

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.M.C. 208/2011 with CRL.M.A. 856/2011**

Decided on 25.01.2011

IN THE MATTER OF :

GURCHARAN SINGH ARORA @ BHAPAJI Petitioner
Through: Mr. S.S. Hora, Advocate

versus

STATE Respondent
Through: Mr. Navin Sharma, APP for the State

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

- | | |
|--|-----|
| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner under Section 482 of the Cr.PC praying *inter alia* for quashing of the order dated 01.07.2010 passed by the learned ASJ, dismissing the revision petition preferred by him against the order dated 22.01.2010 passed by the learned Metropolitan Magistrate, whereunder charge was framed against the petitioner under Section 406 IPC, with an alternative charge under Section 420 IPC.

2. In the complaint dated 18.09.2007, the complainant had alleged that the petitioner/accused had assured her of a shop in Chandni Chowk, on payment of an amount of ₹12,90,000/-. However once such an amount was paid to the petitioner, he avoided meeting the complainant and allegedly threatened her when she tried to approach him for return of the amount

paid. After the investigation was carried out, charge-sheet was filed on 28.03.2008, wherein it was stated that there was sufficient evidence to file a charge-sheet under Sections 420 and 406 IPC against the petitioner, for cheating the complainant and fraudulently and dishonestly taking an amount of ₹12,90,000/- from her, on a false assurance of arranging a shop for her in Chandni Chowk.

3. Vide order dated 22.01.2010, the learned Metropolitan Magistrate held that *prima facie* offence under Sections 406/420 IPC was made out against the petitioner and accordingly, charges were framed against him. Aggrieved by the said order, the petitioner preferred a revision petition before the learned ASJ, which was dismissed by the impugned order dated 01.07.2010 as being devoid of merits.

4. The main grievance of the counsel for the petitioner is that the trial court did not consider the submission of the petitioner that the dispute between the parties was purely civil in nature. On the question of the statement of the petitioner, made in the proceedings before the Special Executive Magistrate for issuance of *Kalandra* against both the parties for maintaining peace, where he had stated during his cross-examination that leaving aside ₹12,90,000/-, he did not owe any amount to Shri Deepak Jain, husband of the complainant, the counsel for the petitioner contended that reliance cannot be placed on the same as it was an extra judicial confession. He further states that the fact that the entire sum of ₹12,90,000/- allegedly paid by the complainant to the petitioner for the purpose of arranging a shop for the complainant in Chandni Chowk, was paid in cash, particularly, when the complainant maintained a bank account and could have issued a cheque

in this regard, raises a doubt on the story alleged by the complainant.

5. It is a settled legal position that at the stage of framing of charges, the trial court is enjoined to assess, evaluate and weigh the prosecution evidence purely to see if a *prima facie* case exists and to frame charge after forming an opinion that the commission of offence was possible on the part of the accused. In the case of State of Maharashtra v. Som Nath Thapa reported as **(1996) 4 SCC 659**, it was held as under:-

"30. In *Antulay case* [reported as (1986)2 SCC 716] Bhagwati, C.J., opined, after noting the difference in the language of the three pairs of sections, that despite the difference there is no scope for doubt that at the stage at which the court is required to consider the question of framing of charge, the test of "prima facie" case has to be applied. According to Shri Jethmalani, a prima facie case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, a better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame a charge against him for committing that offence.

32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused *might have* committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused *has* committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

6. A similar view has been espoused in the case of State of Bihar v. Ramesh Singh reported as **(1977) 4 SCC 39**, where it was held as under : -

"4. ... The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused."

7. In the case of Mathura Dass and Ors. v. State reported as **104**

(2003) DLT 147, a co-ordinate Bench of this Court has held as:-

"7. ... this Court is of the considered view that a Judge, at the time of framing of charge, is not to act merely as a post-office or mouth-piece of the prosecution, but has powers to sift and weigh the evidence but for a limited purpose only. This exercise has to be undertaken by him only with a view to find out as to whether a prima facie case is made out or not. The existence of a prima facie case may be found even on the basis of strong suspicion against an accused. The assessment, evaluation and weighing of the prosecution evidence in a criminal case at the final stage is on entirely different footing than it is at the stage of framing a charge. At the final stage if two views are possible, one of which suggests that the accused may be innocent, then the view favorable to the accused has to be accepted whereas at the stage of framing of the charge, the view which is favorable to the prosecution, has to be accepted for the purpose of framing charge so that in the course of the trial, the prosecution may come out with its Explanations in regard to the draw-backs and weaknesses, if any, being pointed out by an accused."

8. In the present case, after considering the submission made by the counsel for the petitioner that there was no evidence to show that the

complainant had actually paid a sum of ₹12,90,000/- to the petitioner, learned ASJ has rightly observed that the aforesaid allegation of the complainant is supported by two witnesses to the transaction and hence, *prima facie*, it cannot be said that there is no evidence of payment of money to the accused/petitioner.

9. As to the contention raised on behalf of the petitioner that it was purely a civil liability and no criminality was involved, the Sessions Court noticed that there was evidence on record to show that after taking the money, the petitioner locked up his shop and disappeared, as a result of which, the complainant was unable to trace him for a long time. The intention of the petitioner is to be gathered from his conduct to raise a presumption of his having a dishonest intention towards the complainant from the very beginning of the transaction. Further, the submission of the counsel for the petitioner that the *Kalandra* registered in November, 2004 cannot be relied upon, has been examined in the light of the additional evidence that has come on the record. Similarly, maintaining of a bank account by the complainant itself cannot be held against her at this stage merely on the ground that such a large transaction could not have taken place in cash. It is at the stage of trial that the complainant could be confronted with such a stand. But it is not for the trial court to examine the defence that may be available to the petitioner/accused at the stage of framing of charge. There is no infirmity in the conclusion arrived at by the learned ASJ that the question as to whether the intention of the petitioner in inducing the complainant to part with the money was dishonest or not, is to be determined on merits only after the prosecution has led their evidence.

10. In the light of the aforesaid discussion, the conclusion arrived at in the impugned order is not found to be either arbitrary, perverse or illogical for this Court to exercise its extraordinary powers under Section 482 of the Cr.PC for setting aside the same. The revision petition is, therefore, dismissed as being devoid of merits, alongwith the pending application.

JANUARY 25, 2011
rkb

(HIMA KOHLI)
JUDGE