

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

**Criminal Misc. No. M-21471 of 2015
Date of Decision:-08.01.2016**

Tyaub Hussain

...Petitioner

Versus

Smt. Sahina and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

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

Present:- Mr. Rakesh Gupta, Advocate for
Mr. Arjun Atri, Advocate
for the petitioner.

HARI PAL VERMA J.

The petitioner has filed the present petition under Section 482 Cr.P.C. seeking setting aside the order dated 4.6.2015 (Annexure P-3) passed by learned Additional Sessions Judge, Mewat, whereby the summoning order dated 2.12.2013 (Annexure P-1) passed by learned Chief Judicial Magistrate, Nuh has been set aside.

The petitioner-complainant has filed the criminal complaint under Sections 420, 406 and 120-B IPC, against the respondent. The Magistrate sought report under Section 202 Cr.P.C. from the police and thereafter, respondents were summoned for the offence under the aforesaid sections vide order dated 2.12.2013 (Annexure P-1). However,

the order of summoning dated 2.12.2013 passed by learned Magistrate was challenged by way of revision petition and the learned Additional Sessions Judge, Mewat vide judgment dated 4.6.2015 (Annexure P-3) allowed the revision petition filed by the respondents-accused and set aside the order of summoning dated 2.12.2013.

Briefly stated that Wasim Akram aged about 18 years is son of the petitioner and he is neighbour of the respondents namely Sahina, Ismail and Rajman. The petitioner being neighbour of the accused reposed his faith in them and advanced Rs.21,000/- to the accused persons on the occasion of engagement of son Wasim Akram. The respondents raised demand of garments, jewelery and other articles for incurring the expenses in the engagement of his son just to commit cheating upon the petitioner-complainant. The complainant made arrangement of ten couple garments, 2-½ tolas golden ornaments and silver ornaments and other articles. After few days, the respondents-accused along with other accused came to the house of complainant and raised demand of Rs.1,00,000/- for purchasing land. Taking into consideration the new relation, the complainant gave Rs.1,00,000/- to the accused party. When the complainant asked the accused for solemnization of marriage of his son, the accused found reluctant but after some time it came to the notice of the petitioner-complainant that marriage of Sabnam has been solemnized with another person. On raising demand of returning back all the jewellery items and other articles, the accused refused to return the same. It is in the aforesaid facts, the criminal complaint was filed.

The learned Magistrate vide order dated 2.12.2013

summoned the respondents for commission of offence punishable under Sections 420, 406 and 120-B IPC. Aggrieved against the said order, the respondents-accused have filed the revision petition before the learned Sessions Court and vide judgment dated 4.6.2015 the order of summoning dated 2.12.2013 passed by learned Magistrate was set aside. It is in the aforesaid circumstances, the petitioner-complainant has filed the present revision.

Learned counsel for the petitioner has argued that the learned trial Court has rightly taken the cognizance in the complaint and summoned the accused vide order dated 2.12.2013. The trial Court has also taken note of the report under Section 202 Cr.P.C. of the police. The case cannot be decided without a full fledged trial but still the learned Additional Sessions Judge has passed the impugned order setting aside the sumoning order.

I have heard learned counsel for the petitioner.

The facts revealed that the dispute is regarding some engagement of the son of the petitioner Wasim Akram. In the order dated 4.6.2015 it has been observed that the perusal of report under Section 202 Cr.P.C. does not show that an amount of Rs.1,00,000/- was given to accused persons. Statement of Mukesh, Sehsooda also does not show that the amount of Rs.1,00,000/- was given to the respondents-accused. The dispute was apparently between son of the petitioner-complainant and daughter of respondent-accused Nos.1 and 2 and the money was spent on the engagement. Further, there is no evidence to the effect that at the time of making payment to the respondents by the complainant there was dishonest intention on the part of the respondents. In order to

hold a person guilty of cheating, it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise.

Accordingly, I find no infirmity in the judgment dated 4.6.2015 passed by learned Additional Sessions Judge, Mewat and the present petition is dismissed.

January 08, 2016
Vijay Asija

(HARI PAL VERMA)
JUDGE