

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

Criminal Misc. No.M- 24494 of 2017 (O&M)

Date of decision : September 28, 2017

Ashok Singla

.....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Puneet Kumar Bansal, Advocate
for the petitioner.

LISA GILL, J.

The petitioner is aggrieved of order dated 14.02.2017 passed by the learned Additional Sessions Judge, Ambala whereby order dated 20.10.2016 passed by the learned Additional Chief Judicial Magistrate, Ambala summoning respondent No. 2 for the offence punishable under Section 466 IPC has been set aside.

Brief facts of the fact are that FIR No. 73 dated 13.03.2013 under Sections 406, 498A, 323, 34 IPC was lodged against the petitioner, his son and other family members. The said FIR was registered at the instance of Teena/Teena Singla w/o Sh. Varun Singla (i.e. the petitioner's daughter-in-law). Allegations of demand of dowry, harassment and ill-treatment at the hands of accused persons therein, which includes the petitioner, were levelled. The said FIR was registered on a complaint dated 28.12.2012 submitted by the complainant – Teena Singla.

Thereafter a complaint dated 30.05.2013 under Sections 417, 467, 468, 471, 506, 120-B IPC was filed by the present petitioner against the complainant (his daughter-in-law) in FIR No. 73 dated 13.03.2013 as well her father Ram Kumar Goyal, her brother Himanshu Goyal and respondent No. 2 – Dharamvir. It is stated in the complaint that the petitioner's son submitted a written complaint dated 13.12.2012 to the Deputy Commissioner of Police, Urban Ambala against his wife Teena and other family members. A written complaint was given by the other party as well against the petitioner's son and other family members. It is alleged that a criminal conspiracy was hatched in connivance with respondent No. 2 – a police official of Police Station Mahesh Nagar, pursuant to which FIR No. 73 dated 13.03.2013 was registered by using fictitious signatures of the person lodging the FIR (the petitioner's daughter-in-law) in column No. 14 of the original FIR. The petitioner and his son were arrested suddenly on 18.03.2013 and all the family members of the petitioner were involved in the false case, thereby ruining the reputation and prestige of the family. It is further stated in the complaint that the original FIR No. 73 carries the signatures of some person other than the complainant only with a view to arrest the petitioner and his family members.

After recording of pre-summoning evidence, inquiry under Section 202 Cr.P.C. was directed. Learned Additional Chief Judicial Magistrate, Ambala vide order dated 20.10.2016 while concluding that no case is made out against the accused - Teena Singla, her father and brother, directed respondent No. 2 to be summoned for the commission of the offence punishable under Section 466 IPC. Learned Additional Sessions Judge, Ambala on a revision petition preferred by respondent No. 2 set aside

order dated 20.10.2016 to the extent of summoning of respondent No. 2. Aggrieved therefrom, the present petition has been filed.

Learned counsel for the petitioner vehemently argues that it is proved on record that three different certified copies of the same FIR were produced on record. In one, signatures of the complainant are mentioned as 'Teena Singla', in the second as 'Teena' and in the third copy, no signatures of the complainant are found. It is apparent to the naked eye that the two signatures available on both the copies of the FIR are different. It is submitted that there is no explanation as to how and under what circumstances, two different sets of signatures are present. Thus, it is urged that the FIR, which was forwarded to the learned Judicial Magistrate First Class (Annexure P-2), bears the forged and fabricated signatures of the complainant. This was obviously done with the mala fide intention of arresting the petitioner and family members taking them by surprise.

It is further argued that the learned revisional Court has grossly erred in holding that sanction under section 197 Cr.P.C. is required in the present case as in a case of forgery, there cannot be any question of it being done under the discharge of duty. Moreover, the learned revisional Court has wrongly held that no mens rea, motive or object qua respondent No. 2 has been attributed. It is vehemently argued that at the stage of summoning, it is only a prima facie case, which has to be seen and once forgery is made out, the question of mens rea pales into insignificance. It is further argued that the father of the complainant - Teena supplies stationery to the police department and it is due to this reason that the events, as mentioned above, are unfolded. However, it is conceded that this plea was never raised at any time before the courts below, it is being raised for the first time before this

Court. It is further argued that presence of the signatures of the said complainant in the Register for supply of copy, cannot in any manner absolve respondent No. 2 of the offence in question. Thus, it is prayed that order dated 14.02.2017 passed by the learned Additional Sessions Judge, Ambala be set aside and respondent No. 2 be summoned in terms of order dated 20.10.2016.

