

VASUDEV

v.

PARVINDER KUMAR & ORS.  
(Criminal Appeal No. 1263 of 2008)

AUGUST 12, 2008

(DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM  
SHARMA, JJ.)

*Code of Criminal Procedure, 1973; s.91:*

*Filing of petition by appellant alleging forgery committed by respondents – Disposed of by trial Court with directions – Another application filed by appellant was dismissed by trial Court – Challenge to – Dismissed by High Court in view of submission made by counsel for the respondents that FIR has been closed – Correctness of – Held: Incorrect – There must be some order canceling FIR but it has not been brought on record – The State directed to furnish a copy of the order before High Court – If no such order has been passed, disposal of the petition on the ground that FIR has been cancelled, cannot be maintained and the High Court shall hear the matter afresh.*

**The appellant had filed an application before the Judicial Magistrate alleging that father of respondent nos.1 to 3 used to fraudulently withdraw money from the bank account of their mother by forging her signature and FIR No.61 dated 13.3.2002 had been filed, and praying for order in terms of Section 91 of the Code of Criminal Procedure, 1973. The trial Court disposed of the application with certain directions. Subsequently, another application was filed by the appellant, which was disposed of in terms of the direction as given in the earlier order. Aggrieved by the order of the trial Court, appellants questioned the order before the High Court. The High Court dismissed the petition. Hence the present appeal.**

A Appellant contended that till date the order closing the FIR has not been furnished even before this Court.

Disposing of the appeal, the Court

B HELD: 1.1 Since the petition filed by the appellant was rejected by the High Court on the basis of the statement made by the 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. (Para – 7) [26, F-G]

D 1.2 The counsel for the State is directed to place before the High Court a copy of the order purporting to cancel FIR No.61. (Para - 8) [26,G-H]

E 1.3 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. (Para – 9) [27,A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1263 of 2008

F From the final Judgment and Order dated 28.4.2006 of the High Court of Punjab and Haryana at Chandigarh in Criminal Misc. No. 29019-M of 2005

Nand Lal and K.L. Taneja for the Appellant.

G Kuldip Singh, R.K. Pandey, T.P. Mishra, H.S. Sandhu and Ajay Sharma for the Respondents.

The Judgment of the Court was delivered by

H 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.

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

Petition is dismissed.”

B 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

C 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.

D 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.

E 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.

F 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.

G 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.

H

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.

S.K.S.

Appeal disposed of.