

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% CRL. REV. P. NO. 3/2010

+ Date of Decision: 29th January, 2013

HARI OM MAHESHWARI Petitioner
! Through: Petitioner in person

Versus

\$ MAHENDRA KUMAR SHARDA & ANR. ...Respondents
Through: Mr. Vijay Aggarwal & Mr. Gurpreet
Singh, Advocates for R-1
Mr. M.N. Dudeja, APP for the State

CORAM:
*** HON'BLE MR. JUSTICE P.K.BHASIN**

ORDER

P.K.BHASIN, J:

This revision petition has been filed by the petitioner complainant under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973(Cr. P.C.) against the order dated 29th September, 2009 passed by the learned Additional Sessions Judge whereby respondent no. 1 was discharged after setting aside the order dated 7th June, 2008 of the learned Magistrate whereby the respondent no. 1 was ordered to be charged and tried for the offences punishable under Sections 420/468 IPC.

2. The facts and submissions made before the learned Magistrate as noticed in the impugned judgment are as under:-

“Complainant Hari Om Maheshwari was a member of Delhi Stock Exchange from April, 1999 to July, 1995. He was doing the business in the name of ‘H. Maheshwari and Company’ and was sole proprietor of company. He was allotted the membership code No. D273 by Delhi Stock Exchange. The revisionist Mahender Kumar Sharda was employed by complainant Sh. Hari Om Maheshwari as manager in his firm from October/November, 1990. The revisionist worked till 09.05.92 and, thereafter ran away after committing various frauds in the firm. The office of complainant Sh. Hari Om Maheshwari was situated at 5/5761, Street No. 2, Dev Nagar, Karol Bagh, New Delhi till 09.05.92. Thereafter, the complainant shifted his office at Flat No. 316, Eassar House, 10 Asaf Ali Road, New Delhi. After May, 92 there was no contact between the complainant and the revisionist. In the month of Jan/Feb. 97, it came to the knowledge of the complainant that some companies had posted the cheques of brokerage and commission in the name of his firm at old office address at 5/5761, Street No. 2, Dev Nagar, Karol Bagh, New Delhi. Those cheques reached the hands of revisionist Mahender Kumar Sharda, who opened an account with Punjab & Sind Bank, Kashmere Gate, Delhi in the name of H. Maheshwari by showing himself as proprietor thereof. The revisionist got encashed one cheque No. 142045 dated 17.01.94 for ₹ 2242.50, issued by M/s. Triveni Engineering Works Ltd. It is the case of complainant that the said cheque belonged to him as the membership code issued by Delhi Stock Exchange i.e. 05/0273/-1 was also mentioned on the cheque.”

3. The learned Metropolitan Magistrate had found after perusing the charge-sheet and the material submitted there with by the investigating agency that a prima facie case for the commission of the offences punishable under Sections 420 and 468 of the Indian Penal Code was made out against the respondent no. 1.

4. The respondent no. 1 had challenged the Magistrate's order by filing a revision petition in the Sessions Court and the learned Additional Sessions Judge vide his impugned order set aside the Magistrate's order after coming to the conclusion that no case was made out against the accused (respondent no. 1 herein) either under Section 420 or 468 of the Indian Penal Code and further that at the most it could be said that a case under Section 403 IPC was made out but since the police could not investigate that crime without the permission of the Magistrate no charge could be framed for that offence also and consequently respondent no. 1 came to be discharged.

5. The petitioner-complainant then felt aggrieved by the order of the revisional Court and filed the present petition. He presented his case in person before this Court while respondent no. 1 (discharged accused) was represented by his advocate and the State (respondent no. 2) was represented by the Additional Public Prosecutor.

6. The petitioner submitted that the order of the revisional Court is not at all sustainable since in effect its conclusion that at the most a case under Section 403 IPC was made out supported the conclusion of the learned Metropolitan Magistrate that it was a case of cheating and forgery since Section 403 IPC provides for punishment for the offence of misappropriation.

7. On the other hand, learned counsel for the respondent no. 1 (discharged accused) supported the order of the revisional Court and

submitted that this petition should be dismissed being devoid of any merit. Learned Additional Public Prosecutor, however, supported the petitioner and submitted that the learned Metropolitan Magistrate was justified in framing charges under Sections 420 and 468 of the Indian Penal code and this Court should restore that order.

8. After having given my anxious consideration to the rival submissions and going through the records of the case, I am of the view that the order of the Metropolitan Magistrate directing trial of respondent no. 1 (discharged accused) for the offences under Sections 420 and 468 of the Indian Penal Code deserves to be restored and respondent no. 1 is liable to be tried for these offences.

9. The respondent no. 1 (discharged accused) undisputedly had got one cheque encashed by presenting the same in his own account for encashment and which cheque was in the name of the petitioner's firm where the respondent no. 1 was at one time employed by the petitioner. In that cheque the code number of the petitioner's firm, which was dealing in shares, allotted by the Stock Exchange Authorities was printed. The respondent no. 1 at no stage claimed that that cheque was actually belonging to his firm which was also having the same name as that of the petitioner's firm, namely, H. Maheswari & Company. It is also not his case and at least it was not claimed before this Court also that the amount of that cheque was payable to his firm by the Company which had issued the same for a sum of ₹ 2242.50. In these

circumstances, a strong suspicion does arise against the respondent no. 1 that he had got that cheque encashed knowing fully well that it did not belong to his firm and actually was issued for petitioner's firm. On the back of that cheque the respondent no. 1 had put his signatures as the payee of the cheque which prima facie also shows that he signed the cheque as payee, who was the petitioner being proprietor of his firm and therefore, he committed the offence of forgery also. The learned revisional Court was thus not justified in reversing the trial Court's order on charge and discharging the respondent no. 1 herein.

9. This petition is, therefore, allowed and the order dated 29th September, 2009 of the learned Additional Sessions Judge is set aside and the order dated 7th August, 2008 of the learned Metropolitan Magistrate is restored.

10. The matter shall now be taken up by the learned Metropolitan Magistrate concerned on 18th February, 2013 at 2 p.m. for proceeding further with the trial in accordance with law.

P.K. BHASIN, J

JANUARY 29, 2013