

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.12590-2018 (O&M)

Date of decision : 23.01.2019

Om Parkash Kanwal

..... Petitioner

Versus

Smt.Krishna Kanwal

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr.Gulzar Mohd, Advocate for the petitioner
Mr.Gurinder Singh Brar, Advocate for the respondent

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (Oral)

Petitioner has moved this Court under Section 482 Cr.P.C. for quashing of order dated 16.9.2017 (Annexure P-6) passed by learned Additional Sessions Judge, Fatehgarh Sahib in revision vide which order dated 16.12.2013 passed by learned Sub Divisional Judicial Magistrate, Amloh, dismissing complaint was set aside. Learned Additional Sessions Judge ordered summoning of the petitioner for offence under Sections 467, 468, 474, 420 IPC.

I have heard learned counsel for the parties and have also carefully gone through the file.

Admittedly, the complainant is mother of the accused. It is alleged in the complaint that she is now residing at Ahmedabad. Earlier

from 8.11.2008 to 30.11.2008, she was residing at Sirhind. Complaint was filed through power of attorney, stating that his son Om Parkash Kanwal – respondent and his brother Parveen Parkash are the partners of M/s Aggarwal Steel Rolling Mills at Mandi Gobindgarh.. They have taken a loan from Punjab National Bank, Sirhind Mandi against the title deeds of the complainant i.e. No.4073 dated 26.2.1981, 3491 dated 29.12.1980 and 3651 dated 9.1.1991. The sale deeds were kept as security with the banks. Accused have stated to repaid the loan. Dispute arose between husband of the complainant and the accused. Anand Mohan, nephew of the complainant showed her some documents dated 5.9.2007 re-dated as 23.2.2008, written to the Senior Manager, Punjab National Bank, allegedly bearing signatures of the complainant, for releasing of the said sale deeds, as the entire payment has been made to the concerned bank. Thus, the sale deeds were obtained by the accused by forging signatures of the complainant, her mother.

Before trial Court, the Bank Manager, Subhash Chander was produced, who stated that sale deeds were deposited in the bank and said sale deeds are still with the bank. Complainant also produced Naveen Gupta, Handwriting Expert, who compared her signatures on a letter with her signatures and submitted the report that both the signatures do not tally. She also examined Anand Mohan and herself appeared in the witness box.

Learned Magistrate while examining the evidence, did not rely upon the evidence of the expert stating that the complainant did not given her specimen signatures in the Court or got it compared with her standard signatures. She got compared her signatures only with one letter written by

the complainant which was brought on record as Annexure A3. Learned Magistrate, while dismissing the complaint made the following observations:-

Thus, in view of the above discussion made above, no ground is made out for summoning the accused for firstly Ex.PW2/A the document alleged to have been bearing the forged signatures of the complainant, no where reveals as to who has written the same. In other words it cannot be inferred that it was written by the accused. Secondly, Ex.PW2/A the word 'we' i.e. submissions to the Bank Manager Sirhind has been made by two or more person i.e. probable the partners but the said document not bearing the seal of the firm or the name of the person who have given their signatures and rather the word 'Senior Manager' is written at the extreme right bottom of Ex.PW2/A which further makes the matter fishy than clear. Thirdly, as per the version of the complaint, the partners of the firm had committed fraud on her but there is no justification as to why she has not impleaded the firm or all the partners of the firm as accused. Fourthly, the body part of the complaint reveals that the present complaint has been preferred for some family feud and this fact is insufficient in proving the forgery especially in the circumstances when no advantage has been taken by the accused or any person on his behalf for the release of the sale deeds. It is further pertinent to mention here that even now the sale deeds are in the

possession of the bank at present also. Finally, the Court has no reason to believe as to why the complainant has preferred this complaint through her attorney Ravinder Mohan Chopra despite the fact that appropriate jurisdiction to prefer this complaint was at Sirhind. Moreover, she and the accused are the resident of Gujrat, so she could have preferred it at Gujrat. Finally it appears that the complaint is based on the hear say evidence of Anand Mohan, who seems is not sure about the document being prepared by the accused or any person on behalf of his firm. This version of the complainant is otherwise hear say one for the document no where reveals that the said Ex.PW2/A being prepared by the accused. In view of above discussion, no ground is made out for summoning the accused and the complainant is dismissed. File be consigned to record room.

Aggrieved by the said order, the complainant went in revision.

Learned Additional Sessions Judge was of the view that at the preliminary stage, the matter was to be examined from very narrow compass. Therefore, only the prima-facie evidence was to be seen. Expert evidence was sufficient to pass the summoning order. Accordingly, impugned order was set aside and the accused were ordered to be summoned under Sections 467, 468, 474, 420 IPC.

After going through the file, I am of the view that order passed by the learned Additional Sessions Judge, Fatehgarh Sahib is not sustainable in the eyes of law. It is not the law that the Magistrate without

applying the mind accept the preliminary evidence led in the complaint as gospel truth. Magistrate is competent to critically examine the preliminary evidence to come to a particular conclusion. In this case, dispute is between mother and the son and the Magistrate has observed that the reason for complaint are different. The sale deeds are still with the bank. Mother claims that accused signed the letter to the bank to withdraw the sale deed which were in fact never released by the bank. Science of hand writing is weak science. Therefore, if two signatures are made at different time, these are likely to differ. Therefore, the observations of the Court that complainant should have given specimen signatures in the Court and got it compared with her standard signatures of dependable nature, could not be brushed aside lightly. Further, though it is alleged that the accused presented the letter before the Manager, but there is no evidence that he had signed that letter. Learned Magistrate has also referred to the contents of the letter to shows that probably, it was written as partners. Out of two sons, who were partners in the firm, complainant decided to sue only one son. Admittedly, there is a dispute between husband of the complainant with his son Om Parkash Kanwal. Therefore, Magistrate rightly took into consideration that the complaint has been filed to settle the scores with one son. The Magistrate was competent to critically examine the evidence. He was not supposed to blindly believed whatever is stated in the statements. Therefore, in my view learned Magistrate, rightly appreciated the evidence and found that there are not sufficient grounds to summon the accused.

Accordingly, impugned order dated 16.9.2017 (Annexure P-6)

passed by learned Additional Sessions Judge, Fatehgarh Sahib is set aside

and order dated 16.12.2013 passed by learned Sub Divisional Judicial Magistrate, Amloh is restored.

Petition is accordingly allowed.

23.01.2019
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	No