

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

**CRIMINAL MISCELLANEOUS APPLICATION No. 1366/2012**

(Under Section 482 of the CrPC)

Arun Kumar Gupta

.....Applicant

*Versus*

State of Uttarakhand & Another

.....Respondents

Smt. Pushpa Joshi, Sr. Advocate, assisted by Mr. Suresh Parihar, Advocate, for the applicant.

Mr. KS Rautela, AGA, for the State.

None for the private respondent no. 2.

31<sup>st</sup> December, 2012

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

Heard learned Senior Counsel for the applicant and learned Counsel for the State. Also perused the papers on record.

2. It appears that applicant Arun Kumar Gupta purchased a piece of land ad measuring 1620 sq. mt. @ Rs. 500/- per sq. mt. in Haldwani, District Nainital from one Swami Krishnanad. The said plot was meant for establishing a honey-producing unit by way of taming the honeybees. Applicant, accordingly, claimed subsidy on sundry scores while purchasing of the said land. Lateron it was detected by some social activist that the said land was not purchased for the purpose of establishing a food-processing unit. So, the matter was firstly agitated on 20.5.2007, but the FIR could be lodged on 16.1.2010 by respondent no. 2 Amar Nath Joshi. Matter was investigated, which resulted in submission of chargesheet against the applicant for the offences under Section 420, 467, 468, 471, 511 IPC. Learned Magistrate took cognizance on the same date i.e. on 27.1.2011. Process was repeatedly issued against the accused applicant, but he

evaded the same and ultimately approached this Court by way of filing Miscellaneous Application No. 929/2011 under Section 482 CrPC.

3. The aforesaid case was heard by another Bench of this Court and after considering the pleas raised by learned Counsel for the applicant and learned State Counsel, the same was dismissed on 12.10.2011 with the observation that in case the accused surrendered before the court concerned, his bail application shall be decided without unreasonable delay. However, the accused applicant chose not to surrender, and he continued to evade even the process of the Court. Meanwhile, the applicant procured an order from the concerned authority for further investigation into the matter. Investigation Officer submitted an application before the court of Additional Chief Judicial Magistrate, Haldwani seeking permission to further investigate the matter. The same was granted with the condition that Investigation Officer would not submit final report in the matter. After further investigation, the Investigation Officer submitted his detailed report, which is Annexure 4 to this petition, and requested the court below to consider certain evidence, mentioned therein, during the course of trial.

4. In the light of the aforesaid report of the Investigation Officer as well as the findings of the Additional District Judge, Nainital made in Miscellaneous Civil Appeal No. 29/2007, this second petition under Section 482 CrPC has been filed before this Court.

5. It has been argued on behalf of the accused application that complainant Amar Nath Joshi has no *locus standi* to lodge the FIR. Learned Sr. Counsel further argued

that the applicant did nothing wrong as he purchased the said land by way of executing the sale deed and, as such, no offence is made out against the applicant.

6. This Court is not impressed by the contentions raised by learned Sr. Counsel for the applicant because of the reason that all the pleas of defence has already been considered by this Court while hearing the first C482 Petition No. 929/2011. This is, in fact, second petition under Section 482 CrPC. It appears that accused applicant is leaving no stone unturned in order to evade his surrender even defying the orders of this Court made in C482 Petition No. 929/2011.

7. As regards the findings made by Additional District Judge, Nainital in Miscellaneous Civil Appeal No. 29/2007, those are entirely in different context. In the said appeal, though the aspect of cheating was considered, but the fact remains that the accused applicant after getting permission from the concerned authority for establishment of a food-processing unit on the said land and also after procuring subsidy, has still not used the said land for the purpose it was meant for.

8. For the reasons recorded above, this petition has no force and it is liable to be dismissed. It is, accordingly, dismissed. Court below shall proceed with the trial against the accused applicant.

9. Inform the court concerned accordingly.

**(Servesh Kumar Gupta, J.)**