



2025:UHC:2422

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No. 212 of 2024

02 April, 2025

Beer Singh

--Petitioner

Versus

Bhagwan Singh Thapa

--Respondent

Presence:-

Mr. Shankar Aggarwal and Mr. Ashish Aggarwal, Advocate for the petitioner.

Mr. Vikas Bahuguna, Advocate for the respondent.

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

This is a petition under Section 528 of the B.N.S.S. preferred against the impugned order dated 31.05.2024 passed by the learned ACJM III, Dehradun in Complaint Case No.3934/2021 (*old complaint case no.1356 of 2011*), "*Bhagwan Singh Thapa Vs/ Beer Singh*", under Section 138 of the Negotiable Instruments Act, 1881, P.S. Cantt. District Dehradun whereby the application of the petitioner/accused for getting the cheque in question examined by the hand-writing expert was rejected.

Learned counsel for the petitioner/accused would submit that the only payable amount as per dealing between the parties was ₹20,000/-, however, the respondent /complainant added word 'one lakh' before '*twenty thousand*'.

2. Per contra, learned counsel for the respondent/complainant would submit that there is no addition in the cheque in question of any word as 'one lakh' before '*twenty thousand*'; that, the space between each word i.e. one, twenty and thousand is almost same;



that, the petitioner/accused is unnecessarily raising the issue just to delay the dispensation of justice; that, the petitioner/accused has not filed the reply in this petition to the notice given to him because no such plea was stated therein; that, no such objection was taken in the cross-examination of the complainant.

3. Perused the record in view of the submissions made above and considered.

4. It is trite that the powers under Section 528 of B.N.S.S. have to be exercised sparingly, carefully and with caution and only to prevent abuse of process of any Court or otherwise to secure ends of justice.

5. On perusal of the entire material available on record, this Court does not find any manifest error in impugned order dated 31.05.2024, which would warrant this Court to quash the impugned order dated 31.05.2024 passed by the learned ACJM III, Dehradun in Complaint Case No.3934/2021 (*old complaint case no.1356 of 2011*), "*Bhagwan Singh Thapa Vs/ Beer Singh*", under Section 138 of the Negotiable Instruments Act, 1881, P.S. Cantt. District Dehradun.

6. It is pertinent to note that the petitioner/accused did not build up his case on this ground by giving suggestion in the cross-examination to the complainant that cheque was given for ₹20,000 only or it was blank cheque. Even in his statement under Section 251 of the Cr.P.C., in reply to question no.1, the petitioner/accused has not stated that he was only liable to pay ₹20,000/- instead of ₹1,20,000/- and the cheque in question was given for ₹20,000/- only but word '*one lakh*' was inserted later on unscrupulously by the respondent/complainant. It is also pertinent to note that even in his statement under Section 313 of the Cr.P.C., in reply to question no.7, the present petitioner/accused simply stated that he has given the signed cheque which was blank



2025:UHC:2422

instead of stating that the word '*one lakh*' was inserted later on. Moreover, the statement U/s 313 Cr.P.C. is in contradiction to the statement of the petitioner/ accused under Section 251 Cr.P.C.

7. In view of the above, this Court is of the opinion that it is not a fit case in which the High Court should invoke its inherent jurisdiction under Section 528 of B.N.S.S.

8. Rather, the Court is of the view that the present petition is filed without any reasons or ground and, hence, without merit. Accordingly, this petition is dismissed with cost of ₹20,000/- to be paid to the respondent/complainant before the Trial Court within seven days from the date of appearance to be fixed by this Court herein-below.

9. Petitioner/accused is directed to appear before the Trial Court on 09.04.2025 at 10:30 A.M.

10. Learned counsel for the petitioner/accused is requested to inform the petitioner/accused about the date of appearance before the Trial Court.

11. The Trial Court need not to serve any notice on the petitioner/accused for appearance.

12. Copy of the order be sent to the Trial Court concerned to decide the present complaint case expeditiously as the same is pending since 2011, as per law.

13. Learned counsel for the respondent/complainant is directed to provide account details of the respondent/complainant *viz.* Bank and Branch Name, Account Number, IFSC Code to the learned counsel for the petitioner /accused through whatsapp number, if available, or to provide in the Trial Court on 09.04.2025.

(Vivek Bharti Sharma, J.)
02.04.2025

ss