

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application (C482) No.123 of 2007

Shyam Lal S/o Sri Jamuna Prasad
R/o 91 Hazipur Bareilly, District Bareilly

..... Petitioner

Versus

1. State of Uttarakhand
2. Mukesh Gupta
3. Smt. Priya Gupta
Both resident of 5/96 Nawabi Road Haldwani, District
Nainital

..... Respondents

Dated: December 31, 2010

Sri Yogesh Pandey, Advocate, present for the petitioner
Sri S.S. Adhikari, AGA, present for the State
Sri Pradeep Haiiya, Advocate, present for respondent nos.2 and 3

Hon'ble Prafulla C. Pant, J.

Heard.

By means of this petition, moved u/s 482 of The Code of Criminal Procedure, 1973 (for short, Cr.P.C.), the petitioner has sought quashing of the proceedings of Criminal Complaint Case No.2547/2006, Mukesh and another v. Shyam Lal and another, relating to offence punishable under Section 138 of Negotiable Instruments Act, 1881, pending in the court of Additional Chief Judicial Magistrate, Haldwani.

Brief facts of the case are that respondent no.2 and respondent no.3 filed a criminal complaint before the Magistrate seeking prosecution of petitioner Shyam Lal, and his son Yogesh Kumar, relating to offence punishable under Section 138 of Negotiable Instruments Act, 1881. It

is alleged in the criminal complaint that towards the consideration regarding sale of a property situated in Bareilly accused Shyam Lal (petitioner) and Yogesh Kumar (not the petitioner) were liable to make certain payments. Yogesh Kumar issued two cheques (Cheque No.364739 dated 21.9.2005 for an amount of ₹ 50,000/-, and Cheque No.364738 dated 5.9.2005 for an amount of ₹ 75,000/-) in favour of the complainant. But when the said cheques were presented before the bank, the same were dishonoured on the ground that in the account of accused no.2 (Yogesh Kumar) there were no sufficient funds. The trial court, after recording the statement of the complainant u/s 200 of Cr.P.C. and perusal of the papers, summoned the accused Yogesh Kumar and Shyam Lal (present petitioner) to face the trial in respect of offence punishable u/s 138 of Negotiable Instruments Act, 1881. Aggrieved by said order dated 1.4.2006 passed by Additional Chief Judicial Magistrate, Haldwani, this petition is filed by Shyam Lal (one of the two accused summoned in the criminal complaint).

Learned counsel for the petitioner Shyam Lal submitted that admittedly the cheques were issued by accused Yogesh Kumar. Accused Shyam Lal (present petitioner) is father of Yogesh Kumar. It is contended that even if the contents of the complaint are taken to be true, no offence is made out as against present petitioner, who is father of the person who issued the cheques.

Section 138 of Negotiable Instruments Act, 1881, provides that the person who had drawn the cheque for payment of amount to another person towards discharge of his liability, if such cheque is not honoured on account of sufficient funds, such person is liable to the punishment provided under said section.

Since Shyam Lal (present petitioner) is not the person who issued the cheques nor had his account with co-accused Yogesh Kumar, as such, the ingredients of offence punishable u/s 138 of the aforesaid Act are not made out against the present petitioner.

For the reasons as discussed above, this petition, moved u/s 482 of Cr.P.C. is allowed, and the proceedings of Criminal Complaint Case No.2547/2006, Mukesh and another v. Shyam Lal and another, pending in the court of Additional Chief Judicial Magistrate, Haldwani, relating to offence punishable u/s 138 of Negotiable Instruments Act, 1881, are hereby quashed, so far as it relate to the present petitioner Shyam Lal. However, the trial court may proceed against accused Yogesh Kumar.

(Prafulla C.Pant, J.)
31.12.2010

Rajni