

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

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CRM-M-18316-2017 (O & M)
Date of Decision:05.12.2018

Hassan Khan

...Petitioner

Versus

Liyakat and others

...Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Sachin Mittal, Advocate
for the petitioner.

MANOJ BAJAJ, J.

The complainant has challenged the order dated 07.04.2017 passed by the learned Additional Sessions Judge, Mewat, whereby the order dated 09.11.2016 passed by the Judicial Magistrate Ist Class, Mewat refusing to issue process against the respondent in a complaint case was upheld.

Complainant had brought a criminal complaint against the accused persons on the allegations that marriage proposal given by the accused for their daughter Safiya for the son of the complainant namely Sakir was accepted and the complainant party had gone to see the bride Safiya with the Mediators i.e. accused Nos.4 and 5 namely Sahid and Hussainddin (respondents No.4 and 5). After acceptance of the proposal, a sum of ₹21,000/- in cash and some gold ornaments were given. Thereafter,

on 24.03.2015 engagement ceremony was performed, wherein complainant

had spent more than ₹1,50,000/-. It is alleged that the marriage was fixed for 29.06.2015 but the accused on 11.08.2015 refused to marry his daughter with the son of the complainant and married his daughter Safiya with the son of his sister. On these broad allegations, the complaint was filed for the offences punishable under Sections 406 and 420 IPC.

In support of the case, the complainant examined three witnesses including himself and the learned Judicial Magistrate Ist Class, Mewat refused to issue the process and dismissed the complaint as no case was made out for commission of the alleged offences under Sections 420, 406, 506 and 120-B IPC.

Learned trial Court had sought for the report under Section 202 Cr.P.C. as well and according to the same, it was found that the suit for recovery is pending between the parties. Besides, the Court has observed that the expenditure incurred by the complainant was on account of his free Will. The Revisional Court has also affirmed the order of the trial Court vide its order dated 07.04.2017.

I have heard learned counsel for the petitioner and with the able assistance I have gone through the impugned orders. It is not in dispute that initially the parties were entering into this proposed matrimonial alliance on account of their free Will and, therefore, the expenditure incurred by the petitioner in those ceremonies cannot be construed as an entrustment of something to the accused by retaining the ownership by the complainant. Likewise, the ingredients of inducement is also missing. The Revisional Court has considered the material on record to return the following finding:-

“A perusal of the abovementioned definition of

'cheating' shows that for making out a case of cheating, the accused persons must have done something or delivered something to the complainant with intention to deceive him and to cause wrongful loss to him and wrongful gain for themselves. However, in the present case, it is clear that the complainant had spent the amount on engagement ceremony with his own free will and he was not forced or induced to spend such money, by the accused persons for any wrongful gain to the accused persons and wrongful loss to the complainant. The complainant had not disputed that the engagement ceremony was solemnized with consent of both the parties. It was only when he refused Rs.2 Lakh demanded by the accused that the dispute had arisen. There is no cogent evidence on the case file to prove the version of complainant. Moreover, even if an amount was spent by the complainant on engagement ceremony, he can get the same recovered from the accused persons by filing civil suit. It has also come on file that that it is the accused persons who had filed a suit for recovery against the complainant and to avoid the said suit, the complainant had filed the present complaint. Thus, the trial court had rightly observed that the matter is of Civil nature and no criminal action is made out. From the preliminary evidence produced by the complainant, the

ingredients of the offence of cheating are not fulfilled.”

This Court finds that the orders passed by the Courts below are based on correct appreciation of the material on record and the possible view has been adopted. No case for interference is made out.

Accordingly, the present petition is dismissed.

05.12.2018

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(MANOJ BAJAJ)
JUDGE

Whether Speaking/Reasoned: Yes/No

Whether Reportable : Yes/No