

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

Sr. No.115

CRM-M-41304-2017 (O&M)
Date of decision : 7.12.2022

State of UT, Chandigarh

.....Petitioner(s)

VERSUS

Rajat Gupta and another

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.JS Toor, Addl.PP for UT, Chandigarh

Mr.Sumeet Goel, Sr.Advocate with
Mr.Sameer Rathore, Advocate for respondent No.1.

Mr.SS Narula, Advocate for respondent No.2.

AMAN CHAUDHARY, J.

Prayer in present petition filed under Section 482 Cr.P.C. is for setting aside the order dated 4.10.2016, Annexure P-2, passed by learned Judicial Magistrate, 1st Class, Chandigarh in Criminal Complaint No.3298 of 2015, titled as “Rajat Gupta vs. Tanvi Garg and another” and order dated 10.5.2017, Annexure P-3, passed by learned Additional Sessions Judge, Chandigarh.

Facts in brief necessary for adjudication of the present petition are that the complainant filed a complaint alleging therein that a blank signed cheque No.152923 of UCO Bank of his daughter, was stolen by the respondent, who presented the same in the Bank after filling in his own name as the payee alongwith other particulars. On the basis whereof, FIR No.375 dated 31.7.2015, under Section 380 IPC was registered at Police

Station Sector 34, Chandigarh against him.

Learned counsel for the petitioner states that the Courts below have wrongly dismissed the application filed by the Public Prosecutor, UT, Chandigarh, for providing the original cheque lying in the file of criminal complaint filed under Section 138 of the Negotiable Instruments Act, 1881 pending before the JMIC, Chandigarh, which was required for comparing with specimen handwriting of the respondent, inasmuch as the allegations levelled in the FIR were that the same was stolen by him. It is his further submission that the investigation of the case is still going on and the same cannot be completed in absence thereof.

Learned Senior counsel for respondent No.1 submits that the investigation in the matter has already been completed and four PWs have been examined, which has been duly noticed by the Courts below and accordingly, the application has been rightly dismissed. Thus, he prays for the dismissal of the present petition.

Heard.

It is apposite to refer to the order dated 4.10.2016, passed by learned Judicial Magistrate, 1st Class, Chandigarh, the relevant of which reads thus:-

“Having heard the learned counsel for the parties and after going through the case file thoroughly and very carefully, it is observed that by way of present application applicant sought release of original cheque bearing no.152923 on the ground that handwriting as mentioned in the cheque in question is to be compared with specimen handwriting of accused in case F.I.R. bearing No.375, dated 31.07.2015. Admittedly, in case

F.I.R. bearing No.375, dated 31.07.2015, registered under Section 380 I.P.C., P.S. Sector-34, Chandigarh, investigation has already been completed and challan has also been presented before the Court on 08.10.2015 to put the accused on trial. Applicant has failed to produce on record any document to show that investigation is still pending in the said case pertaining to F.I.R. bearing No.375, dated 31.07.2015. Further, trial has also been commenced in said case and four prosecution witnesses have been examined by the prosecution, therefore, it cannot be said that investigation in the said case is still pending. The present case titled as Rajat Gupta versus Tanvi Garg is criminal complaint filed by complainant under Section 138 of N.I. Act on the basis of dishonour of cheque bearing No.152923. As such, cheque in question bearing No.152923 is a material evidence to decide the present case. Therefore, no ground is made out to release the cheque in question in favour of applicant.”

Likewise, the operative part of the order dated 10.5.2017, passed by Additional Sessions Judge dismissing the revision petition filed by the petitioner, reads thus:

“7. The brief point that is involved is that revisionist has sought the release of original cheque bearing no. 152923 dated 2.6.2015 on the pretext that the same is required for obtaining specimen handwriting in FIR No. 375 dated 31.7.2015. The learned trial Court has dismissed the application stating that the investigation has been completed in the other matter and the trial has been commenced. Resultantly, it cannot be said that the investigation is pending. Resultantly, the application is declined stating that no ground is made out to release the

cheque in question in favour of the applicant. This court subscribes the same view point.

8. Otherwise, also if expert has to examine the document, then the best possible course is that the expert can apply to the court concerned for inspection of the file as per rules. The document cannot be given to the expert for 3 4 State vs. Rajat Gupta examination. The learned trial court has rightly not handed over the document presumably to avoid any tampering with the document outside. With the liberty to inspect the file and examination of the document by the expert before the Ahlmad as per rules, the present revision stands disposed of having been dismissed.”

It is axiomatic from the orders passed by the Courts below that after the completion of investigation, the final report had been presented in the trial Court, whereafter, four prosecution witnesses had also been examined, in wake of which, the assertion made to the effect that investigation was still continuing remained unsubstantiated, even before this Court. Such be the situation, the Courts below have rightly dismissed the application, however, it emanates from the order of Additional Sessions Judge, that still a liberty has already been granted to the petitioner to inspect the file and examination of document by the expert before the Ahlmad as per Rules.

The petitioner having already availed of its remedy by filing a criminal revision petition, though unsuccessfully before the learned Additional Sessions Judge, Chandigarh, this petition would amount to a second revision petition under the guise of petition under Section 482 Cr.P.C., as per Section 397(3) Cr.P.C., is the view of this Court, which

finds support from the judgment in the case of **Krishnan vs. Krishnaveni and another** 1997(4) SCC 241, by Hon'ble The Supreme Court of India, wherein it was held that in appropriate cases in order to meet the ends of justice or to prevent abuse of the process, the High Court is preserved with inherent power, which should be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings.

Hon'ble The Supreme Court of India had in the case of **Shakuntala Devi and others vs. Chamru Mahto and another**, 2009(2) SCC (Cri) 8, held thus:

"24. It is well settled that the object of the introduction of sub-section (3) in Section 397 was to prevent a second revision so as to avoid frivolous litigation, but, at the same time, the doors to the High Court to a litigant who had lost before the Sessions Judge were not completely closed and in special cases the bar under Section 397(3) could be lifted. In other words, the power of the High Court to entertain a petition under Section 482, was not subject to the prohibition under sub-section (3) of Section 397 of the Code, and was capable of being invoked in appropriate cases. Mr Sanyal's contention that there was a complete bar under Section 397(3) of the Code debarring the High Court from entertaining an application under Section 482 thereof does not, therefore, commend itself to us."

There is no special circumstance in this case, which could persuade this Court to grant relief in the present case, in exercise of the inherent power under Section 482 Cr.P.C.

In view of the foregoing discussion, this Court finds no illegality or perversity in the orders passed by the Courts below warranting any intervention. As such, the present petition sans merit and is hereby dismissed.

7.12.2022
gsv

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No