IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. **CRM-M-5356-2017 (O&M)**

Bimla Devi

… Petitioner

Versus

Deepak Sharma and another

... Respondents

2. **CRM-M-39403-2017 (O&M)**

Bimla Devi

….Petitioner

Versus

Jyoti Gupta and another

….Respondents

Date of Decision:-25.10.2018

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CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

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Present:- Dr. Naresh Kaushik, Advocate
for the petitioner.

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GURVINDER SINGH GILL, J. (Oral)

This order shall dispose of aforesaid two petitions.

The facts in nut-shell are that the complainant-Bimla Devi had filed a complaint under Sections 420, 467, 468, 469, 471, 120-B of Indian Penal Code, 1860 alleging therein that the accused Sunny Gupta and Jyoti Gupta had approached the complainant-Bimla Devi and Kamlesh and had requested them to be guarantors qua a loan to be raised by accused Sunny Gupta and Jyoti Gupta. The said loan was for the purpose of augmenting the business of M/s Hariom Automibiles, of which accused Sunny Gupta was the proprietor. Although the complainants were not agreeable for the same initially but upon persistence of the aforesaid two accused, agreed and accused No.1, namely, Sunny Gupta applied for a loan of ₹40 lakhs from UCO Bank, Kundli, District Sonepat wherein the complainant-Bimla Devi and Kamlesh become guarantors and during the said process a joint plot measuring 480 square yards belonging to complainant and Kamlesh was mortgaged in favour of UCO Bank. The limit of loan was upto ₹40 lakhs. It is alleged by the complainant that subsequently Sunny Gupta and Jyoti Gupta without informing the complainant got the limit extended by ₹10,88,000/- by forging their signatures and while conniving with the bank officials.

The complainant led preliminary evidence and on the basis of which the trial Court chose to summon Sunny Gupta and Jyoti Gupta while accused No.3 and 4 i.e. Deepak Sharma and Manish who were bank officials were not summoned vide impugned order dated 07.07.2017. While one revision petition was filed by the complainant being aggrieved by the trial Court not having summoned the bank officials, another revision petition was filed by the summoned accused namely Sunny Gupta and Jyoti Gupta challenging their summoning. Learned Additional Sessions Judge, Sonepat while dismissing petition filed by complainant in toto, partly accepted the revision petition filed by the accused to the extent that the summoning qua Jyoti Gupta was set aside. Both the aforesaid orders have been challenged by the complainant by filing two different revision petitions.

Since both the impugned orders arise out of the same complaint and pertain to the summoning of the accused, therefore, both of them are being taken up together.

Learned counsel for the petitioner has submitted that although the evidence led by the complainant was clear and unambiguous to the effect that Sunny Gupta and his wife Jyoti Gupta had joined hands and had approached the complainants together requesting them to be guarantors for extension of loan facilities to the accused No.1 and 2 but learned Additional Sessions Judge, Sonepat fell in error in setting aside summoning order mainly on the ground that Jyoti Gupta was not beneficiary and it is only Sunny Gupta who being proprietor of the firm M/s Hari Om Auto Mobiles is the beneficiary.

Learned counsel has further submitted that the trial Court and also Additional Sessions Judge fell in error in holding that no case is made out for summoning bank officials although the extension of the loan limit by ₹10,88,000/- on the basis of forged documents could not have been possible without the active involvement of the bank officials. Learned counsel has further submitted that the complainant had also led evidence in the shape of

Handwriting Expert from which it is clearly evident that the signatures of complainants were forged when accused Sunny Gupta applied for extension of the loan limit.

I have considered aforesaid submissions raised on behalf the petitioner. As far as the submissions regarding summoning of Jyoti Gupta are concerned, I find that although the complainant alleged that both Sunny Gupta and Jyoti Gupta had approached the complainant together when they requested the complainant to be guarantor so as to enable them to raise loan of ₹40 lakhs, but I find that as far as the said process of raising of the loan in first instance is concerned, no criminality can be attributed to Jyoti Gupta. The main allegations pertain to the increase of loan limit by ₹10,88,000/- on the basis of forged documents. There is nothing to suggest that it was Jyoti Gupta, who had forged the signatures. In any case, it is Sunny Gupta who is proprietor of M/s Hari Om Auto Mobile for which, as per complainant herself, the loan had been raised. In these circumstances I do not find any infirmity in the impugned order passed by learned Additional Sessions Judge, Sonepat whereby the summoning of Jyoti Gupta has been set aside.

As far as the matter pertaining to the summoning of the bank officials namely Deepak Sharma and Manish is concerned, it was for the complainant to have led specific evidence at the stage of preliminary evidence that the loan limit in question has been enhanced only on account of active participation of bank officials or on account of some undue benefits extended by them for the said purpose. It was required that the complainant led some evidence to show as to what was the standard procedure in case of extension of loan limits which has not been adhered to in the present case so as to extend undue benefit to accused Sunny Gupta. In the absence of any specific evidence in this regard, no infirmity can be found in the impugned order whereby the learned Additional Chief Judicial Magistrate, Sonepat chose not to summon bank officials. In view of the aforesaid discussion, there is no infirmity in either of the impugned orders and both are hereby affirmed.

It is however, made clear that in case during the course of recording evidence of the complainant, some evidence surfaces which shows the complicity of the bank officials, it will be open to the complainant to move an application under Section 319 Cr.P.C. so as to summon the aforesaid bank officials to face trial along with the remaining accused.

(GURVINDER SINGH GILL)
JUDGE

25.10.2018
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No