

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 14th May, 2015
Judgment Pronounced on: 10th July, 2015

CRL.REV.P. 676/2007

MADHUKAR ARENJA

..... Petitioner

Through: Mr. Deepak Dhingra,
Mr. Rajesh Kr. Verma and
Mr. Atul Parmar, Advs.

versus

SUNIL BHATIA

..... Respondent

Through: Mr. Mohit Mathur, Sr. Adv.
with Ms. Vasudha Data,
Adv.

**CORAM:
HON'BLE MR. JUSTICE P.S.TEJI**

P.S.TEJI, J.

1. The present revision petition has been filed feeling aggrieved of the order dated 26.03.2007 passed by the learned Metropolitan Magistrate, whereby the criminal complaint bearing No.1270/2001 filed by the petitioner/complainant for offence under Section 405, 406, 415, 417, 418, 420, 421, 424 and 506 of IPC was dismissed.
2. Factual matrix, as emerges from the record, is that the petitioner had filed a criminal complaint against the respondent alleging therein that the petitioner was a partner of registered firm Arenja &

Company. The said partnership firm was formed vide Deed of Partnership dated 13.04.1981. Apart from the complainant, his mother Smt. Promila Devi Arenja, respondent and his father Sh. Jodharam Bhatia were other partners of the said firm. The firm dealt with in Kiriana, chemicals, dry fruits, fresh fruits and other miscellaneous business. From the inception of the firm, it was decided that Sh. Jodharam Bhatia and the respondent shall be active partners of the firm and they conducted day to day business of the firm. Entire capital and other assets were contributed by the complainant and his mother, whereas the respondent and his father never made any investment. The complainant and his mother were partners to the extent of 70%, whereas the respondent and his father were partners to the extent of 30%. The complainant and his mother never actively participated or interfered in the business of the firm. Bank operations of the firm were carried on by the respondent and his father only. The firm operated from the premises of Khari Bhowli which was owned by the father of the complainant who leased the same to the said firm. The firm had dealt with in export and import of various articles. Sh. Jodharam Bhatia, father of the respondent died in 1987. Accordingly, the firm was reconstituted on 07.01.1987 whereby the respondent became partner of the firm to the extent of 30%. It was further alleged that the respondent got addressed a letter dated 21.04.2000 wherein he made certain allegations of breach of trust. The record of the firm revealed that the respondent had embezzled and misappropriated huge funds and huge quantity of stocks. The

petitioner sent legal notice on 29.05.2000 and 30.07.2000, but no reply to the same was received.

3. Pre-summoning evidence was adduced by the petitioner in the form of his own testimony and he also proved certain documents in support of his statement. The learned Metropolitan Magistrate vide order dated 26.03.2007 dismissed the criminal complaint while observing that no ground is made out to proceed further. Therefore, the present revision petition.
4. Arguments advanced by the learned counsel for the petitioner are that as a partner of the firm, the respondent was bound to act honestly; respondent illegally borrowed huge funds from other parties and did not account for the same in the books of account; respondent has embezzled huge stocks of the firm; respondent is guilty of acts of omission and commission. Further argument advanced is that at the time of issuing process, the Magistrate is only to look into the allegations. He is to satisfy himself as to whether prima facie case is made out for proceeding against the accused is made out or not and not to go into the defence or merits or demerits of the case, at the time of issuing the process.
5. In support of the contentions, learned counsel for the petitioner has relied upon judgment in case of ***J.R.D. Tata vs. Payal Kumar and Anr. MANU/DE/0234/1986*** in which it was observed as under :

“The law is well settled that at the stage of issuing process the Magistrate is mainly concerned with the

allegations made in the complaint or the evidence led in support of the same and is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. The Magistrate is not required to go into the detailed discussion of the merits or demerits of the case (see *Smt. Nagawwa v. Veeranna Shivalingappa Konjalqi and others*, MANU/SC/0173/1976 : 1976 CriLJ 1533 and *Kewal Krishna v. Suraj Bhan* MANU/SC/0143/1980 : 1980 CriLJ 1271). That being the legal position the Magistrate was not supposed to weight the evidence meticulously as if he were the trial Court. Moreover the standard to be adopted by the Magistrate in scrutinising the evidence at the stage of Sections 203 and 204 is not the same as the one which is to be kept in view at the stage of framing the charges. So, taking into consideration all these facts, it cannot be ex-facie said that there was no guilty intention/ knowledge on the part of the petitioners in hurriedly proceeding with the disposal of the pledged jewellery in somewhat irregular manner.”

