

CRM No. M-25881 of 2014 and CRM No. M-32344 of 2014 (O/M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 18.2.2016

CRM No. M-25881 of 2014 (O/M)

Vijay Kumar Dhir

..... Petitioner

Versus

Vinay Jain and others

..... Respondents

CRM No. M-32344 of 2014 (O/M)

Vijay Kumar Dhir

..... Petitioner

Versus

Vinay Jain and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Puneet Kansal, Advocate, for the petitioner,
in both the cases.

Mr. R.S. Cheema, Senior Advocate, with,
Mr. Saurav Verma, Advocate, for respondents No. 1 to 3
in CRM No. M-25881 in of 2014 and for respondents No.
1 to 4 in CRM No. M-32344 of 2014.

Mr. Ashish Sanghi, Deputy A.G. Punjab,
for respondent-State.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes.
2. To be referred to the Reporter or not. Yes.
3. Whether the judgment should be reported in the digest ? Yes.

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KULDIP SINGH, J.

By this single judgment, I will dispose of CRM No. M-25881 of 2014 and CRM No. M-32344 of 2014, titled as Vijay Kumar Dhir Versus Vinay Jain and others, filed under Section 482 of Code

of Criminal Procedure, 1973, arising out of the same order dated 3.7.2014 (Annexure-P-15), passed by the learned Additional Sessions Judge, Moga. For brevity, the facts are extracted from CRM No. M-25881 of 2014.

The brief history of the case is that Vijay Kumar Dhir (petitioner) filed a criminal complaint before the learned Judicial Magistrate 1st Class, Moga, against Luxmi Narayan Shandyal son of Hanuman Parshad Shandyal, Vijay Jain, Vinay (Vini) Raj Modi, Ravinder Pal Singh, Director, Gian Ganga Education Institute and Sachin Shandyal son of Rupinder Shandyal under Sections 420/468/465/467/469/471/120-B IPC, alleging that accused No. 1 Luxmi Narayan Shandyal and his son Upinder Shandyal (since deceased) were the Chairman-cum-Managing Director of Gian Ganga Education Institute, Raipur. It was alleged that in July, 1995, Suman Dhir wife of Balraj Kumar, who is elder brother of the complainant, came to the house of complainant at Kot Ise Khan, District Moga and represented that they want to open a school in the name of Gian Ganga Education Institute and they represented that an agreement was signed by four persons, namely, Raj Kumari Kanda, sister-in-law (Bhabhi of the complainant), Rupinder Kumar Shandyal and Ravinder Pal Singh. They demanded Rs. 4 lacs from the complainant and gave assurance to the complainant that he will

be given interest at the rate of 18% per annum and 16% out of the profit. The complainant alleged that on 15.7.1995, he gave a draft of Rs. 2 lacs in favour of accused No. 1 and his son Upinder Shandyal and agreed to send Rs. 2 lacs at Bhopal. The complainant sent two drafts dated 4.3.1996 of Rs. 50,000/- each and again on 2.9.1996, sent another draft of Rs. 1 lac. In this way, the complainant paid Rs. 4 lacs to accused No. 1, namely, Luxmi Narayan Shandyal and his son Upinder Shandyal (now deceased). The complainant was never repaid the principle amount or interest or profit. According to the complainant, his sister-in-law sent a notice dated 3.7.1997 to the accused party and in reply thereof, the accused party replied that they never agreed to pay interest at the rate of 18% per annum or any profit. It is further stated that the amount was not released to the complainant. After the death of Upinder Sandyhal in 1998, accused called a joint house meeting and appointed Luxmi Narayan Shandyal and Sachin Shandyal as Directors of the Company, who have now refused to pay any amount or interest. Accused have now finally refused to pay the amount. In this way, they have committed the offence, alleged in the complaint. It also comes out from the order of charge that accused No. 1 Luxmi Narayan Shandyal had died during the pendency of the complainant and, therefore, he was shown dead in the chargesheet. In this way, Vijay Jain, Vinay (Vini)

Raj Modi, Ravinder Pal Singh and Sachin Shandyal are facing the trial.

On the basis of preliminary evidence, the learned Judicial Magistrate 1st Class, Zira, vide order dated 12.9.2001, summoned the accused under Section 420 IPC only.

