

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

CRM-M No.7814 of 2015

Date of decision: 11th January, 2016

Kamla Asht

... Petitioner

Versus

UT Chandigarh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Present: Mr. Rajeev Anand, Advocate
for the petitioner.

Mr. Gautam Kaile, Advocate for
Mr. Rajiv Sharma, APP UT Chandigarh
for respondent No.1.

Mr. Arshdeep Bhullar, Advocate
for respondent No.2.

Mr. Onkar Rai, Advocate
for respondent No.3.

FATEH DEEP SINGH, J.

An FIR bearing No.64 dated 22.02.2006 under Sections 420 etc. was registered with Police Station Sector 34, Chandigarh on the allegations of Kamla Asht present petitioner against Vinay Krishan Asht accused, Yatinder Dhall and Hans Raj Dhall. It is alleged that the complainant was a widow of late Honorary Captain Raj Pal Asht and

was a senior citizen. She claimed that in the year 1992, she was awarded a sum of ₹2,73,000 being compensation on account of death of her husband in a motor vehicular accident. It is alleged that Vinay Krishan Asht, who was serving in New Bank of India, called upon the complainant to deposit the amount in his Bank. It is subsequent thereto Vinay Krishan Asht asked the complainant that his friend Yatinder Dhall's father Hans Raj Dhall who was an allottee of House No.3519, Sector 46-C, Chandigarh of the Chandigarh Housing Board was to sell this house. On this promise, complainant alleged that she paid the money for purchase of the said house to Vinay Krishan Asht and thereafter nothing transpired and on this act of deceit and fraud, got registered the case in question.

During the course of trial, an application under Section 156(3) Cr.P.C. was moved by the complainant seeking direction to the SHO for conducting further investigations under Section 173(8) Cr.P.C. Complainant alleges that the investigator has let off the hook Yatinder Dhall and Hans Raj Dhall regarding the alleged forged document prepared by them to deceive her. The Court of learned Judicial Magistrate 1st Class, Chandigarh through orders dated 01.08.2014 (Annexure P7) dismissed the application holding that since final report under Section 173(2) Cr.P.C. has been accepted and the trial has also culminated, such a recourse was not permissible. Against the said order, complainant had gone in exercise of powers under Section 397 Cr.P.C. by way of revision and the Court of learned

Additional Sessions Judge, Chandigarh through impugned judgment dated 09.02.2015 (Annexure P10) dismissed the same and that is how the complainant has invoked the jurisdiction of this Court in terms of Section 482 Cr.P.C. for quashing of the orders (Annexure P7 and Annexure P10).

Heard Mr. Rajeev Anand, Advocate for the petitioner; Mr. Gautam Kaile, Advocate appearing on behalf of Mr. Rajiv Sharma, APP UT Chandigarh/respondent No.1; Mr. Arshdeep Bhullar, Advocate representing respondent No.2; Mr. Onkar Rai, Advocate for respondent No.3 and perused the records of the case.

Undisputedly, initially FIR was got registered against Vinay Krishan Asht. It is subsequent thereto, on the application of the complainant for summoning Hans Raj Dhall and Yatinder Dhall, vide orders dated 06.02.2012 only Hans Raj Dhall was ordered to be summoned as an accused against whom supplementary challan was also filed. During the trial, Hans Raj Dhall expired and proceedings against him stood abated vide orders dated 06.01.2014.

The contentions of learned counsel for the petitioner, who has placed reliance on '**Vinay Tyagi v. Irshad Ali @ Deepak and others**' reported as **2013(2) RCR(Criminal) 197**, to drive home the point that Magistrate had ample powers in the exercise of Section 156(3) Cr.P.C. to direct further investigations and in terms of Section 173(8) Cr.P.C. to submit supplementary challan. The same has been controverted on behalf of the respondents by Mr. Arshdeep Bhullar

Advocate who has sought to bring about the fact that the very allegations against Yatinder Dhall were never spelled out earlier and that even the application under Section 319 Cr.P.C. filed by the complainant stood declined vide orders dated 06.02.2012. The petitioner has failed to file any revision against the said order which admittedly has since then attained finality.

No doubt, Judicial Magistrate has ample powers to order further investigations but the same has to be supported by cogent and judiciously reasonable reasoning and even otherwise such a power has to be exercised sparingly in rarest of the rare cases which is also the principle laid down in cited ratio of **Vinay Tyagi's case (ibid)**.

As has been contended before this Court the very written complaint preferred by the complainant does not specify any definite role to Vinay Krishan Asht in the commission of offence. It is not the case of the complainant that she had handed over money to him or that he was instrumental in execution of the false document. It is nobody's case that he is a signatory to the alleged agreement dated 01.08.1992 upon which the entire allegation of the petitioner harbours. Since efforts of the petitioner have remained futile for summoning of Yatinder Dhall in exercise of provisions under Section 319 Cr.P.C., now at this belated stage when the trial has almost concluded, it would be too preposterous to accede to her prayer which will not only bring about fresh de-novo trial but would also tantamount to improving her case and filling in the lacuna which have come about after so many

years, impels this Court to hold that there is neither any illegality nor perversity in the findings of the courts below and which as such are upheld.

The petition being without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

January 11, 2016
rps