IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Misc. No. M-40792 of 2014
Date of Decision: 16.01.2015.

Matadin Saini ....Petitioner

Vs.

Jai Prakash and others ......Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Harsh Chopra, Advocate for
Mr. Sanyam Malhotra, Advocate
for the petitioner.

.....

SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 challenging the order dated 23.3.2010 whereby respondents No. 1 to 3 were ordered to be discharged.

Case of the petitioner, as per the complaint (Annexure P-3), is that he has entered into a partnership firm with accused Balbir Singh and a partnership deed was executed in this regard on 20.6.1997. On 02.1.1998, respondents No. 1 and 2 joined as new partners and a partnership deed was executed in this regard on 2.1.1998. The share of respondent No. 1 in the firm was 45% whereas share of respondent No. 2 was also 45% and the share of the petitioner was 10%. Petitioner being illiterate entrusted all the assets, books of accounts, cheque book etc. to respondents No. 1 and 2 qua the firm. However, respondents No. 1 and 2 with dishonest intention prepared a forged dissolution deed dated 28.2.1998. Signatures of the petitioner were obtained on the said deed by misrepresentation. The fraud came to the notice of the petitioner when he was paid only ₹ 83,000/- on account of his salary, interest of deposit etc. and was told that he had no concern with the firm in question. The name of the petitioner and the old partners Balbir and Keshav Ram were still continuing in the record of Sales Tax, Income Tax and other departments.

Petitioner led his preliminary evidence in support of his case.

Trial Court ordered the summoning of respondents No. 1 to 3 qua commission of offence punishable under Section 420, 471, 418, 423, 468, 474 of the Indian Penal Code, 1860. Thereafter, petitioner led his pre-charge evidence. Trial Court vide order dated 23.3.2010 ordered the discharge of respondents No. 1 to 3 and dismissed the complaint. The said order was upheld by the Court of Revision vide order dated 5.6.2014. Hence, the present petition by the petitioner.

Learned counsel for the petitioner has submitted that fraud had been played on the petitioner by the accused. In fact, the dissolution deed had been prepared by respondents No. 1 and 2 by misrepresentation. The name of the petitioner was still continuing in the office record of Income Tax, Sales Tax and other departments. Petitioner would have to pay for the liabilities incurred by respondents No. 1 and 2.

The Court of Revision, while dismissing the revision petition filed by the petitioner, has held as under:-

> *"While having due regards to the contentions of Ld. Counsel for both parties, it is observed that as per complainant, a firm M/s Ajanta Auto Works, Dharuhera came into existence on 02.1.1998 in which complainant Matadin, Jai Parkash and Rati Ram were partners. Rati Ram and Jai Parkash were having 45% share each whereas complainant was having 10% share. As per complainant, dissolution deed dated 28.02.1998 was fraudulently prepared by the accused. However, the complainant when appeared in the witness box as PW6 stated that two firms were constituted. On was between Matadin, Balbir and Keshav Ram and another was between Matadin, Balbir and Hari Ram. He has admitted that legal notice Ex.DA was sent by him through his counsel to Jai Parkash and Rat Ram. Perusal of Ex. DA would show that it was mentioned in the same that partnership which was executed on 02.1.1998 was dissolved on 28.2.1998 vide dissolution deed. Through that notice Jai Parkash and Rati Ram partners of M/s Ajanta Auto Works Dharuhera were requested to delete the name of complainant Matadin from the sales tax/income tax returns and accounts books of M/s Ajanta Auto Works, Dharuhera. It is not in dispute that civil case titled Matadin Vs. M/s Ajanta Auto Works Ltd. for permanent injunction was filed by complainant Matadin on 27.9.1999 and since there was an arbitration clause in the partnership deed, therefore,*

the suit was dismissed and the parties were directed to seek their relief through arbitration in terms of clause 13 of partnership deed dated 2.1.1998. Thus, the complainant has availed remedy by filing civil suit also. When the complainant himself has admitted dissolution of firm vide dissolution deed dated 28.2.1998, in his legal notice dated 26.3.1999 Ex. DA, no case worth framing charge against the accused is made out and Ld. CJM has rightly dismissed the complaint and has rightly discharged the accused. There is no illegality or infirmity in the order dated 20.3.2010 of Ld. CJM, Rewari."

The reasons given by the Court of Revision while dismissing the revision petition, are sound reasons. Civil suit filed by the petitioner for permanent injunction was dismissed in view of the arbitration clause in the partnership deed. The factum of dissolution of firm vide dissolution deed dated 28.2.1998 was admitted by the petitioner in his legal notice dated 26.3.1999.

It is a settled proposition of law that the petitioner cannot invoke jurisdiction of this Court under Section 482 Cr.P.C. after dismissal of his revision by the Sessions Court as it would amount to a second revision. However, in a case of grave injustice, this Court can interfere under Section 482 Cr.P.C.

In the present case, no grave miscarriage of justice has occurred which would warrant interference by this Court under Section 482 Cr.P.C.

Keeping in view the facts and circumstances of the present case, no ground for interference is made out.

Dismissed.

(SABINA)
JUDGE

January 16, 2015
Gurpreet