.P.C. and after going through other papers available in file, I am of the view that prima facie a case under Section 138 of N.I. Act is made out against the applicant.

Even otherwise, the trial court will decide the case after recording the evidence of the complainant as well as of

the accused and also on the basis of the appreciation of the evidence as per law. It is well settled that while exercising jurisdiction under section 482 of the Cr.P.C., this Court would not ordinarily embark upon the enquiry as to whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial court. If the allegations made in the complaint and the statement recorded u/s 200 Cr.P.C. are taken at their face value and accepted in their entirety as well as on the basis of the documentary evidence, I am of the view that the applicant has rightly been summoned by the trial court. The trial court will decide the case after recording the evidence adduced before it. I am of the view that in the present case there is neither any miscarriage of justice nor any abuse of process of court.

For the reasons recorded above, there is no force in the application. The C482 application, being devoid of merit, is dismissed accordingly.

(Dharam Veer, J.)
30.07.2010

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