

248.

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

CRM-M-40552-2016

Date of decision:07.11.2017.

BALBIR SINGH

... Petitioner

versus

STATE OF HARYANA AND ANOTHER

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Rajeev Sharma, Advocate, for
Mr. Sanjay Verma, Advocate,
for the petitioner.

Mr. Sandeep Vashisht, DAG, Haryana,
for respondent No.1.

None for respondent No.2.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing the criminal complaint No.18 dated 14.03.2013 filed under Sections 406, 409, 506 IPC (Annexure P-1) and the summoning order dated 10.06.2013 passed by learned Judicial Magistrate Ist Class, Palwal, vide which, the petitioner was summoned for commission of offence punishable under Section 409 IPC. Challenge has also been laid to the order dated 04.06.2016 passed by learned Additional Sessions Judge (1) Palwal, whereby the revision petition against the order dated 10.06.2013 passed by learned Magistrate was dismissed.

Learned counsel for the petitioner has argued that the FIR No.23 of 2012 under Sections 420, 467, 468, 471 and 120-B IPC was registered against respondent No.2 who was accused in the said FIR. He was taken into custody and during the course of search, an amount of ₹5,170/- and a mobile make Samsung Model 2252 was recovered from him (respondent No.2). Learned counsel refers to Fard Jama Talashi (Annexure P-5) whereby in the presence of witnesses, on the arrest of respondent No.2, an amount of ₹5,170/- was recovered. Even the HC Duli Chand, Police Station Camp Palwal, had signed the receipt of mobile phone and ₹5,170/- on 02.11.2012. He states that the very complaint filed by respondent No.2 is contrary to record more particularly when Annexure P-5 is Fard Jama Talashi of the respondent-accused. Therefore, not only the complaint filed by respondent No.2 under Sections 420, 467, 468, 471, 120-B IPC is liable to be quashed, rather the consequential order dated 10.06.2013 passed by learned Magistrate summoning the petitioner and the order dated 04.06.2016 dismissing the revision petition against the summoning order are also liable to be set aside. He further states that the FIR in question has been quashed by this Court vide order dated 15.12.2015 on the basis of compromise between the parties.

Learned State counsel, on instructions from ASI Kuldeep Singh, does not dispute the fact of quashing the FIR No.23 dated 13.10.2012 by this Court vide order dated 15.12.2015.

I have heard learned counsel for the parties.

There is no one on behalf of respondent No.2 to oppose the present petition. The very basis for filing of complaint by respondent No.2 is referred to in para 8 of the complaint which reads as under:-

“8. That during the course of request, the complainant came to know that the accused Balbir Singh have committed the breach of trust of the complaint. The accused has deposited much lesser amount, which was taken from the complainant at the time of search. The accused has deposited only Rs.3170/- instead of Rs.5170/- and being the reason of depositing of lesser amount, the accused not make any arrangements to return the JAMATALASHI articles as well as amount of Rs.5170/- to the complainant.”

The only ground on which the complaint was filed is that the respondent No.2 had sought RTI information which states that the petitioner had deposited ₹3,170/- and not ₹5,170/-, but this fact is contrary to the document (Annexure P-5) which is Fard Jama Talashi wherein the petitioner had deposited ₹5,170/- as well as the mobile phone make Samsung Model 2252 as recovered from the possession of respondent No.2. Interestingly, the said document has been signed by respondent No.2/complainant as well as HC Duli Chand. Said Duli Chand had endorsed a receipt that he had received a mobile phone make Samsung Model 2252 of black and gray colour as well as ₹5,170/- from the petitioner-Balbir Singh. Therefore, this Court finds that the very complaint filed by respondent No.2 and the consequential order summoning the petitioner and the dismissal of the revision petition are contrary to record.

In view of above, present petition is allowed and the criminal complaint No.18 dated 14.03.2013 filed under Sections 406, 409, 506 IPC (Annexure P-1), summoning order dated 10.06.2013 passed by learned Judicial Magistrate Ist Class, Palwal as well as order dated 04.06.2016 passed by learned Additional Sessions Judge (1) Palwal, are set aside.

(HARI PAL VERMA)
JUDGE

07.11.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No