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

**COCP No.463 of 2015
Date of decision: September 16, 2016**

J.N. Gupta

...Petitioner

Versus

Jaspal Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. J.N. Gupta, Advocate, petitioner in person.

Mr. J.S. Toor, Advocate
for respondent No.1-Chandigarh Administration.

Mr. Vikas Chatrath, Advocate with
Ms. Neeru Thakur, Advocate
for respondent No.2.
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AUGUSTINE GEORGE MASIH, J.

Petitioner has approached this Court alleging contempt against respondent No.1 who is Incharge, Cyber Crimes Investigation Cell, Police Station Central, Sector-17, Chandigarh for non-registration of an FIR on a complaint dated 11.02.2015 (Annexure P-4) submitted by him, wherein primarily, it has been alleged that after the death of his brother, late Sh. Sat Narain Gupta on 05.01.2015, he had balance amount of ₹2,14,139.91/- in his account with State Bank of India, Sector-7, Chandigarh Branch, from which various withdrawals were made by his wife Smt. Navita Gupta i.e. ₹20,000/- on 05.01.2015 & 19.01.2015 in one transaction and then ₹20,000/- each on 19.01.2015 by second transaction and the remaining amount of ₹738/- was deposited by her in the account on 27.01.2015, to check as to whether the ATM card was still working. The entire amount of

₹1,74,878.00/- which was in the account of the deceased brother of the petitioner was withdrawn by her by making an application to the Bank Manager, and the account was closed. As per the assertion of the petitioner, all this has been done in violation of the ATM rules and guidelines issued in this regard as after the death of the account holder, the ATM card itself become lifeless and no transaction can be done with the same. Even the nominee of the bank account holder/deceased or any other family members, friends or relative cannot operate or transact after the death of the card holder with the said card. Thus, the petitioner asserts that the same discloses commission of a cognizable offence punishable under Section 420 IPC read with Section 34 IPC. Since respondent No.1 has not registered a FIR despite the disclosure of a cognizable offence and having violated the directions issued by the Supreme Court in *Lalita Kumari Versus Govt. of U.P. and others 2013(4) RCR (Criminal) 979* (Annexure P-1), has committed the contempt of Court. Allegations have also been made against respondent No.2, who is alleged to be a Branch Manager, State Bank of India, Sector-7 Branch, Madhya Marg, Chandigarh, for having not stopped the operation of ATM card and, thus, conniving with Smt. Navita Gupta wife of the brother of the petitioner.

Petitioner, who appears in person, has made submissions on this aspect, in the same lines as the pleadings and alleges that the directions issued by the Hon'ble Supreme Court in Para 111 of the said judgment in *Lalita Kumari's case (Supra)* have not been complied with, which mandates that even if a preliminary inquiry is held, the final conclusion should have been intimated to the petitioner, by respondent No.1 within a period of seven days, which has not been done till date. He, therefore, prays that the respondents be held guilty of having committing contempt of Court and be accordingly punished.

Counsel for respondent No.1 submits that the complaint, as referred to above, was received in the public window of the Senior Superintendent of Police, Chandigarh on 24.02.2015, which was marked to the Cyber Crimes Investigation Cell on 02.03.2015. The Deputy Superintendent of Police, Chandigarh, down marked the said complaint, which ultimately was received by SI Harinder Singh for investigation, on the basis of which an intimation was sent to the petitioner through e-mail on 09.03.2015 that his complaint has been received on 03.03.2015 and is being looked into. A letter was also sent to the State Bank of India, Sector-7 Branch, for account details and CCTV footage. Copy of the e-mail and the letter sent to the Manager, State Bank of India, Sector-7 Branch, are appended as Annexures R-1 and R-2. On the same date i.e. 09.03.2015, a Daily Diary Report was also recorded to the effect that a complaint has been received and the petitioner has been informed of the action taken on his mobile number, copy whereof, is appended as Annexure R-3. The complete statements of the account was sent by the Bank on 13.03.2015. However, on 20.03.2015, the Bank acknowledged the receipt of request of the investigating agency and the intimation with regard to non-availability of the CCTV footage of the ATM was sent on 15.04.2015, indicating that the hard disk had crushed on 20.01.2015. The report was prepared by respondent No.1 on 28.04.2015 on the basis of the information collected, stating that no offence is made out under the IT Act and the complaint may be sent to the Police Station Sector-11, Chandigarh for necessary action. This report dated 28.04.2015 is appended as Annexure R-6. The petitioner was also sent an e-mail, informing him about the report dated 28.04.2015 on the same date. He, on the basis of the report submits that there has been no violation of the directions issued by Hon'ble the Supreme Court on the part of respondent No.1, as there has not been an intentional delay on the part of respondent No.1 in inquiring into the matter. His further contention is that the complaint as received from the petitioner, would fall within the type of cases where preliminary inquiry may be made as it is a family dispute and could be a commercial offence, which is the category specified by the Hon'ble Supreme Court in *Lalita Kumari's case (Supra)*. He, thus, contends that there is no violation of the directions as issued by Hon'ble the Supreme Court, which can be termed as contemptuous.

