

(2011) 10 UK CK 0010

Uttarakhand High Court**Case No:** Criminal Miscellaneous Application (C-482) No. 996 of 2011

Yogesh Gupta

APPELLANT

Vs

Smt. Pushpa Lata

RESPONDENT

Date of Decision: Oct. 31, 2011**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 482
- Negotiable Instruments Act, 1881 (NI) - Section 138

Hon'ble Judges: Prafulla C. Pant, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Hon"ble Prafulla C. Pant, J.

Heard.

2. By means of this petition moved u/s 482 of Cr.P.C., the petitioner has challenged order dated 11.08.2011, passed by Additional Chief Judicial Magistrate, Dehradun whereby application dated 01.06.2011, moved by the petitioner was rejected. Also, the order dated 28.09.2011, passed by Sessions Judge, Dehradun in Criminal Revision No. 132 of 2011 is challenged by the petitioner.

3. Brief facts of the case are that, the petitioner is an accused in Criminal Complaint Case No. 2331 of 2011 Pushpa Lata vs. Yogesh Gupta relating to offence punishable u/s 138 of Negotiable Instruments Act, 1881, which is pending in the court of First Additional Chief Judicial Magistrate, Dehradun. In said case, evidence of the complainant is over. After the statement of the accused recorded u/s 313 of Cr.P.C, the case is pending for the defence evidence, before the trial court.

4. At the stage of defence evidence, petitioner (accused) moved an application dated 01.06.2011, seeking direction to the complainant to adduce the evidence of a finger print and hand writing expert. The trial court has rejected the application after

hearing the parties for the reason that accused can not compel the complainant to adduce the evidence of his liking. The trial court has also observed that the application has been moved to delay the proceedings of the case. The revisional court after hearing the parties, has also affirmed the same view.

5. Having gone through both the impugned orders and after considering the submissions of learned counsel for the petitioner, this court is not inclined to interfere with the trial of the case. The principle of law laid down in [T. Nagappa Vs. Y.R. Muralidhar](#), relied by the petitioner does not apply to the present case, as what has been held by the apex court is that an accused has a right to rebut the evidence adduced by the complainant.

6. Therefore, the petition u/s 482 of Cr.P.C., is dismissed summarily with the observation that the petitioner is at liberty to adduce evidence in defence in support of his plea that the cheque in question does not bear his signature.