

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

RESERVED ON : 10th AUGUST, 2015

DECIDED ON : 3rd DECEMBER, 2015

+ **CRL.REV.P. 374/2007 & Crl. M.A. No. 13263/14**

MOHAN KUKREJA Petitioner

Through Ms. Rebecca M. John, Senior
Advocate along with Mr. Vishal
Gosain, Ms. Geetika Kapur, Mr.
Harsh Bora & Ms. Nicy Paulson,
Advocates

versus

STATE Respondent

Through : Mr. Sanjeev Sabharwal, APP.
Mr. Navin Chawla, Mr. Aditya V.
Singh, Mr. Ricky Kundra, Mr.
Ketan Paul & Mr. Siddhartha,
Advocates for R2.
Mr. Gurbaksh Singh, Ms. Richa &
Ms. Aashna, Advocates for R3.

AND

+ **CRL.REV.P. 445/2007 & Crl. M.A. No. 13265/14**

MADAN KUKREJA Petitioner

Through Mr. Suman Kapoor, Advocate

versus

STATE & ORS. Respondents

Through : Mr. Sanjeev Sabharwal, APP.
Mr. Navin Chawla, Mr. Aditya V.
Singh, Mr. Ricky Kundra, Mr.
Ketan Paul & Mr. Siddhartha,
Advocates for R2.
Ms. Meenakshi Arora, Senior
Advocate along with Ms. Bansuri
Swaraj & Ms. Shreya Bhatnagar,
Advocates for R3.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Instant revision petitions have been preferred by the petitioners to challenge the legality and correctness of an order dated 19.05.2007 of learned Metropolitan Magistrate whereby they were ordered to be charged for commission of offences under Sections 420/468/471/120B IPC. The petitions are contested by the respondents. I have heard the learned counsel for the parties and have examined the file.

2. At the outset, it may be mentioned that during arguments, learned Senior Counsel for the petitioners, on instructions, stated that petitioners have opted not to challenge the impugned order under Section 471 IPC. Arguments were restricted / confined to challenge the correctness of the charges under Sections 420/468/120B IPC. Learned Senior Counsel would urge that ingredient of Sections 415 IPC and 468 IPC are not attracted in the instant case. There was no 'representation' made by the petitioners to respondents No.2 & 3 and no 'property' whatsoever was delivered by them pursuant to that. Merely because of alleged forgery of the documents i.e. Retirement Deed and Receipts, it cannot be inferred that the petitioners were liable for committing offences under Sections 420/468 IPC too. The Retirement Deed dated 16.08.1990

came into existence after all the brothers agreed to divide their properties in a family settlement. Subsequently, for ulterior motives, the respondents backed out of the settlement and initiated criminal proceedings against the petitioners though civil dispute between the parties was pending before this Court. Learned counsel for Madan Kukreja urged that he had nothing to do with the partnership-firm after 16.08.1990. He is victim of circumstances. He urged that the Retirement Deed dated 16.08.1990 was executed by all the partners pursuant to family settlement arrived at among them. Reliance was placed on '*Devendra and ors vs. State of Uttar Pradesh and anr.*', 2009 (7) SCC 495 and '*Fiza Developers and Inter-Trade Pvt. Ltd. vs. AMCI (India) Pvt. Ltd. and anr.*' 2009 (17) SCC 796.

3. Refuting the contentions, learned Senior Counsel for respondents No.2 & 3 urged that there is no illegality or irregularity in the impugned order. At the stage of consideration of charge, the Court is not expected to go deep into probative value of material on record, it has to find out whether a prima facie case is made out against the accused. By forging Retirement Deed and Receipts purporting to have paid ₹50,000/- each to all other partners in lieu of their claim in the partnership-firm pursuant to conspiracy hatched by them, they attempted to grab the entire properties to the detriment of the respondents. Learned Senior Counsel

further urged that a conspiracy was hatched by both the petitioners in forging Retirement Deed and Receipts. The receipts are also in the handwriting of the petitioner Madan Kukreja. Both the petitioners were hand in glove.

4. The petitioners and the respondents No.2 & 3 are brothers. They were running business in partnership in the name of M/s. D.R.Kukreja & Co. This firm was first constituted on 24.06.1969. The partnership firm was reconstituted in the name of M/S. D.R.Kukreja & Co. vide a partnership deed dated 10.07.1984 comprising of partners – Sunder Kukreja, Ram Chander Kukreja (since deceased), Raj Kumar Kukreja, Madan Kukreja and Mohan Kukreja. All the partners had equal share in the profit and loss of the firm to the extent of 20% each.

