

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

**Criminal Misc. Application No. 931/2010**

Sachin Mukund

.....Petitioner

**Versus**

Mathura Prasad Dube

.....Respondent

**September 30, 2010**

**Hon'ble Dharam Veer, J.**

Heard Mr. Narendra Bali, Advocate for the petitioner.

By means of this petition, moved under Section 482 of Code of Criminal Procedure, 1973 (for short, CrPC), the petitioner has prayed for quashing the summoning order dated 3.4.2010 passed by 2<sup>nd</sup> Addl. Civil Judge (JD)/JM, Haridwar in Complaint Case No. 286/2010 under Section 138 of NI Act, Mathura Prasad Dube v. Sachin Mukund.

Facts, in brief, are that the respondent had given Rs. 2,01,200/- to the petitioner in presence of the witnesses and the petitioner had also given a receipt thereof on 20.8.2009 and had prayed for three months' time to return the aforesaid amount. Petitioner had also given a cheque dated 14.12.2009 of aforesaid amount to the respondent. But when the said cheque was presented before the bank, it was dishonoured. Thereafter respondent gave legal notice to the petitioner. The petitioner asked him to present the cheque again in the bank and assured that it will be honoured now. But again the cheque was dishonoured by the bank. Then respondent again gave a legal notice to the petitioner, who neither replied to the notice nor returned the money to the respondent. Thereafter the respondent lodged this complaint against the petitioner. Learned trial court after recording the statement of the complainant under Section 200 CrPC and in view of the documentary evidence produced by the complainant, came to the conclusion that a prima facie case under Section 138 of NI Act is made out against the petitioner and accordingly summoned him vide order dated 3.4.2010.

Learned Counsel for the petitioner argued that petitioner had been falsely implicated in this case. I do not find any force in the argument of learned Counsel for the petitioner due to the reasons that averments made in the complaint are corroborated by the statement of the complainant under Section 200 CrPC and other documentary evidence produced by the complainant.

Having considered the arguments advanced by learned counsel for the petitioner; perusal of complaint, summoning order dated 3.4.2010, statement recorded under Section 200 and other papers available on record, I am of the view that a *prima facie* case under 138 of NI Act is made out against the petitioner. Even otherwise, the dispute involves factual question which cannot be decided by this Court. The dispute can be decided only after adducing the oral and the documentary evidence by the parties before the trial court. It cannot be decided by this Court only on the basis of papers filed on the record.

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. If the allegations made and the evidence oral as well as documentary produced against the accused and the statement of the complainant are taken at their face value and accepted in their entirety, I am of the view that the petitioner 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.

Accordingly, the petition being devoid of merit is dismissed in limine.

(Dharam Veer, J.)

30.9.2010

