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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-15100-2014 [O&M]

Date of Decision : October 30th, 2015

Union of India and another

.... Petitioners

Versus

Inspector General of Police, U.T. Chandigarh Police and others

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present Mr. Vikram Bajaj, Advocate
for the Petitioners.

Mr. Sukant Gupta, Advocate,
Standing Counsel - U.T.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure for seeking directions to official respondents no. 1 to 3 to register FIR against Rakesh Chander, respondent no. 4, for committing criminal breach of trust.

Relevant facts of the case that Recurring Deposit [RD] Account No.215906 standing in the name of Smt. Anju Bansal matured on 10.06.2009 with a balance of Rs.1,12,050/-. The final withdrawal, i.e., maturity value was charged in the accounts of Rakesh Chander, respondent No. 4, Sub Post Master [SPM] on 17.06.2009. When the

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depositor approached the Post Office for payment of maturity value, she came to know the fact and she was denied the payment. The depositor stated that she was told by respondent no. 4, S.P.M. of Sector 31 Post Office that the payment would be made by cheque which would be received from General Post Office [GPO], Chandigarh on 20.6.2009 as the R.D. Account was originally opened at Ambala City and was received by transfer at Sector 31 Post Office, Chandigarh. Ultimately, respondent No. 4 made a fake deposit of Rs.1,12,050/- in the Saving Bank Account No.3323850 in the name of Mr. Chander Kant and Smt. Anju Bansal for the satisfaction of the depositors, but the amount was not taken in the account of Sector 31 Post Office, Chandigarh on that day. He had also allowed withdrawal of Rs.4,000/- on 3.7.2009 and proceeded on leave on 9.7.2009 to 11.7.2009. On 10.7.2011, Smt. Anju Bansal visited the Post Office for withdrawal of Rs.1,00,000/- from her Saving Bank Account. Smt. Pushpa Sharma, officiating SPM allowed the withdrawal on the basis of balance available in the passbook. However, the said withdrawal was disallowed by GPO, Chandigarh as it resulted in minus balance due to insufficient funds. Respondent no. 4 further misappropriated a sum of Rs.1,11,157/- in R.D. Account No. 214336 in the name of Rakesh Kumar Sharma and the total misappropriated money was Rs. 2,23,207/-.

2. As per the petitioners, the department had been writing to the official respondents to register the FIR against respondent no. 4 vide Annexures P/2 to P/8, but no FIR has been registered. However, petitioner No. 2 received a letter dated 8.8.2011 [Annexure P/9] from respondent No. 2 to the effect that as respondent No.4, principal offender had deposited an amount of Rs.1,12,050/- with the Post Office and the

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remaining amount of Rs.1,11,157/- has been directly handed over to the account holder and the account holder did not want any police action and the forgery is not proved, no cognizable offence is made out. Petitioner No.2 sent reply dated 19/26.09.2011 [Annexure P/10] informing respondent no. 2 in clear terms that respondent no. 4 had used the funds of the department for his personal use and when the same came to the light that crime had been committed and he had been exposed, he made part payment to the concerned account holder. As such, respondent no. 4 has mis-appropriated the amount and has committed cognizable offence. FIR be registered, but no action has been taken by the official respondents.

3. Respondents No. 1 to 3 have taken same stand in their written statement that SSP, Chandigarh [respondent No.2] got the matter enquired into and got the same legally examined and it transpired that respondent No. 4 had deposited an amount of Rs.1,12,050/- with the Post office concerned and the remaining amount of Rs.1,11,157/- had been directly handed over to Rakesh Kumar, the holder of the concerned R.D. Account, who made the statement that the matter had been resolved. The allegations of forgery were not found to be correct on the record and thus, no offence is made out and as such registration of FIR was declined.

