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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-3605-2019 (O&M)

Date of decision: August 07, 2023

Gianwati and another

....Appellants

versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr.Aakash Vashisth, Advocate for appellants.

Mr. Vikas Bhardwaj, AAG, Haryana.

ARUN MONGA, J. (ORAL)

Present appeal has been filed challenging the orders dated 01.03.2018 and 06.03.2018 passed by learned Sessions Judge, Faridabad, vide which Suresh Sharma (Reader of Court) has been authorized to file complaint against appellants, as they are liable to be set aside by dismissing the complaint dated 07.12.2017 under Section 340 Cr.P.C. (Annexure P-1).

2. Succinct facts of the present case, as narrated in the grounds of appeal are that due to motor accidental death of one Dhan Singh, MACT petition no.42 of 2005 titled as “**Smt. Gianwati & ors. Vs. Hari Chand and ors.**” was filed by wife, daughter and mother of deceased for claiming compensation before Motor Accident Claims Tribunal, Faridabad (Ld. Tribunal). Learned Tribunal awarded total compensation to the tune of Rs.4,00,000/- with 9% interest. Thereafter, appeal for enhancement was also filed before the Hon'ble High court, in which compensation was enhanced upto Rs.12.85,000/- vide order dated 17.11.2015. Thereupon, insurance company also deposited Rs.15,82,651/-(inclusive interest) on 04.03.2016. Out of the said amount of compensation, Rs.3,16,730/- fell to the share Smt. Nangi i.e., respondent no.2. She moved a complaint before learned Tribunal alleging therein that appellant no.1 had withdrawn whole compensation amount including share of respondent no.2 by

impersonating her through appellant no.2 and prayed before the learned Tribunal to initiate legal proceedings against appellants. Consequent thereupon, learned Sessions Judge vide impugned order dated 01.03.2018 found *prima facie* case against appellants and gave the conclusion that proceeding u/s 340 Cr.P.C. should be initiated. Vide order dated 06.03.2018, learned Sessions Judge directed and authorized his Reader namely Suresh Sharma to file complaint u/s 340 Cr.P.C. Thereafter, upon orders of learned Court complaint was moved by Reader of the court of Learned Additional District Judge, Faridabad, alleging commission of offence of forgery, cheating and fraud by appellants. Thus, proceedings of said complaint are pending before learned ACJM, Faridabad. He further submits that respondent no.2 (Smt.Nangi) also lodged an FIR No.846 dated 20.08.2018 u/s 120-B, 406, 420, 467, 468, 471, 506 IPC, Police Station Faridabad Central, District Faridabad, against both the appellants, alleging the same story of impersonation.

2.1. Learned counsel for the appellants further submits that after registration of FIR, both the private parties mutually settled and compromised the issue with each other. On behalf of appellant no.1 formalities of compromise were completed by her daughter namely Jyoti and on the basis of compromise appellants filed a quashing petition before this Hon'ble High Court. Resultantly, the said FIR was quashed vide order dated 05.04.2019.

2.2. Learned counsel submits that the main grievance of Smt.Nangi i.e., respondent no.2 has already been satisfied and thereupon only compromise was effected. Now looking at the allegations of pending proceedings arising from complaint/application dated 07.12.17 (P-1) (which are yet to be proved), it would be falling under shadow of doubt as to whether criminal proceedings should continue there or not and the impugned orders passed by learned Court below are not legally sustainable and deserves to be quashed.

2.3. Learned counsel for the appellants further submits that it would be only 'Court' i.e., Presiding Officer to initiate criminal proceedings. Moreover, there was no inquiry conducted to verify the offence. He further relies upon a judgment of this court in

B.K.Uppal vs. State of Punjab 2015 (1) RCR (CrI.) 338 to contend that which there is no power or authorization bestowed upon Ahlmad of the Court to act as ‘Officer of the Court’ so as to launch proceedings.

3. The impugned orders dated 01.03.2019 and 06.03.2018 are being reproduced, which are as under: -

Order dated 01.03.20218

*“Present: Applicant Smt.Nangi in person with counsel Sh.Y.D.Sharma, Adv.
Respondent No.2 Smt. Sheela in person.*

Respondent no.2 has appeared accompanied by his son and has made a statement submitting that she was sbrought to the Court by Gianwati and presented her as Nangi so as to withdraw the amount which was pertaining to Nangi. Detailed statement of Sheela has been recorded. She has been indentified by her son Mukesh.