On similar point, judgment in case of *Smt. Nagawwa vs. Veerana Shivalingappa Konjalgi and Ors. AIR 1976 SC 1947* has been relied upon.

Next judgment relied upon is in case of *Sushil Kanta Chakravarty vs. State and Ors. MANU/DE/0467/1993* in which it was observed that *in case of partnership every partner has dominion over the partnership property by reason of the fact that he is a partner. But if it is established that dominion over the assets of a particular asset of the partnership was by a special agreement between the parties entrusted to the accused person, then he can be*

held guilty of dishonest misappropriation or conversion of partnership property, if he dishonestly converts the same to his own use. It was further observed that in the case of disputes between the partners with respect to the undivided assets of the partnership, the matter is of civil nature, but in such case whereby a special agreement the amount has been kept apart to be distributed among the partners and others specially mentioned therein, the accused cannot seek the protection that being a partner he has withdrawn this amount and is not criminally liable. The criminal proceedings as well as civil proceedings can continue to proceed together when there is a criminal breach of a special agreement between the parties and the amount has been specifically earmarked.

6. In the present case, it is the consistent stand of the petitioner himself that earlier the respondent and his father were managing the entire affairs of the partnership firm, though they were having only 30% share in the same. It has also been contended by the petitioner that he and his mother were the inactive partners of the firm and they never interfered in the business transactions and functioning of the firm. After the death of father of the respondent, the respondent became partner to the extent of 30% and managed all the affairs of the firm. Thus, from the admitted case of the petitioner himself, it was the respondent who was the overall incharge of the affairs of the partnership firm.
7. In the judgment ***Velji Raghavji Patel vs. State of Maharashtra AIR 1965 SC 1433***, the Hon'ble Apex Court has categorically held that

before a person can be said to have committed criminal breach of trust, it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use or disposed of in violation of any direction of law etc. It has to be necessarily establish that dominion over the assets of the partnership was by a special agreement between the parties. Relevant para from the judgment reads as under :

“It seems to us that the view taken in Buban Mohan Rana case by the later Full Bench of the Calcutta High Court is the right one. Upon the plain reading of Section 405 IPC it is obvious that before a person can be said to have committed criminal breach of trust it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use or disposed of in violation of any direction of law etc. Every partner has dominion over property by reason of the fact that he is a partner. This is a kind of dominion which every owner of property has over his property. But it is not dominion of this kind which satisfies the requirements of Section 405. In order to establish “entrustment of dominion” over property to an accused person the mere existence of that person’s dominion over property is not enough. It must be further shown that his dominion was the result of entrustment. Therefore, as rightly pointed out by Harris, C.J., the prosecution must establish that dominion over the assets or a particular asset of the partnership was, by a special agreement between the parties, entrusted to the accused person. If in the absence of such a special agreement a partner receives money belonging to the partnership he cannot be said to have received it in a fiduciary capacity or in other words cannot be held to have been “entrusted” with dominion over partnership properties.”

8. The petitioner has miserably failed to demonstrate on record that there was any special agreement between the partners of the partnership firm vide which the respondent was entrusted with the dominion over any property or asset of the firm. In the absence of any such special agreement, the respondent cannot be said to have any dominion over a particular money or asset of the firm. The respondent also cannot be held to have committed any breach of trust or inducement as the petitioner has failed to show any material for the same. In view of this position of the matter, the petitioner cannot get any assistance from the judgments in case of *J.R.D. Tata* (supra), *Nagawwa* (supra) and *Sushil Kanta Chakravarty* (supra).
9. In view of the law laid down in *Velji Raghavji Patel's* case (supra) and in view of facts and circumstances of the case, this Court is of the considered opinion that the petitioner has failed to make out any case for proceeding against the respondent as he has failed to show that there was any special agreement vide which the respondent had dominion over the assets of the firm or that he had committed criminal breach of trust of the property of the firm.
10. Consequently, the present revision petition is dismissed. Record of the trial Court be sent back.

P.S.TEJI, J.

July 10, 2015
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