

SUPREME COURT OF INDIA

Vasudev

Vs.

Parvinder Kumar

Crl.A.No.....of 2008

(Dr.Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

12.08.2008

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.
2. Challenge in this appeal is to the order passed by a learned Single Judge of the Punjab and Haryana High Court, dismissing the petition in Criminal Miscellaneous Application No.22300 of 2006 filed in Criminal Miscellaneous No.29019-M of 2005.
3. A brief reference to the factual aspects would be necessary:

“Appellant had filed Criminal Misc. Case No.29019- M/2005 questioning the correctness of the order passed by learned Sub Divisional Judicial Magistrate, Rajpura, in respect of FIR No.23/25.1.2001 of PS City, Rajpura, relating to a gift deed purported to have been fraudulently executed.

The appellant had filed the application alleging that Lachman Dass father of respondent nos.1 to 3 used to fraudulently withdraw amount from the bank account of their mother Kishni Bai by forging her signature and FIR No.61 dated 13.3.2002 had been filed. It appears that the prosecution had filed application praying for order in terms of Section 91 of the *Code of Criminal Procedure, 1973* (in short ‘the Code’). Learned SDJM disposed of the application with certain directions. The order dated 3.5.2004 was passed by learned SDJM, Rajpura. Subsequently, another application was filed in terms of Section 91 Cr.P.C. which was disposed of by order dated 4.5.2005 pointing out that in view of earlier order dated 3.5.2004 nothing further was required to be done.

The order was questioned before the Punjab and Hayana High Court. By order dated 13.1.2006, the High Court closed the matter with the following order:

"Learned counsel for the State and the accused submit that FIR No.61 already stands cancelled and in any case, the documents were available in Court, which could be examined in court earlier.

It is stated by the learned counsel for the State that the State is no longer interested in taking documents from the Court.

In view of the above, no ground is made out for interference in the impugned order. Petition is dismissed."

An application to recall the order was filed primarily on the ground that there was no order passed cancelling the FIR. The petition had been disposed of on the basis of statement made by learned counsel for the accused to the effect that FIR has been closed. Appellant submitted that no such order had been passed. As noted above, High Court dismissed the petition"

4. In support of the appeal, learned counsel for the appellant submitted that till now the so-called order closing the FIR has not seen the light of the day. Even before this Court, the same has not been produced.
5. It is also pointed out that had any such order been passed, the informant was required to be notified so that protest petition can be filed before the Court.
6. Learned counsel for the State and the accused persons submitted that obvious object of the appellant is to drag the proceedings. It is, however, fairly conceded that the order directing cancellation of the FIR has not been brought on record.
7. Since the petition filed by the appellant was rejected by the High Court on the basis of the statement made by the learned counsel for the State and the accused persons that the FIR has been cancelled, it was but natural that there should be some order in that regard. It is not understood as to why the same has not been brought on record as yet. If there is no such order in existence, obviously the disposal of the petition filed by the appellant on the ground that the FIR has been cancelled cannot be maintained.
8. In the aforesaid circumstances, we direct the learned counsel for the State to place before the High Court a copy of the order purporting to cancel the FIR No.61 within a period of four weeks from today.
9. If any such order has not been passed, the High Court shall hear the matter afresh. Order of rejection by order dated 13.1.2006 and order in Criminal Misc. Application 22330/2006 dated 28.4.2006 stand quashed. In case the aforesaid order is placed before the High Court it shall direct the same to be placed before the concerned lower Court for consideration. Needless to say the informant shall be granted liberty to take action as provided in law.
10. The appeal is disposed of accordingly.