

PUNJAB AND HARYANA HIGH COURT

State of Punjab

Vs

Iqbal Singh

(B.S. Nehra,J.)

26.03.1991

JUDGEMENT

B.S. Nehra,J.

(1.) THIS order will dispose of Criminal Reference No. 2 of 1988.

(2.) SHRI D S. Malwai, Judicial Magistrate Ist Class Patiala, has made reference to this Court stating that one Kashmira Singh son of Gopal Singh, resident of House No. 1728, Phase -III, Sector 60, S.A.S. Nagar, Mohali, had filed two suits, viz. one for recovery of Rs. 2,000/- and the other for recovery of Rs. 6,400/- against Sohan Singh, sole proprietor, Manvinder Auto, and Electric Works, Patiala. These suits, were decreed by the Court of Shri P.C. Suman, Sub Judge Ist Class, Patiala. In these suits, a receipt dated 20.6.1976 had been relied upon by Sohan Singh about the alleged repayment of the disputed amount to Kashmira Singh. One Iqbal Singh who is described as son-in-law of Sohan Singh had, appeared as a witness of the said receipt during the trial of those suits. The said receipt was held to be an act of forgery by the Court of Sub Judge Ist Class, Patiala. Kashmira Singh filed an application under Section 340 of the Code of Criminal Procedure on 4.1.1982 praying that a complaint be filed under Sections 120-B/183/93/467/468/471 and 109/114 of the Indian Penal Code against Iqbal Singh son of Manna Singh, Proprietor of M/s. Sahney Property Dealers, Bahera Road, Patiala. The act of forgery was alleged to be a conspiracy between Sohan Singh and Iqbal Singh. This application was opposed. After hearing the parties, the learned Sub Judge Ist Class, Patiala, dismissed the application on 7.5.1987. Criminal Appeal, No. 68 of 14.11.1985, was preferred against this order, which was decided on 9.4.1987 by Shri M.L. Singhal, Additional Sessions Judge, Patiala, whereby he directed successor of the Court of Shri R.K. Tyagi, Sub Judge Ist Class, Patiala, to institute the complaint against Iqbal Singh under Sections. 183/120-B/467/468/193 and 471 or the Indian Penal Code. The Court of Shri D.S. Malwai has been stated to be the successor Court of the Court of Shri R K. Tyagi. Shri Malwai has referred to the provisions of Section 340(3)(b) of the Code of Criminal Procedure under which a complaint under this Section can be made by the Presiding Officer of the Court concerned in terms of the provisions and has contended that the

complaint was to be filed by the Court of Shri M.L. Singal, Additional Sessions Judge, Patiala. He has stated that his Court is not competent to make such complaint. He has expressed the apprehension that if the case is sent by him to the Court of Additional Sessions Judge, it may be taken as a contempt and hence a reference has been made to this Court seeking revision of the order of Shri M.L. Singhal, Additional Sessions Judge, or for passing any other appropriate order. I have heard Shri. H.S. Bhullar, Deputy Advocate General, Punjab.

(3.) IN *Kunjo Chaudhry v. Emperor*, AIR 1938 Patna 99, it was held that where an application under Section 416 of the Code of Criminal Procedure asking a Court to file a complaint against a person is rejected by the Magistrate and the District Judge on appeal sets aside the order of the lower Court and directs it to, hold an enquiry into the matter and file a complaint, if necessary, the lower Court is not precluded from filing a complaint or holding the enquiry merely because it had previously declined to do so. The provision of Section 340 (3) of the Code of Criminal Procedure merely described a person who can be the complaint and provides that where the making the complaint is High Court, the High Court may appoint an officer of the Court for making a complaint and when the complaint has to be filed by any other Court, the Presiding Officer of that Court can file the complaint. This provision does not preclude the Court of the learned, Magistrate to file the complaint Similarly sub-section (2) of this provision merely deals with situation of filing a complaint by an appellate Court where for in stance the trial Court has neither made a complaint under sub-section (1) nor rejected an application for making such a complaint. This provision also has no bearing to the facts of the instant reference for the trial Court in this case had rejected the application for filing the complaint and its order has been reversed by the appellate Court with a direction to the trial Court to file the complaint. Hence the trial Court was duty bound to comply with that order. In the circumstances the reference is declined and the trial court is directed to proceed further in accordance with law as directed by the Court of learned Additional Sessions-Judge, Patiala. Order accordingly. ;