In the High Court of Punjab and Haryana at Chandigarh

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Cr. Misc. No.M-25742 of 2014

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Date of decision:14.7.2016

OHM Forex Services Ltd.

.....Petitioner

v.

Inder Oberoi and others

.....Respondents

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Vikas Singh, Advocate for the petitioner.

Mr. Sandeep Suri, Advocate for respondents No.1 and 5 to 8.

Mr. Brinder N.S. Sharma, Advocate for respondent No.3.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for quashing of the judgment dated 2.1.2014 (Annexure-P.8) as well as judgment dated 19.4.2012 (Annexure-P.7) whereby the complaint filed by the petitioner has been dismissed and his revision petition has also been dismissed.

Notice of motion was issued in this case.

Mr. Sandeep Suri, learned Advocate has put in appearance on behalf of respondents No.1 and 5 to 8 and Mr. Brinder N.S. Sharma, learned Advocate has appeared for respondent No.3 and contested this petition.

I have heard learned counsel for the petitioner and learned counsel for the respondents and have gone through the record.

From the record, I find that a complaint had been filed by M/s OHM Forex Services Ltd. against Inder Oberoi and others for the offence under Section 409 read with Section 120-B IPC.

The brief facts as alleged in the complaint and as noted by the learned Judicial Magistrate Ist Class, Chandigarh in his judgment dated 19.4.2012 are as under:-

> "The present complaint is being filed by the complainant which is a company having been incorporated with the Registrar of Companies Act, Jalandhar and is having its corporate office at Mohali and Mr. Nikhil Saraf who is business director of the complainant company is authorized representative of the complainant company and is conversant with the facts of the case. It is alleged that the complainant company is running the business of Inward Money Transfer (under MTSS guidelines by RBI) for the principals namely, M/s First Remit (London) having its India based office at Mumbai and the complainant is its main agent. It is alleged that the complainant is aggrieved by the illegal action on the part of the accused in deducting an amount of Rs.25,94,518/- by charging exchange margins for foreign transactions in excess as compared to what had been agreed to by them. The accused bank has caused criminal breach of trust by late credit of the remittances so received in

the name of the complainant by temporary withholding the remittance, thereby, causing a wrongful loss of Rs.10,11,859.19 to the complainant and in turn gaining wrongfully for its on this account. It is further stated that an agreement was entered into between the complainant with M/s First Remit (London) and consequently, the complainant company started its operations in the year 2003 through its India based agent and as per the obligations, the Principals are to immediately reimburse the amount in foreign exchange to be paid in Indian currency by the complainant company to the clients of the Principals. In order to make this business arrangement in execution, an offer was made by ICICI Bank Ltd. to the Principals i.e. M/s First Remit (London) Mumbai on 26.9.2003 to meet the business requirements by the said bank with the collection of facilities by charging exchange margins for foreign transactions at 0.07 paisa per dollar on the basis of INFLOW of GBP 20,000/- per day. It is further stated that the bank verbally communicated to the complainant company that instructions have been given to charge only 0.07 paisa irrespective of the inflow of GBP and the same arrangement had been uploaded in the computer/software systems of the accused and from perusal of Annexure-C.2, it is clear that the accused bank charged 0.07 paisa per dollar since the date of operation i.e. 23.10.2003 till 20.7.2005 irrespective of Inflow of the amount in foreign currency less than 20,000/- US dollar on daily basis. The said arrangement continued for about three years, but during the course of reconciliation with the Principals M/s First Remit (London), it was observed that there was huge difference of the balances in the account of the complainant company. M/s First Remit (London) suspected that the accused bank has indulged in practice by charging and deducting exchange margin much in excess of the agreed exchange margin, consequent upon which, the difference in amount in the account came up. It is further stated that the bank from the very beginning had been sending the details of the received US dollars from M/s First Remit without disclosing the prevailing Treasury Rates of a dollar at the point of time. The accused bank, in these statements, in order to conceal their illegal act of recovering the excess amount, deliberately and willfully had been sending only the conversion rates so as to keep the complainant company in dark in respect of prevailing treasury rates so as to prevent the complainant company from knowing the comparison of the rates which were being excessively levied and deducted from the account of the complainant company. There being difference in the accounts, the complainant company took up the matter with the accused for issuance of statement of accounts with the treasury rates prevailing at the relevant point of time in order to know the rate of exchange margin so made applicable from time to time in its case. The said details was supplied on 18.5.2007 by accused No.2. The complainant company at no point of time had ever been informed about the change in exchange rates and this fact came to the notice only as per e-mail letter dated 18.5.2007 and this statement too was provided when the complainant company cautioned the bank about its intentions to transfer of the current account to some other bank. After the protracted correspondence and personal contacts with the accused bank, accused officials of the bank requested the complainant company not to transfer their current account to some other bank due to the ongoing problems and assured the complainant that for all future deals, the bank would give 0.06 paisa on all the remittances which is better than the previous exchange margin on 0.07 paisa. The accused bank in order to appease the company also reimbursed an amount of Rs.97,155/- on 9.7.2007, the amount excessively charged over and above 0.06 paisa w.e.f. 14.3.2007 to April, 2007 and besides this, it was also assured that the excess charging of the margin more than 0.07 paisa prior to 14.3.2007 will also be reimbursed/due credit would be given to the account of the complainant company. The reimbursement of Rs.97,155/- by the accused bank reveals that it unilaterally and at its own whims and fancies charged excess exchange margin rate as and when it felt convenient without any notice to the complainant company. It is further stated that from perusal of e-mail letter dated 18.5.2007, it came to the notice of the complainant company that the accused had been charging agreed transactions rates at 0.07 paisa for exchange margin for the period w.e.f. 23.10.2003 to 20.7.2005 irrespective of the quantum of inflow of foreign exchange. The reference of quantum of inflow of 20,000/- GBP so made in the letter dated 26.9.2003 written by the bank, was never made operational and it is further revealed from the statement of account that after 20.7.2005, the exchange margin rate was increased substantially from 0.07 paisa to 0.99 paisa by the bank unilaterally and accordingly deducted the amount from the account of the complainant, thus, all accused in connivance with each other deducted the amount from the account of the complainant company with dishonest and fraudulent intention in order to have wrongful gain. As this amount was charged unilaterally from the complainant bank's account and in spite of repeated approach, the refund of said amount was not effected by the accused bank, a legal notice dated 18.6.2007 was served upon the accused bank by the complainant company advising it to refund an amount of ₹25,94,518/- charged excess along with interest @24% per annum to the tune of ₹3,24,000/- calculated as on 31.3.2007, but instead of remittance excess amount charged by the accused bank, accused No.1 vide his letter dated