I have heard learned counsel for the petitioner at length and have gone through the file with his able assistance.

It is not in dispute that the complainant – Teena submitted a written complaint dated 28.12.2012 against her husband, the petitioner (her father-in-law) and other family members alleging harassment and ill-treatment on account of bringing less dowry. It is on the basis of this complaint submitted in December, 2012 that FIR No. 73 dated 13.03.2013 was registered. Respondent No. 2 was admittedly the investigating officer in the said case. Final report under Section 173 Cr.P.C. against the accused persons was submitted by respondent No. 2 after conclusion of investigation. The petitioner is admittedly an accused in the said FIR No. 73 dated 13.03.2013. It is to be noted that DDR No. 17(A) dated 19.03.2013 stands recorded in respect to threats given by the present petitioner to respondent No. 2. Learned Additional Sessions Judge, Ambala while setting aside order dated 20.10.2016 passed by the learned Additional Chief Judicial Magistrate, Ambala observed as under:-

“ In the instant case, learned trial Court did not consider the pros and cons of allegations, rather simply formed an opinion the basis of two different signatures over copies of FIR Ex.CW3/1 and Ex.CW3/3 without attributing to mens rea, motive and object qua revisionist behind alleged crime in any

manner. However, if signatures of complainant Teena Singla is found different over Ex. CW3/1 and Ex. CW3/3, even then, it has also brought on record that copy of FIR Ex. CW3/2 did not bear signature of Teena. As a matter of fact, version of FIR was inserted pursuant to written complaint made by Teena, which is neither altered nor changed or tampered while lodging FIR Ex.CW3/2 and so, if subsequent signature of Teena Singla was obtained in register while supplying copy of FIR by MHC (who has to maintain record of FIR), then criminal liability would not be shifted upon investigating officer for appending signature over copies of FIR by other person in place of Teena, particularly, when complainant being accused in earlier case, was nursing grudges with investigating officer in one way or other. For the sake of discussion, if signature of complainant Teena Singla was different over copies of two FIR, even then, it was the Teena, who was to object for initiating action against erring official or impersonator, but she never raised any objection that her signature was forged by any impersonator.

It may not be out of place of mention here that if signature over two copies of FIR were found different, even then, it would not be attributed to the revisionist without establishing his mens rea, motive and object for doing so, which is apparently missing and so, mere different signatures over two copies of FIR, despite blank over portion in third FIR, would not shift criminal liability relating to crime punishable under Section 466 of IPC upon public servant (who was investigating officer) without obtaining sanction under Section 197 of Cr.P.C. from government. It is the duty of trial Court to weigh and reckon the factual matrix and necessary aspects surrounding the case because ipsi dixit of witness cannot always be sole basis to be acted upon. However, learned trial Court apparently fell in error while summoning revisionist for committing offence punishable under Sections 466 of IPC

and so, impugned order cannot be sustained in eyes of law.”

There is nothing on record to indicate any conspiracy between respondent No. 2 and the complainant in FIR No. 73. There is no motive on the part of respondent No. 2. Contention that the complainant's father was a supplier of stationery to the police department, due to which this action was taken by respondent No. 2 is noticed only to be rejected. Such a plea was admittedly never raised before any of the learned courts. Respondent No. 2 was admittedly the investigating officer, in this case, and the petitioner was obviously not holding very cordial feelings for him. It is not in dispute that the complaint in this respect was lodged by Teena Singla on 28.12.2012 on the basis of which FIR No. 73 was registered. The complainant has not raised any objection in this regard. The learned Additional Sessions Judge, Ambala has rightly allowed the revision petition filed by respondent No. 2 vide impugned order dated 14.02.2017 while setting aside order dated 20.10.2016.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned order dated 14.02.2017 which calls for interference by this Court in exercise of jurisdiction under Section 482 Cr.P.C.

Accordingly, this petition is dismissed.

(Lisa Gill)
Judge

September 28, 2017
rts

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No