

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

259

CRM-33392-2018 in
CRM-M-38416-2018(O&M)
Date of decision: 13.09.2023

Luxmi Sharma

...Petitioner

Versus

Naresh Kumar and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Ajit Kumar Sharma, Advocate for
Mr.Ram Darshan Yadav, Advocate for the petitioner

AMAN CHAUDHARY, J.

CRM-33392-2018

For the reasons mentioned in the application, the same is allowed.

Main case is restored to its original number and taken on board today
itself.

CRM-M-38416-2018

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of judgment dated 18.02.2015 passed by learned Additional Chief Judicial Magistrate, Rewari, dismissing the revision petition filed against the order of Additional Chief Judicial Magistrate, Rewari, whereby, in complaint No.86 RT/14.09.2005, the accused-respondents were acquitted.
2. Brief facts that emerge from the complaint are that the complainant, a retired teacher, went to PNB, Kund on 23.03.2003, along with one Des Raj, where the accused persons were also present, for getting a mistake rectified in her

account. Allegedly, she was offered tea with some intoxicant added in it and under the influence of the same, certain documents like FDR, Kisan Vikas Patra, etc. were gotten signed by her and pass books and revolver were snatched from her by the accused. She having regained consciousness, found herself at her home the next day. The complainant was informed that all her FDRs had been encashed and her account number was also changed. After about 3-4 months, she approached the bank, where the officials stated that there was no amount in the account. Hence, the complaint was instituted by her, having evoked no response from the police authorities.

3. In order to prove the case against the accused, the complainant examined herself. Thereafter, the accused caused an appearance in the Court and were released on bail. The complainant further examined herself and one more witness in pre-charge evidence.

4. The learned trial Court after carefully evaluating the evidence on record and hearing the counsel of the parties came to the conclusion that no case was made out against the accused-respondents and thereby discharged them.

5. Feeling aggrieved by this order, the petitioner had preferred a revision petition against the aforesaid order before Additional Sessions Judge, Rewari, and the same was dismissed vide order dated 15.03.2018, finding no illegality or irregularity in the same.

6. Hence the present petition.

7. Learned counsel contends that both the Courts below had grossly erred in evaluating the evidence on record as also the statements of the complainant and PW-1, Vivek Mudgil, which proved the offences under Sections

468 and 120 IPC being made out against the accused-respondents and thus, wrongly acquitted them.

8. Heard and perused the file.

9. Before considering the case at hand, a reference is required to be made to the order passed by the trial Court discharging the respondents by holding thus:

“9. In the present complaint, complainant was required to prove the factum that accused have got forged the papers related with her bank account and then took away the amount belonged to her and misappropriated it. To prove these assertions, she has tendered several photo copy of the bank account. Learned counsel for the complainant drew my attention towards the number of the account which is existing in the name of complainant and the same account number in the name of two other persons. Merely pointing out this fact does not establish that accused have got changed the name for their own benefit. Moreover, no original pass book or statement of accounts or documents have been tendered to establish the factum of forgery committed by the accused. The story put forward by the complainant also not appears to be true as she has stated that she on being asked by Desh Raj went to PNB Kund on 23.3.2003 which was Sunday. Admittedly, complainant is retired teacher and knows three languages. It is not her case that by taking undue advantage of her illiteracy accused persons have got her signatures on the papers. As per complainant accused had given some intoxicated substance under influence of which she put her signatures. There is no prima facie evidence available on file that on that day she became unconscious. Although one photocopy of prescription has been shown during the course of arguments but the medicines mentioned in the prescription are of Asthma. It is nowhere mentioned that patient was unconscious at that time. The witness examined by complainant Vivek PW2 has stated that complainant came into senses after three days and he has not gone with her to Delhi. It is very strange that he being close relative of complainant did not accompany her when she visited the hospital. No person from the vicinity has been examined to show that she become unconscious on that day due to act and conduct of the accused persons. Moreover, it is quite unbelievable to presume factum that all the managers and bank officials gathered at one place and acted in such manner as alleged as complainant. There is no evidence of forgery

committed by accused person. No handwriting or finger print expert report is available on file that accused persons added or deleted the entries in the pass book of complainant. Hence in these circumstances, this court has left with no option except to discharge the accused persons..."

