

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

CRM No.M-38002 of 2015 (O&M)
Date of Decision: May 15, 2017

Rakesh Kumar

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Munish Puri, Advocate,
for the petitioner.

Mr.V.P.S.Sidhu, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Harit Sharma, Advocate
for respondent No.2.

INDERJIT SINGH, J.

The petitioner has filed this petition under Section 482 Cr.P.C. against respondents State of Punjab and Rajiv Mahajan for quashing the FIR No.26 dated 07.04.2014 under Sections 420, 464, 465 and 466 IPC registered at Police Station Division No.1, Pathankot, District Gurdaspur and all other consequential proceedings arising therefrom.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

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 in the present case FIR has been registered on the basis of the application filed by Rajeev Kumar for

committing cheating/forgery with the complainant in the court by tampering

with judicial file, in which the complainant alleged that the date of the cheque has been tampered with from '05.09.2012' to '08.09.2012' while the cheque was in custody of the Court and this tampering was done during the Court proceedings to benefit the accused.

Learned Chief Judicial Magistrate, Pathankot, after discussing the facts, directed SHO to investigate the matter and to register the FIR after making enquiry as the Court came to the conclusion that there is overwriting on the cheque Ex.C1 and respondent is beneficiary of the same. On the basis of this order dated 12.12.2013 passed by learned CJM, Pathankot, FIR was registered.

At the time of arguments, learned counsel for the petitioner argued that when the document is tampered with in the judicial proceedings while in the custody of the Court, then Section 195(1) (b) (ii) Cr.P.C. applies. I have gone through the above-said provision, which states that no Court shall take cognizance of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

Learned counsel for the petitioner cited judgment passed by Large Bench of the Hon'ble Supreme Court in ***Iqbal Singh Marwah & anr. vs. Meenakshi Marwah & Anr., 2005(2) RCR (Criminal) 178***, in which it is held as under:-

17. Section 190 Cr.P.C. provides that a Magistrate may take cognizance of any offence (a) upon receiving a complaint of facts which constitute such offence, (b) upon a police report of

such facts, and (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. Section 195 Cr.P.C. is a sort of exception to this general provision and creates an embargo upon the power of the Court to take cognizance of certain types of offences enumerated therein. The procedure for filing a complaint by the Court as contemplated by Section 195(1) Cr.P.C. is given in Section 340 Cr.P.C. and sub-section (1) and (2) thereof are being reproduced below:

340. Procedure in cases mentioned in Section 195-(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, -

*(a) record a finding to that effect;
(b) make a complaint thereof in writing;
(c) send it to a Magistrate of the first class having jurisdiction;
(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
(e) bind over any person to appear and give evidence before such Magistrate.*

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195.

Section 341 Cr.P.C. provides for an appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195, against the order refusing to make a complaint or against an order directing filing of a complaint and in such appeal the superior Court may direct withdrawal of the complaint or making of the complaint. Sub-section (2) of Section 343 lays down that when it is brought to the notice of a Magistrate to whom a complaint has been made under Section 340 or 341 that an appeal is pending against the decision arrived at in the judicial proceeding out of which the

matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided.

18. In view of the language used in Section 340 Cr.P.C. the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the Section is conditioned by the words "Court is of opinion that it is expedient in the interest of justice." This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(i)(b). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remedyless. Any interpretation which leads to a situation where a victim of a crime is rendered remedyless, has to be discarded.

25. In view of the discussion made above, we are of the opinion that Sachida Nand Singh has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in custodia legis.

26. In the present case, the will has been produced in the Court subsequently. It is nobody's case that any offence as enumerated in Section 195(b)(ii) was committed in respect to the said will after it had been produced or filed in the Court of District Judge. Therefore, the bar created by Section 195(1)(b)(ii) Cr.P.C. would not come into play and there is no embargo on the power of the Court to take cognizance of the offence on the basis of the complaint filed by the respondents. The view taken by the learned Additional Sessions Judge and the High

Court is perfectly correct and calls for no interference.”

I have gone through the above-cited judgment and in view of the law laid down by the Hon'ble Supreme Court, provision of Section 195 (1) (b) (ii) Cr.P.C. will apply in the present case and the procedure is to be adopted by the Court by making preliminary enquiry under Section 340 Cr.P.C. and then to file complaint. In the present case, no such preliminary enquiry has been conducted and the registration of the FIR by giving direction to the SHO is not as per law. On the same point, learned counsel for the petitioner cited judgment passed by this Court in ***Harbans Singh and others vs. State of Punjab, 1986(2) RCR (Criminal) 481***, in which it is also held that when the forgery was committed while the documents were in custody of Court, then provision of Section 195 (1) (b) (ii) Cr.P.C. will apply.

In view of the above discussion, I find that as the complaint is not filed by the Court, therefore, cognizance cannot be taken under Section 195(1) (b) (ii) Cr.P.C. Cognizance can be taken on the filing of the complaint by the Court by adopting procedure under Section 340 Cr.P.C.

Therefore, registration of the FIR in the present case is not as per law. Finding merit in the present petition, the same is allowed.

FIR No.26 dated 07.04.2014 under Sections 420, 464, 465 and 466 IPC registered at Police Station Division No.1, Pathankot, District Gurdaspur and the subsequent proceedings arising therefrom, are hereby quashed qua the petitioner.

May 15, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes