



2024:UHC:9838

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No. 594 of 2024

(Under Section 528 of BNSS, 2023)

23 December, 2024

Shivram

--Applicant

Versus

State Of Uttarakhand and Another

--Respondents

Presence:-

Mr. Shankar Aggarwal, learned counsel for the applicant.

Mr. Bhaskar Chandra Joshi, learned A.G.A. with Ms. Sweta Dobhal, learned Brief Holder for the State of Uttarakhand.

Hon'ble Pankaj Purohit, J. (Oral)

Heard learned counsel for the parties.

2. By means of this C528 application, applicant has challenged the entire proceedings of the Criminal Case No.526 of 2023 State Vs. Shivram pending in the Court of learned Judicial Magistrate, Vikasnagar, District Dehradun, under Sections 420, 467, 468, 471, 504 & 506 IPC, along with summoning order dated 01.06.2023 as well as the charge-sheet dated 17.06.2021 submitted pursuant to the FIR No.0226 of 2020 registered with Police Station Sahaspur, District Dehradun.

3. It is contended by the learned counsel for the applicant that an agreement to sale was executed by the applicant with the respondent No.2-Sumer Chand for selling a piece of land situated at Village Shankarpur, Hukmatpur, Tehsil Vikasnagar, Dehradun on a consideration of Rs.90,000/- and the advance cheque amounting to Rs.85,000/- was given



by the respondent No.2, but the said cheque was not presented before the Bank. This agreement to sale was executed on 04.08.2009 but the sale was not executed due to non-availability of fund with the respondent No.2.

4. It is further contended by learned counsel for the applicant that the applicant repeatedly requested the respondent No.2 to proceed with the execution of sale deed and come to the Court but the respondent No.2 did not come to the Court to get the sale deed executed. Instead of filing the suit for specific performance of the contract, the impugned First Information Report was lodged, which resulted into the filing of charge-sheet after investigation and the proceedings of Criminal Case No.526 of 2023.

5. Per contra, learned State Counsel submitted that in the charge-sheet, it has come out that the respondent No.2 was cheated at the hands of applicant, as the applicant has sold the entire land of his share.

6. Having heard learned counsel for the parties and having gone through the entire record, it transpires that *prima-facie* from the FIR, the offences alleged against the applicant, are made out and there are various disputed question of facts which can be seen only after the evidence is adduced by the prosecution. This Court while invoking the jurisdiction under Section 528 of BNSS Act, cannot go into the disputed question of facts as alleged. In order to make out a case for interference under Section 528



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of BNSS Act, the applicant has to satisfy the Court that even if the entirety of the case of the prosecution has taken as true, no case is made out. But, here this is not a case, therefore, this Court doesn't incline to interfere into the matter.

7. Accordingly, the C528 application is dismissed *in-limine*.

(Pankaj Purohit, J.)

23.12.2024

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