5. Sunder Kukreja in his complaint (Ex.PW-4/A) lodged on 23.11.1993 informed the police that on 03.06.1992, when he along with his brothers – Ram Chander Kukreja and Raj Kumar Kukreja and friends (Davis John and Suresh Dahiya) went to the office at Sapna Cinema building, they were shocked to see that cupboards therein were broken and some files and other important documents were missing. When they enquired about the damage, routine working of the cinema and receipt / payments position from the Manager, the petitioners – Mohan Kukreja

and Madan Kukreja became furious and told them that they had no right to enquire about it due to execution of 'Deed of Retirement' dated 16.08.1990 by them in favour of Mohan Kukreja. The petitioners apprised them that they had been paid ₹50,000/- each from the firm in full and final settlement of their share / account in the firm and for that, they had put signatures on the documents. The complainant complained that no such Deed of Retirement was ever executed by them and these documents were forged and fabricated intentionally by Mohan Kukreja with the connivance of Madan Kukreja to deprive them of the benefits of the income of the firm running Sapna Cinema at East of Kailash and share in the assets worth crores of rupees of the firm. It was further alleged that Mohan Kukreja by fabricating the Deed of Retirement had shown himself to be 'sole proprietor' of M/s. D.R.Kukreja & Co. by opening current accounts of the firm with Syndicate Bank, Nehru Place and Punjab National Bank. On this (Ex.PW-4/A), FIR was lodged under Sections 420/468/471/120B IPC. Upon completion of investigation, a charge-sheet was filed against both the petitioners for the commission of offences mentioned previously.

6. It is relevant to note that CS (OS) No. 2190 of 1992 titled 'Sunder Kukreja and others vs. Mohan Lal Kukreja and others' was filed *Crl.R.P.374/2007 & connected matter.*

before this Court challenging the Deed of Retirement dated 16.08.1990. Vide order dated 01.05.1996, this Court directed that the original Retirement Deed and the Receipts be sent to CFSL, CGO Complex, Delhi for finding out as to whether the said documents were genuine or fabricated. By an order dated 07.02.1997 Registrar was directed to depute a special messenger to collect the documents from CFSL with report. S.L.Mukhi, Senior Scientific Officer, CFSL gave his detailed report dated 21.11.1996.

7. It is apt to note that Hon'ble Supreme Court vide order dated 26.03.2009 in Civil Appeal No. 1910 of 2009 appointed a sole arbitrator to decide the dispute between the parties including the dispute whether the alleged Retirement Deed was genuine or not. The sole arbitrator gave award on 26.05.2014. The petitioners filed objections under Sections 30 & 33 of the Arbitration Act, 1940 to the award dated 26.05.2014. It is informed that the said objections have been dismissed by a judgment dated 09.10.2015 of this Court in CS (OS) No.2050 of 2014 and the impugned award dated 26.05.2014 of the learned Arbitrator has been made Rule of the Court. The learned Arbitrator came to the conclusion that the Retirement deed dated 16.08.1990 was not genuine and it was a fake document. It did not dissolve the partnership deed dated 10.07.1984.

Needless to say, at this stage, genuineness of the Retirement deed dated 16.08.1990 and signatures of the complainant and his two brothers on the Receipts / Vouchers are suspect. For that reasons seemingly, charge under Section 471 IPC is not under challenge.

8. I do not subscribe to the contention of the learned Senior Counsel for the petitioners that ingredient of Sections 415 IPC and 468 IPC are not attracted to proceed against the petitioners for prima facie commission of offences under Sections 420/468/120B IPC. Being partners in M/s. D.R.Kukreja & Co., the complainant and his two brothers were entitled to have 20% equal share in the profit and loss of the firm on the basis of the partnership deed dated 10.07.1984. By the execution of Retirement Deed dated 16.08.1990, and the Receipts in conspiracy with each other, the petitioners apparently attempted to divest them of their share in the income generated from running of the said business by grabbing the whole business. The petitioner No.1 represented himself to be 'sole proprietor' of the said firm to the exclusion of all others. Obvious motive / intention of the petitioners was to cause wrongful loss to the complainant and his brothers and wrongful gain to themselves. Retirement Deed dated 16.08.1990 not only was brought into existence, but was even acted upon and all the assets and properties hitherto in joint possession of

all the partners were usurped by the petitioners. They opened Bank Accounts in Syndicate Bank, Nehru Place and Punjab National Bank representing M/s. D.R.Kukreja & Co. to be the 'sole proprietorship' of the petitioner Mohan Kukreja. The other three brothers were not given their share of income in the business as reflected in the Income Tax Returns on record in the civil proceedings. The complainant and their other brothers had to file civil suit. In the award dated 26.05.2014, learned Sole Arbitrator found them to be entitled to ₹736227.26 with interest @ 18% per annum from 01.04.2009 till the date of award.