9.2.2007 denied the claim for refund of such amount alongwith interest. Thus, in this way, the complainant company has been put to a loss to the tune of Rs.25,94,518/-. It is further submitted that while reconciling the accounts by the complainant company with M/s First Remit (London), it came to the notice of the complainant company that quite heavy remittances/transfers made from 20.12.2005 to 18.4.2006 were not transferred, in other words, due credit of said amount so received during the said period was not given in the account and this illegal and fraudulent act of the accused came to the notice of the complainant company at the time when it raised a claim against the First Remit (London) for non receipt of the amount in Indian currency total amounting to Rs.88,80,509.82. Thus, the accused No.1 to 5 with dishonest and fraudulent intentions and in connivance with each other, have misappropriated the funds in lakhs of rupees, thereby causing wrongful gain to the accused bank and wrongful loss to the complainant company and accused No.1 to 5 are active and responsible for the business affairs of the accused bank qua the bank account transactions concerning the complainant. It is stated that in view of the above acts of the accused, the complainant company has suffered a loss of Rs.30,11,858.19 paisa (Rs.10,11,858.19 paisa on account of delayed remittances by way of interest plus Rs.20.00 lacs liquidated damages on account of business and operational losses) and it is submitted that the accused have committed criminal breach of trust in criminal conspiracy with each other by misappropriating the amount of complainant company for their own use. Hence the present complaint.”

The learned Judicial Magistrate Ist Class, Chandigarh vide judgment dated 19.4.2012 held that the complainant failed in prima facie proving the dishonest intention of the accused persons and has also failed in prima facie proving that the accused had dishonestly misappropriated the amount of the complainant company or they converted the same to their own use. Further, there is no material on record for prima facie proving the criminal conspiracy between the accused persons to dishonestly misappropriate the amount of the complainant company. The learned Magistrate further held that the allegations whatsoever of the complainant company against the accused persons only raises a liability of civil nature of the accused towards the complainant, if any, but it does not raise any criminal liability under Section 409 IPC and 120-B IPC and the complaint was dismissed.

A revision petition was filed. The learned Additional Sessions Judge vide judgment dated 21.2.2014 dismissed the revision petition. Aggrieved from these judgments, the present petition has been filed to quash these orders.

I have gone through the judgments passed by the Courts below. A perusal of the judgments passed by the Courts below shows that these are as per evidence and law. No illegality has been committed by the Courts below. Nothing has been pointed out as to how the judgments passed by the Courts below are pervers or against the evidence or law. There is nothing on the record to show that passing of these judgments amounts to miscarriage of justice or are liable to be quashed. The learned Magistrate has discussed the evidence of the complainant's witnesses in minute detail and has reached to the correct conclusion that the liability if at all is of civil nature. No offence under Section 409 IPC is made out. None of the accused has misappropriated the amount of the complainant for his personal gains. If there is any breach of the agreement between the complainant and the bank only civil liability arises. The complainant has alleged that the accused deducted an amount of Rs.25,94,518/- illegally by charging exchange margins for foreign transactions in excess as compared to what had been agreed to by them. If it is so, then at the most, it can be held as breach of the terms of the agreement and then a civil remedy lies. The second allegation in the complaint is that accused persons caused criminal breach of trust, late credit of the remittances so received in the name of the complainant by temporary withholding the remittances, thereby, causing a wrongful loss of ₹10,11,859.19 to the complainant and the bank in turn gaining wrongfully by way of such late credit. Even if it is taken as it is again it is a civil liability. No criminal offence under Section 409 IPC is made out nor from the evidence criminal conspiracy of the accused is proved. The findings given by the Courts below are correct, as per evidence and law and, in no way, the judgments passed by the Courts below can be held as perverse or illegal nor it can be held that the judgments amount to miscarriage of justice.

Therefore, finding no merit in the present petition, the same is dismissed.

July 14, 2016. **(Inderjit Singh)**
Judge

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