4. Learned counsel for the petitioners submitted that the cognizable offence had already been committed by respondent No. 4 and the official respondents were required to register the FIR and investigate the matter which they have not done. Learned counsel for the petitioners placed reliance upon the judgment of Hon`ble Supreme Court of India in **Anju Chaudhary Vs. State of U.P. and another, 2013[1] RCR [Criminal] 686** wherein law was laid down by the Apex Court that an accused is not

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entitled to hearing pre-registration of an FIR because the very purpose of fair and just investigation shall stand frustrated if pre-registration hearing is required to be granted to a suspect.

5. Learned counsel for the petitioner also placed reliance on the Supreme Court decision in **Lalita Kumari Vs. Govt. of U.P. & Ors. Writ Petition [Criminal] No. 68 of 2008, decided on 12.11.2013**, wherein, guidelines were given by Hon`ble Supreme Court for registration of FIRs under Section 154 Cr.P.C is mandatory in cases where the information disclosed to the police is on the point of cognizable offence and no preliminary enquiry is permissible in such a situation.

6. Learned counsel for the official respondents submitted that powers under Section 482 Cr.P.C. are to be exercised sparingly and in exceptional cases and not in routine manner. Moreso, in the present case, if at all, the petitioners were not satisfied, they were having remedy as per law to move an application under Section 156[3] Cr.P.C. before the Magistrate for availing of legal remedy and the present petition under Section 482 Cr.P.C. is not maintainable. He has also submitted that in the present case, legal opinion was obtained from the Additional District Attorney [L], which is already available on the file and as per the said legal opinion, no case was made out for registration of FIR and that is why, FIR was not registered. So, the present petition be dismissed being without merit. In support of his arguments, learned counsel for respondents No.1 to 3 has relied upon Hon`ble Supreme Court in **State of West Bengal and Ors. Vs. The Committee for Protection of Democratic Rights West Bengal & Ors., 2010 [2] JT 352** and **Sakiri Vasu Vs. State of U.P. And Ors. JT 2007[13] SC 466.**

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7. Having considered the respective submissions made by learned counsel for the parties and the legal opinion available on the file and judgments from Hon`ble Supreme Court, that the registration of FIR was sought against respondent no. 4 primarily on the ground that there was mis-appropriation of funds to the tune of Rs.2,23,207/-. Out of this, respondent No. 4 has already deposited a sum of Rs.1,12,050/- with the Post Office and the remaining amount of Rs.1,11,157/- has been directly handed over to the R.D. Account holder Mr. Rakesh Kumar Sharma. It has come on the file by way of statement of said Mr. Rakesh Kumar Sharma that he had received the sum of Rs.1,11,157/- directly from respondent No.4 and the matter stood resolved and he does not want any police action. The legal opinion is also on the point that as far as forgery is concerned, the same is not proved on record. That way, no loss or gain has occurred to any body and, therefore, no cognizable offence is made out.

8. In view of the above facts, it is clear that whatsoever was the amount of alleged mis-appropriation, the same has already been deposited with the Post Office or handed over to the account holder Mr. Rakesh Kumar Sharma and he is satisfied and does not want any legal action against respondent No.4. Forgery of record is not proved and hence, no cognizable offence is made out as per reply submitted by the official respondents. In view of above factual matrix, judgments from Hon`ble Supreme Court in **Anju Chaudhary's case [supra]** and **Lalita Kumari's case [supra]** are distinguishable on the facts and are not applicable in the present case. So, the present petition for issuance of directions to respondents No. 1 to 3 for registration of FIR against

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respondent No. 4 is without any merit and same stands dismissed. Moreso, if at all, the petitioners are dissatisfied with the police proceedings, the alternative remedy available with the petitioners was to file an application under Section 156 [3] Cr.P.C. before the Magistrate, but that has not been done. Law on the point is settled that powers under Section 482 Cr.P.C. are to be exercised sparingly and in exceptional circumstances and should not be exercised in routine manner. The Courts must bear in mind certain self-imposed limitations and the very plenitude of the power requires great caution in its exercise.

9. Resultantly, the present petition is not maintainable and stands dismissed.

(SHEKHER DHAWAN)
JUDGE

October 30th, 2015
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