

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(118)

CRM No. M-17377 of 2021 (O&M)

Date of Decision : 31.08.2021

Rajender Pal Singh and another

...Petitioners

Versus

The State of Haryana and another

...Respondents

(through video conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Arav Gupta, Advocate for the petitioners.

Mr. Gaurav Bansal, Assistant Advocate General, Haryana.
(keeping in view advance copy given)

Harsimran Singh Sethi J. (Oral)

CRM-12390-2021

Application is allowed, as prayed for.

CRM No. M-17377-2021

The present petition has been filed challenging the order dated 17.02.2021 (Annexure P-3) passed by learned Additional Sessions Judge, Faridabad, whereby order dated 14.05.2018 (Annexure P-2) passed by learned Judicial Magistrate First Class, Faridabad by which Criminal Complaint No. 147, dated 01.08.2014, registered under Sections 420, 468, 484, 120-B IPC filed by respondent No. 2 was dismissed, has been set-aside and the case had been remanded back to the Judicial Magistrate First Class, Faridabad for fresh adjudication.

Learned counsel for the petitioner submits that order dated 17.02.2021 (Annexure P-3) passed by learned Additional Sessions Judge,

Faridabad is bad in law. Learned counsel for the petitioner argues that once a finding has been returned that the signatures appended on the Dissolution Deed dated 16.12.2005 (Annexure P-5) are of respondent No. 2, order passed by learned Additional Sessions Judge setting-aside the order passed by learned Judicial Magistrate Ist Class, Faridabad so as to pass a fresh order after receiving the FSL report, should not have been passed. Learned counsel for the petitioner further argues that no complaint could have been filed by respondent No. 2 by disputing the Dissolution Deed dated 16.12.2005 (Annexure P-5) by terming the same as a fraud and not executed by her.

I have heard learned counsel for the petitioners and have gone through the record with his able assistance.

In the order dated 14.05.2018 (Annexure P-2) passed by the Judicial Magistrate Ist Class, Faridabad by which the complaint filed by respondent No. 2 was dismissed being without merit, the findings were recorded in para 7, which are as under :-

“7. In view of the statements of the accused recorded before the police in the investigation under Section 202 Cr.P.C. as well as the own admission of complainant that she taken the amount from accused on monthly basis for maintenance of children, it makes the Court to raise the presumption regarding the truthfulness of the said dissolution deed dated 16.12.2005. I perused the signatures of complainant present on the complaint itself and on the affidavit attached alongwith the complaint. On comparison of these signatures with the signatures on the copy of dissolution deed in question, I am of the opinion that the questioned signatures on the dissolution deed and signatures present on the complaint and the affidavit are freely written and do not show any evidence of difference in their line and quality and show

natural variations which are generally observed in the genuine signatures of an individual written over a period of time under varying circumstances and are inter-se consistent. The report of handwriting expert tendered by the complainant is not reliable as neither the expert has been examined in the case by the complainant nor the comparison was made properly. The said expert made the comparison of disputed signatures with the specimen signatures of complainant. I perused the specimen signatures which are even not consistent inter-se. So it suggests that the signatures are not written freely by the complainant. The testimony of complainant is not corroborated with the statement of CW-2 who goes to the extent and deposed that A.P. Tools was the sole proprietorship of deceased Jasvinder Singh. There is no proof of sole ownership of deceased Jasvinder Singh as deposed by him. In totality of these circumstances, I found no merits in the present complaint and same is hereby dismissed. File be consigned to record room after due compliance.”

A bare perusal of the above would show that though the Dissolution Deed dated 16.12.2005 (Annexure P-5) was sent to the FSL for verifying its genuineness including the signatures of respondent No. 2, but the Judicial Magistrate Ist Class, Faridabad returned the finding about the genuineness of signatures of respondent No. 2 by comparing the signatures of respondent No. 2 on the complaint with that on the affidavit with the naked eye. The appellate Court found the said finding not in accordance with law, especially, when the Dissolution Deed dated 16.12.2005 (Annexure P-5) was sent to the FSL for comparing the signatures of respondent No. 2. No illegality has been pointed out in the impugned order dated 17.02.2021 (Annexure P-3) by which the learned trial Court has been directed to give finding after receipt of the FSL report. Learned counsel for the petitioner has not been able to explain as to how, a Judicial Officer, by

examining two documents with naked eye, can return finding of a fact, which is the duty of forensics and which is to be based on technicalities involved in examining two signatures so as to return a finding.

Learned counsel for the petitioner has argued that the complaint itself was not maintainable on the basis of the disputed Dissolution Deed dated 16.12.2005 (Annexure P-5) and places reliance upon a judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 87 of 2020 titled as ***Padum Kumar Vs. State of Uttar Pradesh***, decided on 14.01.2020.

This argument also cannot be accepted at this stage for the reason that the same was never raised at any stage by the petitioners either before the trial Court or before the Lower Appellate Court. Once, the argument has not been raised, the order so passed, cannot be challenged upon the said argument. Even otherwise, once the matter has been remanded back by the learned Additional Sessions Judge, Faridabad vide impugned order dated 17.02.2021 (Annexure P-3) to the trial Court to decide afresh, petitioners are at liberty to raise all the arguments available to them in their defence including the maintainability of the complaint before the trial Court.

Keeping in view the above, no ground is made out to interfere with the impugned order dated 17.02.2021 (Annexure P-3).

Dismissed.

August 31, 2021
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No