Notice to respondent Gianwati sent through registered post received back unserved with the report that she is absconding.

After going through the entire record and hearing learned counsel for the applicant, I find that prima-facie case is made out against respondents and a complaint is liable to be filed in the Court of learned Area Magistrate by following the procedure u/s 340 Cr.P.C. Respondent Sheela be taken into custody. Adjourned to 06.03.2018 for drafting the formal complaint. In the meantime, respondent Sheela be sent to judicial custody.”

Order dated 06.03.2018

“Formal complaint has been prepared to be filed in the Court of learned Area Magistrate, Faridabad. Shri Suresh Shama, Reader of this Court is hereby authorised to file the said complaint in the Court of Ld. Area Magistrate/ACJM, Faridabad on 08.03.2018. Respondent Sheela be produced in the Court of Ld.ACJM, Faridabad on 08.03.2018. After due compliance, this file be consigned to records.”

3.1 Complaint Annexure P-2 dated 07.03.2018 was signed by Suresh Sharma, Reader of the Court of the learned Sessions Judge who filed it in the Court of the learned Chief Judicial Magistrate, Faridabad.

4. I have heard learned counsel for appellants and perused the case file.

5. For better appreciation of the case on merits Section 340 of the Cr.P.C. is reproduced herein below: -

“340. Procedure in cases mentioned in section 195.

[\(1\)](#) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an in-

quiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

- (a) record a finding to that effect;
 - (b) make a complaint thereof in writing;
 - (c) send it to a Magistrate of the first class having jurisdiction;
 - (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
 - (e) bind over any person to appear and give evidence before such Magistrate.
- (2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.
- (3) A complaint made under this section shall be signed,-
- (a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;
 - (b) in any other case, by the presiding officer of the Court.
- (4) In this section, "Court" has the same meaning as in section 195."

6. Perusal of the case file shows that after registration of FIR, both the private parties mutually settled and compromised the issue with each other and on the basis of compromise dated 11.01.2019 (Annexure A-4), appellants had filed one quashing petition (CRM-M-12144-2019) before the High Court upon which the FIR was quashed vide order dated 05.04.2019 (Annexure A-5). Thus, the main grievance of respondent no.2 has already been satisfied.

7. Annexure P-5 is the order dated 05.04.2019 passed by a co-ordinate bench of this Court in CRM-M-12144 of 2019 (O & M) titled **Gianwati and another versus State of Haryana and another** whereby the impugned FIR No. 846 dated 20.08.2013 under sections 120-B, 406, 420, 467, 468, 471, 506 of IPC registered at Police Station, Faridabad Central and all other consequential proceedings arising thereto were quashed. Besides that, there are other reasons available on record in present as stated hereafter for allowing the instant petition.

8. In my opinion, the impugned order dated 01.03.2018 reproduced above is quite cryptic, is neither self-contained nor a speaking order showing application of judicial mind to the case. It is liable to be set aside on that ground.

8.1 Section 340(3) of the Code lays down that a complaint under this section shall be signed by the Presiding Officer of the Court, except when the Court making the complaint is a High Court. In this case, the complaint Annexure P-2 was not signed by the Presiding Officer of the Court, but by the Reader of the Court. This, to my mind, is patent illegality in the complaint.

8.2 As noted above, vide the impugned order dated 01.03.2018, the learned Sessions Judge adjourned the case to 06.03.2018 for drafting the formal complaint. Order dated 06.03.2018 states that the complaint had been prepared to be filed in the Court and authorized the Reader to file the said complaint in the concerned court. Curiously, the complaint Annexure P-2 bears the signature of the Reader of the Court dated 07.03.2018, which is after the Court's order dated 06.03.2018. Obviously, the signed complaint Annexure P-2 was not before the learned Sessions Judge when he passed the order dated 06.03.2018 authorizing the Reader to file the same in the concerned court. This is also a significant infirmity in the complaint.

9. In the light of the above observations, the impugned orders dated 01.03.2018, 06.03.2018 and the complaint Annexure P-2 dated 07.03.2018 are not legally sustainable. Accordingly, the said orders are set aside and complaint is dismissed.

10. Instant appeal is hereby allowed.

11. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 07, 2023
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No