Learned counsel for respondent No.2, on the other hand, contends that respondent No.2 is not the Branch Manager as has been alleged rather the Branch is headed by the Assistant General Manager. He contends that the directions, which have been issued in *Lalita Kumari's case (Supra),* cannot be given effect to against the said respondent as it is not the role or responsibility of the said respondent to register an FIR etc. The allegations, if any, are with regard to commission of an offence under Section 420 read with Section 34 IPC, which cannot be attributed to the said respondent for the simple reason that no intimation was received or given by the petitioner or by any other family member with regard to the sad demise of Sh. Sat Narain Gupta. Any of the bank official could have been held responsible in case there would have been any intimation to the bank about the death of Sh. Sat Narain Gupta and then the transactions would have been permitted through the ATM debit card. This respondent has further given details with regard to the saving bank account No.30044962317 which was opened by Sh. Sat Narain Gupta in the State Bank of India, Sector-7 Branch, Chandigarh. Smt. Navita Gupta, his wife was the nominee. The facility of withdrawing money was being used through ATM i.e. State Bank Classic Debit Card. For withdrawal of the amount, it is mandatory to enter the PIN which is confidential by its nature without which no cash withdrawals can be made. The responsibility for any cash withdrawal through the debit card solely lies on the customer and the respondent-bank cannot be held liable in any manner. As regards the instructions/ATM rules and guidelines which would come into force on the death of the customer, would be dependent on the factum of death of the customer coming to the knowledge of the bank. Since no intimation was ever made at any point of time regarding the death of Sh. Sat Narain Gupta, the ATM card continued to operate. The allegations, thus, made against respondent No.2 are without basis.

It has been explained that the cancellation of use of debit card on the death of a customer can be given effect to by the bank only on receiving intimation/information. The bank can terminate the use of the debit card in case of death, bankruptcy or insolvency of the cardholder or on receipt of a letter from any one of the joint account holder, changing the operative clause, on receipt of an attachment order from the competent Court or revenue authority or the Reserve Bank of India due to violation of FEMA/Exchange Control Regulations or for other valid reasons or when the whereabouts of the cardholder become unknown to the bank due to any cause attributable to the cardholder. Such action can only be taken by the respondent-bank on receipt of such particular or specified instructions either by any one of the joint account holder or any other legal competent authority/entity.

It has been admitted that the account of Sh. Sat Narain Gupta has been used thrice for cash withdrawals w.e.f. 05.01.2015 by Smt. Navita Gupta wife of late Sh. Sat Narain Gupta. Smt. Navita Gupta, being the nominee of the deceased, made a request for withdrawal of the total balance amount in the account through banker cheque No.929609 dated 27.01.2015 which was accepted, as the respondent-bank has acted upon, the instructions of the nominee of the deceased and, therefore, there is no deficiency in service, illegality, irregularity etc. on the part of the respondent-bank. In conclusion, it has been asserted that the petitioner is trying to settle his personal family dispute *inter se* and has impleaded respondent No.2 while misinterpreting the directions of the Hon'ble the Supreme Court in *Lalita Kumari's case (Supra)*. Counsel submits that respondent No.2 has no role with regard to either violating the directions issued by Hon'ble the Supreme Court or for giving effect thereto and, thus, the present contempt petition is not maintainable against him and deserves dismissal.

I have heard the petitioner as also the counsel for the respondents and with their assistance have gone through the records of the case.

The details of the facts have been referred to above in the submissions which has been made by the petitioner and the counsel for respondent Nos.1 and 2 are not disputed. On going through the pleading and the records, this Court is of the considered view that the complaint dated 11.02.2015 (Annexure P-4) which has been filed by the petitioner, clearly falls within the ambit of the category of cases in which preliminary inquiry may be made as it is a family dispute and primarily a commercial offence. The conclusions/directions as reached/issued by the Supreme Court in *Lalita Kumari's case (Supra)* would clearly make it a case where a preliminary inquiry was called for and has rightly been conducted by respondent No.1. He has explained in the reply, which has been filed by him in detail, the steps taken and the intimations which have been given to the petitioner with regard to the progress of the inquiry. It cannot be said that there has been any deliberate or intentional delay on the part of respondent No.1 in proceeding with the inquiry or that he had been negligent or casual in his approach as far as the present case is concerned. He had kept the petitioner informed about the developments and has also explained the time consumed by him during the inquiry and, therefore, I am of the considered view that no contempt is made out against respondent No.1.

As regards the impleadment of respondent No.2 by the petitioner is concerned, this court is of the firm opinion that the said respondent has unnecessarily been impleaded as a respondent. The directions as issued by Hon'ble the Supreme Court in *Lalita Kumari's case (Supra)* would not even remotely touch the duties and responsibilities of the said respondent and he has no role whatsoever with regard to registration of an FIR or holding a preliminary inquiry or taking a decision for either of these two aspects. The details, as have been disclosed in the reply which has been filed, would clearly indicate that he was nowhere involved either in the process of use or withdrawal of the cash through the ATM debit card of deceased Sh. Sat Narain Gupta. Rather he was not even the Branch Manager as the Branch Manager is the Assistant General Manager. The liability, if any, of the bank with regard to the allegations of commission of an offence under Section 420 read with Section 34 IPC also would not arise at all as nowhere in the petition or in the complaint, which has been filed, it has been alleged or indicated that the bank was ever informed about the death of Sh. Sat Narain Gupta prior to 27.01.2015, when Smt. Navita Gupta wife of Sh. Sat Narain Gupta who was the nominee of the deceased, made a request to the bank for withdrawal of the total balance amount in the account, which was permitted as per the rules and regulations of the bank. It is an admitted fact that Smt. Navita Gupta is the wife of Sh. Sat Narain Gupta and was the nominee of the deceased and, therefore, was well within her rights to have withdrawn the total balance amount in the account of deceased Sh. Sat Narain Gupta on 27.01.2015. The impleadment of respondent No.2 as a party to the present contempt petition by the petitioner is totally unjustified, uncalled for and unexpected which has led to unnecessary harassment of the said respondent. Though, this Court intends to impose costs for causing harassment to respondent No.2 but refrains itself by taking a lenient view.

In view of the above, finding no merit in the present contempt petition, the same stands dismissed.

Rule issued to the respondents stands discharged.

September 16, 2016 **(AUGUSTINE GEORGE MASIH)**
ps-I **JUDGE**

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.