(2008) 8 UC 1338

Uttarakhand High Court

Case No: Criminal Miscellaneous Application No. 599 of 2005

P.C. Jain		APPELLANT
	Vs	
State of Uttaranchal and Others		RESPONDENT

Date of Decision: Sept. 5, 2007

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 200, 202, 482#Negotiable Instruments Act, 1881 (NI) â€" Section 138, 141, 145

Citation: (2008) 8 UC 1338

Hon'ble Judges: B.C. Kandpal, J

Bench: Single Bench

Advocate: Manish Arora, for the Appellant; H.C. Pathak and Learned A. G.A. for State, for the Respondent

Final Decision: Dismissed

Judgement

B.C. Kandpal, J.
By way of this application u/s 482 Code of Criminal Procedure the Petitioner has sought the relief for quashing the

impugned summoning order dated 18-07-2005 passed by J.M. Roorkee, in complaint Case No. 1392/2005, Dr. Subodh Gupta v. P.C. Jain, u/s

138 of Negotiable Instrument Act. The Petitioner has also prayed for quashing the aforesaid entire complaint case.

2. Brief facts of the case are that Respondent No. 3 Dr. Subodh Gupta filed a complaint against the Petitioner u/s 138 of the Negotiable

Instrument Act on 12-7-2005 before the Court of Judicial Magistrate, Roorkee. The complainant in support of his case also filed his statements on an affidavit u/s 200 Code of Criminal Procedure The case of the complainant was that after repeated requests made by the complainant for the

return of the money amounting to Rs. 5,00,500/-, which was taken by the Petitioner/accused Prem Chand Jain as loan, a cheque was given to the

complainant, but the same was dishonoured. The complainant thereafter issued the notice to the accused/Petitioner but the accused did not pay

back the amount which was taken by him as loan. The complainant has also taken the plea that the liability to make the payment was with the

accused/Petitioner being the proprietor as well as the incharge of the business of the company.

3. The learned court after having considered the material available on record issued the summoning order against the accused/Petitioner on 18-7-

2005.

4. Feeling aggrieved by the aforesaid summoning order the Petitioner has filed the petition before this Court.

5. The Respondent No. 3 has filed the counter affidavit refuting the facts mentioned in the petition. The Respondent No. 3 also filed the

supplementary counter affidavit. Thereafter the Petitioner has filed the rejoinder affidavit.

6. Heard learned Counsel for the parties and perused the record.

7. Learned Counsel for the Petitioner has firstly argued that the statutory requirement contained in Section 141 of the Negotiable Instrument Act

has not been complied with. By reason of the said provision a person although is not personally liable for commission of such offence, would be

vicariously liable therefor and such vicarious liability can be inferred so far as the Company is registered or incorporated under the Companies Act.

It has been submitted that the complaint in the case demonstrates that it has nowhere been stated that the Petitioner was Incharge of the business of

the company.

8. I fail to appreciate the argument advanced by the learned Counsel for the Petitioner. The specific averment has been made in paragraph-5 of the

complaint that the applicant/accused had the liability to pay back the amount being proprietor and Incharge of the business of the firm. It would be

further worthy to note here that the Petitioner in paragraph-9 of his petition has himself stated that he has returned a sum of Rs. 4,25,000/- by

cheque and rest of the amount has been paid in cash, though this averment has been emphatically denied by the complainant, Respondent No. 3 in

his counter affidavit. However, this specific averment made by the Petitioner in his petition clearly shows that the Petitioner himself has admitted the

liability to pay back the amount taken by him as loan from the complainant.

9. Learned Counsel for the Petitioner has further argued that the learned Magistrate before issuing the process was duty-bound to examine on oath

the complainant and his witnesses. In support of his submission the learned Counsel for the Petitioner has cited before me the cases Maharaja

Developers and Another Vs. Udaysingh Pratapsinghrao Bhonsle and Another, and Sabitha Ramamurthy and Anr. v. R.B.S. Channabasavaradhya

reported in (2007) 1 SCC (Cri) 621.

10. I have gone through the judgments cited before me and I am of the view that both the judgments are not applicable to the facts and

circumstances of the present case.

11. There is a specific provision u/s 145 of Negotiable Instrument Act, by which the complainant may adduce his evidence through the affidavit in

any inquiry or trial. Section 145 of the Negotiable Instrument Act reads as under:

Evidence on affidavit- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), the evidence of the

complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding

under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence

on affidavit as to the facts contained therein.

12. Perusal of the aforesaid section clearly permits the Magistrate to take the evidence on affidavit and if the Magistrate has taken the cognizance

and proceeded u/s 200 and 202 Cr.P.C, it is an enquiry under the provisions of the Code of Criminal Procedure and the complainant is entitled to

file the affidavit in support of his evidence.

13. With the aforesaid observations I come to the conclusion that the petition lacks merit and is liable to be dismissed.

14. Accordingly the petition is dismissed. The stay order, if any, stands discharged.