



2024:UHC:8916

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No.453 of 2024

2nd December, 2024

Kripal Singh

--Applicant

Versus

State of Uttarakhand & Anr.

--Respondents

Present:-

Mr. Ramji Shrivastava, Advocate for the petitioners.

Mr. G.S. Sandhu, Addl. A.G. with Mr. Deepak Bhardwaj, Brief Holder for the State.

Hon'ble Vivek Bharti Sharma, J. (Oral)

By means of present petition, petitioner seeks quashing of charge-sheet dated 28.11.2014 filed in Case Crime No.146 of 2012 and the summoning order dated 18.12.2023 as well as the entire proceedings of Criminal Case No.1309 of 2015 "*State vs. Sri Kripal Singh and others*" under Sections 406, 420, 467, 468, 471, 120-B of IPC pending in the court of V Additional Judicial Magistrate, Dehradun.

2. Factual matrix of the case is that the respondent no.2/Bank lodged the present FIR against the petitioner and two others stating therein that the petitioner/accused Kripal Singh and co-accused Pradeep Saklani are the Directors of M/s Subh Premier; that, co-accused Vijay Nautiyal had taken a car loan from his branch to purchase a car



from the dealership firm of petitioner/accused; that, the entire loan amount was paid to this dealership firm through banker's cheque/draft; that, the car dealer encashed the draft amount in his account but the car was not supplied to the loanee; that, the petitioner/accused in connivance with the loanee has committed cheating with the bank; that, the matter was investigated and on completion of investigation charge-sheet was filed against the petitioner/accused and others under Sections under Sections 406, 420, 467, 468, 471, 120-B of IPC whereupon the Magistrate took the cognizance; that, vide impugned summoning order, petitioner/accused was summoned to face the trial under the aforesaid sections.

3. Learned counsel for the petitioner/accused would submit that before registration of present FIR, the petitioner/accused had returned the amount of ₹ 6,48,000/- to the co-accused/loanee Vijay Nautiyal as the said vehicle could not be delivered to the loanee Vijay Nautiyal because of some technical problem regarding the said vehicle Rio Premier in the State of Uttarakhand.

He would further submit that he did not know whether that amount was paid to the respondent no.2/bank by the co-accused Vijay Nautiyal or not; that, meanwhile respondent no.2/Bank filed the Civil Suit for money recovery against the co-accused/loanee Vijay Nautiyal and guarantor Madan Nautiyal (*father of Vijay Nautiyal*);



that, apart from the aforesaid recovery proceedings, as per settlement with the bank the Guarantor Shri Madan Nautiyal repaid a major portion of loan amount to the Bank.

4. On the query of the Court, learned counsel for the petitioner/accused would submit that it is not clear whether in the civil suit the guarantor Madan Lal, father of the co-accused/loanee Vijay Nautiyal, had taken the plea that the loan amount is being deducted from the account of guarantor Madan Lal.

5. He would further submit that the dispute between the parties is of purely civil in nature which has come to an end as the entire outstanding dues of bank in respect of the loan has already been repaid to the bank by the guarantor.

6. Learned State Counsel, per contra, would vehemently oppose this petition on the ground that the alleged offence of cheating is made out the moment the car loan was paid by the respondent no.2/complainant to the petitioner/accused by Bank draft but the vehicle was not delivered to the purchaser.

7. State Counsel would further submit that, whether the petitioner/accused returned the money to the purchaser Vijay Nautiyal directly instead of respondent no.2/Bank, is matter of evidence and should be seen during trial.



8. Heard the submissions of the learned counsel for the respective parties and perused the material available on file.

9. In the considered opinion of this Court, present matter pertains to intricate question of facts to be proved by way of evidence in trial to reach its logical conclusion. The Court, in exercise of its jurisdiction under Section 528 of B.N.S.S. cannot go into the truth or otherwise of the allegations made in the complaint or delve into the disputed question of facts. The grounds taken by the petitioner/accused are, apparently, his defence which can be made in evidence led before the Trial Court and not by way of invoking jurisdiction under Section 528 of B.N.S.S. at this stage.

10. In view of the foregoing discussion, there is no merit in the present petition. Same is hereby dismissed *in limine*.

(Vivek Bharti Sharma, J.)
02.12.2024

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