

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No. 65 of 2006
(Under Section 482 of Code of Criminal Procedure)
Om Prakash Sharma and another.Applicants.
Versus

State of Uttaranchal and another. Respondents

Mr. Suresh Chandra Mishra, Advocate holding brief of Mr. Sandeep Tandon, Advocate for the applicants.

Mr. K.S. Rautela, Assistant Government Advocate for the State of Uttarakhand / respondent no. 1.

Mr. Ramji Srivastava, Advocate for respondent no. 2.

Date of Judgment: 29.06.2012
JUDGMENT

BARIN GHOSH, C.J. (ORAL)

Judgment of the II Additional Civil Judge (Jr. Div.), rendered on 18th October, 2005, is not only unjust, but is also *malafide*. In the body of the complaint, there is not a single whisper that the oral agreement for sale was entered at Dehradun, or that the draft was made over at Dehradun. The fact remains that the draft was obtained from a Bank situate outside the State of Uttarakhand. The draft was brought to Dehradun and handed over at Dehradun was not pleaded in the complaint. It is true that there was an allegation, in course of recording of evidence in support of the complaint, that the agreement was arrived at Dehradun. The draft was made over at Dehradun, was, however, not alleged. That allegation pertaining to the place of agreement could not be treated as evidence, inasmuch as, it is settled in law that no evidence, not supported by pleading, can be accepted. While rendering the order, learned II Additional Civil Judge (Jr. Div.) recorded that in terms of Section 181 (4) of the Code, the Court will have jurisdiction, as the defalcated money is required to be returned at Dehradun. In the absence of a pleading to that effect in the complaint itself, the Court could not proceed on the basis that the draft was handed over at Dehradun. In the absence of a pleading to that effect, in respect whereof there is not a single whisper in the evidence, it could not be recorded that since the draft was handed over

at Dehradun, the sum, mentioned therein, was required to be paid back to the complainant at Dehradun.

2. Subject matter of dispute was in respect of sale of a flat situate at Delhi by the persons residing at Delhi, in respect whereof a draft was produced from Rajasthan and the criminal complaint was filed at Dehradun. Learned II Additional Civil Judge (Jr. Div.) did not take notice of the *malafide* moves of the applicants. Accordingly, application is allowed. The complaint and the order taking cognizance thereon are quashed.

3. It is recorded that applicant no. 1 is dead.

(Barin Ghosh, C.J.)
29.06.2012

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