

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Criminal Misc. Application No.326 of 2007  
(Under Section 482 Cr.P.C.)**

S. Pandey & another ..... Applicants

Versus

State of Uttarakhand & another ..... Respondents

**Sri Vinod Sharma, Advocate for the applicants**

**Sri H.O. Bhakuni, Brief Holder for the State/respondent no.1**

**Dated: August 30, 2011**

**Hon'ble Servesh Kumar Gupta, J.**

This petition was filed to set aside the complaint case no.3959/2006, Subhash Sharma Vs. Girish Pant & another, pending before the court of CJM, Haridwar.

Respondent no.2 Subhash Sharma has sufficiently been served and power was also filed by Mr. Ashok Aggarwal, Advocate on his behalf, but today and even on the last date, there was no representation on his behalf. So this Court has heard learned counsel for the applicants on the merits of the case.

After hearing learned counsel for the applicants, it appears that respondent no.2-Subhash Sharma is the owner of some news publication while the applicants used to collect the Cheques for the advertisement in that newspaper. So, there were business relations existing between the two. Somehow or the other, the differences cropped up between the applicants on the one hand and Sri Subhash Sharma on the other, on the question of dishonour of the Cheque which was issued by Sri Subhash Sharma to Sri Girish Pant. That cheque was issued on 6.11.2003. Sri Girish Pant filed a complaint case u/s 138 of the Negotiable Instruments Act, 1881 (*hereinafter will be referred as the Act*) wherein the

cognizance order dated 13.2.2004 was passed. Sri Subhash Sharma did not put his appearance in that case for almost 2½ years. Thereafter, he filed a petition u/s 482 Cr.P.C. against the said order of cognizance dated 13.2.2004 but that was dismissed. So, feeling desperate, he filed the impugned complaint on 2.7.2006 making the allegations of cheating and fabrication of Cheque on the part of Sri Girish Pant u/s 420, 467, 468, 471, 120-B IPC. He examined himself u/s 200 Cr.P.C. and the learned Magistrate, on the basis of material available before him, passed the cognizance order dated 2.2.2007 in the said complaint.

Now, it has been apprised by the learned counsel of the applicants that the complaint case no.12/2004, Girish Pant Vs. Subhash Sharma, which was the root cause of generating vengeance in the heart of Sri Subhash Sharma to file the present complaint, has been done away with. That has been vanished in terms of the compromise, a certified copy of the order of the court accepting that compromise as well as the original compounding deed stating the terms of compromise between the two have been brought on record today, which are kept with the records. This is the reason that now Sri Subhash Sharma is not interested in opposing this petition. Otherwise too, the story which has been concocted, making the allegations of cheating and fabrication and manipulation of the Cheque, issued by Sri Subhash Sharma, does not inspire the confidence.

Learned counsel of the applicants has relied upon a precedent of the Hon'ble Apex Court in the case of "*Mahindra and Mahindra Financial Services Limited and another Vs. Rajiv Dubey* **reported in (2009) 1 SCC (Cri) 603**", wherein the Hon'ble Apex Court has laid down the circumstances whereupon the powers under Section 482 Cr.P.C. can be

invoked, and one of the circumstances is that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, then it is appropriate to invoke the powers u/s 482 Cr.P.C. vested in this Court.

In view of the above, this Court finds that the instant case is a fit one to invoke the powers u/s 482 Cr.P.C. Accordingly, C482 petition moved by the petitioners is allowed. Proceedings of the impugned complaint case no.3959/2006, Subhash Sharma Vs. Girish Pant and another as well as the order of cognizance dated 2.2.2007 passed thereupon, are hereby quashed.

**(Servesch Kumar Gupta, J.)**  
30.08.2011