9. In '*V.P.Shrivastava vs. Indian Explosives Ltd. and Ors.*', 2010 (10) SCC 361 it was held by the Supreme Court with reference to relevant circumstances that to hold a person guilty of cheating, it is necessary to show that at the time of making promise, he had fraudulent or dishonest intention to deceive or to induce person so deceived to do something which he would not otherwise do. There is no dispute about this concept. At the same time, it is also to be considered that just on the basis of what has taken place at the inception of transaction it is always not possible to ascertain whether the ingredients of cheating are satisfied or not for which subsequent conduct of the party concerned may also be necessarily taken into consideration. In other words the totality of the

circumstances of the case is to be taken into consideration for properly appreciating the matter. In the instant case, there is clear material to the effect that knowing fully well about the Retirement deed to be forged and fabricated document, the petitioners with a fraudulent intention to cheat the complainant and other partners, took complete control of the entire business depriving them of their share in the income and assets of the firms causing wrongful gain for themselves and wrongful loss to them. Bank accounts were opened by the petitioners misrepresenting the concerned Banks to be the 'sole proprietor' of the firm. Under Section 468 IPC, forgery with an 'intention to cheat' is punishable. In the instant case, the forged documents were not only created with an intention to cheat but the complainant and other partners were in fact deprived of their valuable rights in the firm on the basis of partnership deed dated 10.07.1984.

10. In '*Hridaya Ranjan Prasad Verma vs. State of Bihar*', 2000

(4) SCC 168, Supreme Court held :

"14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not

so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.”

(Emphasis given)

11. But for the forged Retirement Deed and the Receipts, the complainant and other brothers allegedly deceived would not have consented to forgo the benefits of the partnership deed. By forging Retirement Deed and the Receipts, the complainant and other brothers were made to believe that they had received ₹50,000/- each in full and final settlement of their claims in the partnership-firm.

12. In the complaint (Ex.PW-4/A), the complainant has leveled specific allegations against the petitioners for mis-appropriating the business of the firm using false documents with a fraudulent and dishonest intention. In my view, there is sufficient material at this stage to presume the commission of offence punishable under Sections 420/468 IPC read with Section 120B IPC against the petitioners.

13. Reliance was heavily placed by the petitioners on ‘*Devendra and ors. Vs. State of Uttar Pradesh and anr.*’, 2009 (7) SCC 495 to emphasize that since the petitioners were co-sharers in the firm, ingredients of Sections 420/468 IPC are not attracted. In the said case,

appellants No.1 & 2 had executed a sale deed dated 22.08.1997 in favour of appellants No.3 & 4 therein stating that they had 1/3rd share over the entire properties. The Supreme Court held that the appellants were co-sharers in the property. The dispute between them was confined to the extent of their respective shares which was to be determined only in a civil suit. If the appellants No.1 & 2 had executed deed of sale in favour of a third party stating that they had 1/3rd share over the entire properties, the same would not be binding on the complainant / respondent. If any cause of action arose by reason of a threat of dispossession at the hands of the co-sharers or at the hands of the third party, as was contended, recourse to legal action could always be taken. Even for that purpose, a proceedings under Sections 144 and 145 of the Code of Criminal Procedure would be maintainable. The decision of a criminal Court in a case of this nature would not be binding on the civil Court. In the instant case, by executing a forged and fabricated Retirement Deed, the petitioners apparently ousted the complainant and other partners from the entire business of the partnership firm. There are specific allegations against both the petitioners to hatch conspiracy to forge and fabricate the documents in question to swallow the entire income and assets of the partnership-firm. The prosecution has relied upon the report of

handwriting expert S.L.Mukhi to point out that portion of the receipts in question were filled by Madan Kukreja. These allegations cannot be brushed aside at this stage.

14. The impugned order based upon fair appraisal of the material on record needs no intervention.

15. In ‘*Amit Kapoor vs. Ramesh Chander and Another*’, 2012 (9) SCC 460, Hon’ble Supreme Court discussed the ambit and scope of power with the Courts including the High Court under Section 397 and Section 482 of the Code.

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law.....

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been

framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the Code of Criminal Procedure.....

16. The above-stated principles clearly show that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under Section 482 of the Code in relation to quashing of an FIR is circumscribed by the factum and caution afore-noticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited.

17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say

that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.....”

16. In ‘*P.Vijayan vs. State of Kerala and another*’, 2010 (2) SCC

398, Supreme Court held :

“11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.

*12. The scope of Section 227 of the Code was considered by this Court in the case of *State of Bihar v. Ramesh Singh* : (1977) 4 SCC 39 wherein this Court observed as follows:*

“4....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. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial....”
This Court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Trial Judge in order to frame a charge against the accused.”

17. In the light of above discussion, the revision petitions lack merits and are dismissed. Pending applications also stand disposed of. Trial Court record be sent back forthwith with the copy of the order.

18. Observations in the order would have no impact on merits of the case.

(S.P.GARG)
JUDGE

DECEMBER 03, 2015 / tr