

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

(1) CRM No.48471-M of 2007 (O&M)

K.VadyaRaja Updhaya and others

...Petitioners

VERSUS

State of Punjab

...Respondent

(2) CRM No.M-4894 of 2009 (O&M)

Hira Lal Goyal and another

...Petitioners

VERSUS

State of Punjab and others

...Respondents

Date of Decision: October 24, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.O.P.Goyal, Senior Advocate with
Mr.Gaurav Mohunta, Advocate
for the petitioners (in CRM No.48471-M of 2007).

Mr.Sumeet Mahajan, Senior Advocate with
Mr.Amit Kohar, Advocate
for the petitioners (in CRM No.M-4894 of 2009).

Ms.Simranjeet Kaur, Asstt. Advocate General, Punjab
for the respondent-State.

Ms.Isha Goyal, Advocate
for respondent No.2 (in CRM No.M-4894 of 2009).

Mr.Puneet Sharma, Advocate
for respondents No.3 to 6 (in CRM No.M-4894 of 2009).

INDERJIT SINGH, J.

cases as the point for determination in both the cases is the same.

The above-mentioned petitions have been filed by petitioners under Section 482 Cr.P.C. for quashing the FIR No.134 dated 18.06.2000 under Sections 406, 465, 120-B and 201 IPC (Sections 466 and 467 IPC dropped by learned trial Court vide order dated 07.01.2009) registered at Police Station Division No.5, Ludhiana, report under Section 173 Cr.P.C., supplementary report dated 05.04.2006 under Section 173(8) Cr.P.C., order dated 07.01.2009 only to the extent it orders that there is sufficient ground to proceed against the petitioners and all subsequent proceedings arising therefrom.

Notice of motion was issued. Learned State counsel in both the cases as well as learned counsel for respondents No.2 to 6 in CRM No.M-4894 of 2009, appeared and contested the petitions.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that a complaint was received from Mrs.Hittowanti Goyal, on the basis of which, FIR was registered, in which it is stated that she is 90 years old and living with his son S.P.Goyal. She had a locker in the Indian Overseas Bank, which was operated by her jointly with her son H.L.Goyal. Huge quantities of jewellery and cash was kept by her in the locker and whenever locker was to be operated, his son H.L.Goyal used to take her along. She does not remember number of the locker and when it was last operated. It is further stated by the complainant that her representatives were informed by the Bank Manager and the staff that she has no locker in their bank. The complainant suspected some foul play on

the part of her son H.L.Goyal in connivance with bank employees and she

feared that her son H.L.Goyal operated the locker in connivance with the bank employees and took away her jewellery and cash. It is also stated that in spite of repeated request made by the complainant to the bank, she was not informed about the locker number or when it was last operated. Rather, she received a letter from the bank asking about the locker number and date when it was taken and last operated and in the letter, bank expressed that they are unable to locate the number of the locker from their record. She feared that her son H.L.Goyal has mis-appropriated the cash and jewellery from her locker while operating the same in her absence in connivance with some bank officials as he got her thumb impressions on papers many times in the past.

On the basis of the FIR, after investigation, challan was presented and learned Magistrate, after going through the record, framed the charges.

Firstly, from the perusal of the FIR, it cannot be held that no offence has been committed. The complainant is alleging regarding taking away her jewellery and cash by her son in connivance with the bank officials. The challan has been presented by the police against the petitioners and the trial Court, on the basis of evidence collected by the Investigating Officer, finding prima facie case, has framed the charges and has taken cognizance. It has been brought to the notice of this Court that 20 witnesses out of 22 witnesses have already been examined.

At the time of arguments, learned counsel for the petitioners argued that no offence has been committed. The locker has always been operated by the complainant and the jewellery has not been taken away by the accused. It is also argued that from the documents placed on record

regarding operating of the locker, income tax record, it transpires that accused have not committed any offence, whereas, on the other hand, learned counsel for the private respondents argued that finding of fact cannot be given in the quashing petition. The Investigating Officer has already collected the evidence and Hira Lal Goyal has operated the locker and as the complainant is an old lady, so her signatures etc. were also taken by Hira Lal Goyal and Smt.Kanchan Goyal has also accompanied the complainant while operating the locker. Learned counsel for respondents No.2 to 6 further argued that if the petitioners have not taken away the jewellery etc., then, where this jewellery has gone. This Court cannot give the finding of fact, specially when the witnesses have already appeared before the trial Court and have deposed regarding prosecution version and the trial is almost complete.

From the arguments and from the record, I find that in the quashing petition, this Court cannot give the findings of fact without any evidence whether jewellery has been mis-appropriated by the petitioners in connivance with the bank officials or not. This finding of fact is to be given by the trial Court on the basis of the evidence produced before it. After framing of the charge, as argued, 20 out of 22 witnesses have already been examined, which means that almost the trial is almost complete. In the facts and circumstances of the present case, at this stage, it cannot be held that no cognizable offence is made out from the perusal of the FIR or the registration of the FIR amounts to abuse process of law or amounts to miscarriage of justice.

In view of the above discussion, I do not find any ground to

Therefore, finding no merit in both the petitions, the same are dismissed.

However, nothing stated above, shall constitute my opinion on merits of the case.

October 24, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No