10. The appellate Court in the revision filed by the complainant-petitioner, had recorded the following findings:

“ 11. The complaint filed by the complainant on the allegations that accused persons have got forged his account in various banks and misappropriated her money. On finding preliminary evidence, accused were summoned under section 468 IPC. The complainant was required to prove the factum that accused have got forged the papers related with her bank account and then took away the amount belonged to her and misappropriated it. To prove these assertions, she has tendered several photo copy of the bank account. Moreover, no original pass book or statement of accounts or documents have been tendered to establish the factum of forgery committed by the accused. The story put forward by the complainant also not appears to be true as she has stated that she on being asked by Desh Raj went to PNB Kund on 23.3.2003 which was Sunday. Admittedly, complainant is retired teacher and knows three languages. It is not her case that by taking undue advantage of her illiteracy accused persons have got her signatures on the papers. As per complainant accused had given some intoxicated substance under influence of which she put her signatures. There is no prima-facie evidence available on file that on that day she became unconscious. A photocopy of prescription is placed on the case file which reveals that the medicines mentioned in the prescription are of Asthma. It is no where mentioned that patient was unconscious at that time. The witness examined by complainant Vivek PW2 has stated that complainant came into senses after three days and he has not gone with her to Delhi. It is very strange that he being close relative of complainant did not accompany her when she visited the hospital. No person from the vicinity has been examined to show that she become unconscious on that day due to act and conduct of the accused persons. Moreover, it is quite unbelievable to presume factum that all the managers and bank officials gathered at one place and acted in such manner as alleged as complainant. There is no evidence of forgery committed by accused person. No handwriting or finger print expert report is available on file that accused persons added or deleted the entries in the pass book of complainant.

12. In view of the above discussion, this court is of the view

that there is no illegality or irregularity in the order dated 18.02.2015 passed by learned trial court. Learned trial court has rightly discharged the accused/respondents.”

11. The Courts below after meticulous examination of the evidence and statements of witnesses, have rightly arrived at the conclusion as the complainant was unable to establish the guilt of the accused-respondents under 468 IPC, on account of failure to bring forward any relevant document such as original passbook or statement of accounts, indicating an act of forgery, no eye-witness or any medical report report to prove her unconsciousness on the day of alleged occurrence and absence of any expert report of the alterations allegedly made in the passbook. No glaring defect in the procedure or any patent error has shown to be committed, which may have resulted in flagrant of miscarriage of justice. There is not even an iota of evidence against the respondents, which would lead to their conviction under Section 468 IPC and a perusal of the judgments show that no other view is possible.

12. The petitioner in the present case has otherwise already availed of the remedy of filing a criminal revision petition, though unsuccessfully before the Additional Sessions Judge, thus, 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, passed by Hon'ble The Supreme Court, 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.

13. The High Court can entertain a petition under Section 482 Cr.P.C. when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when it is felt that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court. [See: **Kailash Verma vs. Punjab State Civil Supplies Corpn.**, (2005) 2 SCC 571]

14. Hon'ble The Supreme Court 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.”

15. There is no presence of any special circumstances in the present case, for this Court to be persuaded to exercise its inherent power under Section 482 CrPC and accede to the prayer of the petitioner.

16. Applying the exposition of law to the facts and circumstances of the present case, this Court finds no illegality or perversity in the impugned orders whereby the petitioner had been rightly discharged, thus the same do not call for any intervention. As such, the present petition is dismissed being devoid of merit.

17. Nothing herein shall be treated as an expression on the merits of the case and the trial Court shall proceed and decide the matter, independent of any observation made in the present judgment, which was only for the purpose of adjudicating the present petition.

(AMAN CHAUDHARY)
JUDGE

September 13, 2023
M.Kamra

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No