

In the High Court of Punjab and Haryana at Chandigarh

**CRM-M No. 50399 of 2021
Date of Decision: 02.12.2021**

Harinderjeet Singh and anotherPetitioners

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. N.K.Manchanda, Advocate
for the petitioners.

Mr. Balbir Singh Sewak, Addl. A.G., Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. FIR bearing No. 176 of 21.8.2021, is registered at Police Station Sirhind, District Fatehgarh Sahib, therein offences constituted under Sections 419, 420, 465, 467, 468, 471, 120-B IPC, are embodied. The allegation against the petitioners is that the signatures, of the complainant, as carried in the agreement to sell concerned, as, became purportedly drawn amongst them, are forged.

2. The bail applicants-petitioners, instituted a suit for specific performance against the complainant in respect of the agreement to sell concerned, as became purportedly drawn amongst the bail petitioners, and, the complainant.

3. Be that as it may, since the learned counsel for the bail applicants-petitioners, with the completest authority, has made a submission before this Court, that the original of the agreement to sell concerned, as purportedly drawn amongst the bail petitioners, and, the complainant, is

appended along with the afore complaint, claiming hence the relief of specific performance of contract. Therefore, if the afore civil suit is subjudice before the learned Civil Judge concerned, and, after the filing of a written statement by the complainant to the complaint (supra), rather the relevant contest appertaining to the validity of the signatures of the complainant, as occurring on the agreement to sell concerned, would sequel the framing of issues in respect thereof. Moreover, when for resting a valid finding on the issue(s) (supra), an application, as may become, preferred before him, under Section 45 of the Indian Evidence Act, the Magistrate concerned, the latter may seek an apposite opinion, upon, the apposite document, from the hand writing expert concerned. Consequently, prima facie, the FIR (supra), carrying allegations (supra), is hence premature at this stage, nor any direction can be made upon the Civil Judge concerned, to release from the records concerned, the relevant document(s) to the investigating officer concerned, to enable him to seek from the expert concerned, after the latter making the apposite comparison, hence an apposite opinion from the hand writing expert. The afore inference is well rested, upon, the apt hereafter (underlined) provisions carried in Section 195 of the Cr.P.C., the relevant provisions whereof, are extracted hereinafter.

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or

sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court in situate:

Provided that-(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”

5. The preponderant reason(s) being that the relief (supra) in the civil suit concerned, can be strived to be negated, on, allegations (supra). Moreover, obviously twin remedies qua similar allegations cannot be resorted, moreover, with the statutory embargo (supra) against the taking of cognizance, and, concomitant assumption of jurisdiction by the criminal Court of competent jurisdiction, vis-a-vis document (supra), which rather exists on records of the civil Court concerned. The further sequel of the afore drawn inference is that, at this stage there cannot be any direction to the Civil Court concerned, to deliver the original of the agreement to sell, as lying on its records, hence to the investigating officer concerned, for the relevant purpose (supra). Therefore, when only the disputed signatures of the complainant, as occurring on the original of the agreement to sell concerned, can be sent to the Hand Writing Expert, for theirs being compared along with his admitted/standard handwritings, and, or being compared with the specimen handwritings of, the bail petitioners. However, when for reasons (supra) this Court cannot proceed to make an order upon

the Civil Judge concerned, to hand over the original of the agreement to sell, concerned to the investigating officer for facilitating, the latter to carry ahead the investigations, inasmuch, as his eliciting the cooperation of the bail applicants-petitioners, for, the afore purpose. Contrarily, when the only remedy available to the aggrieved complainant, is through his making a motion, under the provisions of Section 45 of the Indian Evidence Act, rather before the learned trial Judge concerned, before whom, the afore civil suit is pending, rather for sending the disputed signatures of the complainant, as occurring on the original of the agreement to sell concerned, along with the admitted/standard handwritings, of the complainant, besides with the specimen signatures of the bail petitioners, so as to enable the hand writing expert concerned, to render an opinion, with respect to the validity of the signatures of the complainant, as held in the agreement to sell. In summa, at this stage, it appears that there cannot be any direction, upon, the bail petitioners to join the investigations, as the cooperation of the bail applicants-petitioners to the investigating officer, is limited, to determine, the authorship of the purportedly fictitious signatures of the complainant, on the agreement to sell, and, as allegedly made by the bail applicants-petitioners, and, rather with the afore legal obstacles, besetting this Court to make the relevant order. Therefore, no direction can be passed by this Court to the investigating officer to make the afore endeavour(s).

6. Consequently, as prayed for by the learned counsel for the petitioners, he is permitted to withdraw the present petition. Accordingly, the petition is dismissed as withdrawn.

7. However, liberty is reserved, as prayed for, to the learned

counsel for the petitioners to make a re-motion before the Court concerned, for any relevant purpose, as deemed fit.

8. However, in case the investigating officer deems it fit to arrest the petitioners, he may not do so, without issuing seven days notice, upon, them.

(SURESHWAR THAKUR)
JUDGE

December 02, 2021
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes