

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

**Criminal Misc. Application No. 933/2010**

Bhupendra Kumar Lumba .....Petitioner

**Versus**

Harbhajan Singh .....Respondent

**With**

**Criminal Misc. Application No. 935/2010**

Bhupendra Kumar Lumba .....Petitioner

**Versus**

Harbhajan Singh .....Respondent

**September 30, 2010**

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

Since complainant and accused in both these petitions are same and common facts are involved therein, hence they are being decided by this common judgment and order.

Heard Mr. Siddhartha Sah, Advocate for the petitioner.

By means of these petitions, moved under Section 482 of Code of Criminal Procedure, 1973 (for short, CrPC), the petitioner has prayed for quashing the summoning order dated 16.2.2010 passed Special Judicial Magistrate, Dehradun in Complaint No. 1213/2010 and in 1212/2010 respectively under Section 138 of NI Act.

Facts, in brief, are that the respondent filed both these complaints against the petitioner with the allegation that the petitioner was the tenant in the respondent's house and rent deed was duly executed on Rs. 100/- stamp paper. The petitioner vacated the house of the respondent after the lease period and tendered cheque bearing no. 367716 and 367717 of Rs. 38,047/- each as the rent of the said house. When these cheques were presented before the bank, the same were dishonoured. The respondent gave legal notice to the petitioner but he has not returned his money. Thereafter the respondent lodged this complaint against the petitioner. Learned trial court after considering the 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 16.2.2010.

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 evidence produced by the complainant.

Having considered the arguments advanced by learned counsel for the petitioner; perusal of complaint, summoning order dated 16.2.2010 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, both these petitions being devoid of merit are dismissed in limine.

(Dharam Veer, J.)

30.9.2010

