**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No. 9572 of 2014(O&M)
Date of decision : 02.12.2015**

Sumeet Sethi

...... Petitioner

versus

State of Punjab & Anr.

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1.Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2.To be referred to the Reporters or not? Yes/No
3.Whether the judgment should be reported in the digest? Yes/No

Argued by: Mr. Parminder Singh, Advocate for the petitioner.

Mr. Deep Singh, AAG Punjab.

Mr. G.S. Brar, Advocate for respondent No.2.

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ANITA CHAUDHRY, J.

The petitioner is seeking quashing of FIR No. 26 dated 31.01.2011, registered under Sections 420, 468, 471 and 120-B IPC at Police Station Civil Lines, Patiala and consequential proceedings arising therefrom.

The petitioner is real brother of complainant-respondent No.2 Manju. They are three sisters and two brothers. Her father Kharaita Lal died in the year 1999. Some dispute arose between sisters and brothers with respect to the properties left by their father. Nothing was given to the sisters. It was alleged by the complainant that her mother Uma Devi @ Oma Devi and brother Hanish Kumar @ Raju came to her matrimonial house at Patiala and asked to sign some cheques on the pretext that the amount lying in the joint account with father was to be withdrawn. They assured her that after withdrawing the amount, she would be given her share. The allegations were that she had been cheated and not given any share from the joint account.Her brother in conspiracy with his partner Manoj Kumar, fraudulently filled the blank cheque for an amount of Rs.2 lacs and presented it to her banker. The cheque was dishonoured and Manoj filed a complaint under Section 138 of Negotiable Instruments Act against her and the accused started black mailing her to withdraw the civil suit filed by her and other sisters.

The case was registered and investigated. Uma Devi died on 28.03.2011. Final report was filed against the present petitioner, Hanish Sethi and Manoj Kumar and they have been charged under Sections 120-B, 420, 468 and 471 IPC.

Quashing has been sought on the ground that in the FIR there is not even a whisper about the participation of the petitioner in the crime and he was not the beneficiary of the cheque amount either and the trial Court has wrongly framed charges against him and the complainant in her statement recorded in the Court did not attribute anything to him.

In the reply filed on behalf of the State, it was averred that final report had been submitted in the Court on 27.08.2011 and charges were framed on 17.11.2011 and five witnesses out of ten, had already been examined and the petitioner could raise all these issues before the trial Court.

In the reply filed by respondent No.2, it was averred that the blank cheque signed by her was misused by the accused in connivance with each other and the petitioner played an active role in cheating and committing fraud and forgery with her. The issue regarding maintainability of the petition after framing of charge was also raised.

I have heard learned counsel for the parties and have perused the paper-book.

Broad guidelines have been framed by the Hon'ble Apex Court for exercise of powers under Section 482 Cr.P.C. in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, AIR 1992 SC 604, which read as under:-

> *"105. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
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> *1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in*

their entirety do not primafacie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. Do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under

Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly

> *attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

In the instant case, a perusal of FIR would reveal that no role whatsoever had been given to the petitioner. The accusation revolves around her mother and brother, who had allegedly come to her and obtained her signatures on blank cheques. The FIR nowhere refers to the participation of petitioner in the crime. A perusal of reply dated 12.09.2008 (Annexure P-4) sent by the complainant to the legal notice issued by Manoj Kumar, a co-accused, would reveal that though the complainant alleged that the cheque was misused by Manoj Kumar in connivance with Uma Devi, Hanish Sethi and Sumit Sethi, but in the FIR lodged subsequently, the name of the petitioner was conspicuously missing with no role assigned to him either as a conspirator or for actively participating in the crime. The allegations of conspiracy made by the complainant in her statement as PW1(Annexure P-6) against the petitioner are only an improvement. The complainant would have named the petitioner in the FIR if he was involved. Admittedly, the parties are having strained relation over the properties left by their father. The civil suit, for withdrawal of which the complainant was said to have been pressurized, was dismissed in default on 30.04.2011. The petitioner had been charged not only under

Section 120-B IPC, but independently under Sections 420, 468 and 471 IPC even though no role had been given to him in the FIR. Though, much time had lapsed after framing of charges and some witnesses have been examined, but this Court in exercise of powers under Section 482 Cr.P.C. can interfere where continuation of proceeding against the petitioner would amount to sheer abuse of process of law. In **Satish Mehra Vs. State of N.C.T. of Delhi & Anr. AIR 2013 SC 506,** it has been observed thus:-

> "15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extra ordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available

> for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged against the accused."

In the considered opinion of this Court, the allegations in the FIR if taken in its entirety does not constitute any offence against the petitioner and warrants interference by this Court for quashing all the proceedings against the petitioner with an object to meet the ends of justice and prevent abuse of the process of the Court.

In view of the discussion made above, the instant petition is allowed. The impugned FIR and consequent proceedings taken therein, against the petitioner, are quashed.

December 02, 2015 **(ANITA CHAUDHRY)**
Jiten **JUDGE**