It also comes out that the accused party had earlier filed a petition before this Court i.e. CRM No. M-7885 of 2009 for quashing the complaint, which was ultimately withdrawn on 17.8.2011 (Annexure-P-10) with liberty to take up all the pleas available to them during trial. The summoning order was not challenged by the accused party.

It also comes out that, vide order dated 1.2.2014 (Annexure-P-11), the accused were chargesheeted under Section 420 IPC. The said order was challenged by the accused and the complainant by way of filing the separate revisions before the first appellate Court, i.e. Crl. Revision No. 25 dated 26.2.2014 CRR302014, titled as Vijay Jain and others Versus Vijay Kumar Dhir and Crl. Revision RT No. 68 dated 24.4.2014 CRR322014, titled as Vijay Kumar Dhir Versus Lakshami Narain Shandley and others, respectively and both the revisions were decided, vide impugned order dated 3.7.2014, passed by the learned Additional Sessions Judge, Moga. The revision filed by the complainant was dismissed

and the revision filed by accused Vijay Jain, Vinay (Vini) Raj Modi and Sachin Shandyal was allowed.

I have heard the learned counsel for the petitioner, learned senior counsel for respondents No. 1 to 4, learned State counsel and have also carefully gone through the file.

The perusal of the contents of the complaint shows that according to the complainant, a misrepresentation was made to him in July, 1995 by Suman Dhir wife of Balraj Kumar, elder brother of the complainant alongwith accused Luxmi Narayan Shandyal and his son Upinder Shandyal. Accused No. 1 as well as Upinder Shandyal are dead and Suman Dhir has not been arrayed as accused. The said three persons had presented an agreement to the complainant and prevailed upon him to invest Rs. 4 lacs in the education institute, to be opened by them, namely, Gian Ganga Education Institute. They agreed to pay 18% per annum interest and 16% out of profit to him. The said promise was oral and it was between the complainant and said three persons, who are either no more or not made accused. According to the complainant, he paid Rs. 4 lacs in favour of accused No. 1 Luxmi Narayan Shandyal (now dead) and his son Upinder Shandyal (now deceased), who were Chairman and Director of the said company. The grouse of the complainant is that since 1995, neither any interest was paid to him

nor any profit was paid to him and that in reply to the notice dated 3.7.1998, accused refused to pay the amount. It comes out that the money was paid to accused No. 1 and his son as a Chairman of Gian Ganga Education Institute, who are now dead. Therefore, money was paid to the company and not to any individual. Vijay Kumar Jain, Vinay (Vini) Raj Modi, Ravinder Pal Singh, Director, Gian Ganga Education Institute and Sachin Shandyal have nothing to do with the said oral promise of return of the money.

The learned counsel for the petitioner does not deny that the petitioner was allotted about 800 shares in the said company. The learned counsel for the petitioner alleged that a demand draft for refund of his money is ready, but is not being signed by the directors.

First of all, it is to be noticed that the company is not an accused in this case and all the persons are sought to be made liable for their personal act. For this purpose, it is required to be proved that accused have committed the offence under Section 420 IPC or any other offence, as alleged in the complaint.

I am of the view that if according to the complainant, some misrepresentation was made by some persons, who are either not made accused or are dead, for the said reason, the other accused cannot be held liable. The money invested by the

complainant is still shown in the account books of the company. If the complainant wants to withdraw the said money and it is not being returned by the company alongwith interest and profit, the complainant can always file a civil suit. In order to prove the criminal offences, the petitioner is required to strictly prove that the offences are made out.

Section 420 IPC provides as under :-

“Section 420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

In this case, there are no allegations that the accused, who have been chargesheeted, have made any representation to the complainant and that the complainant has been cheated. The money is still shown in the record books of the company and according to the complainant, it is not being refunded. Therefore, the element of cheating is not there.

From the contents of the complaint, it comes out that the complainant had invested Rs. 4 lacs in the said company, namely,

Gian Ganga Education Institute Private Limited. There is no document on file to show that the said company or any of its directors ever promised or entered into a written contract to pay interest at the rate of 18% per annum and 16% profit to the complainant. Therefore, the averment in the complaint cannot be taken as gospel truth. Even in the civil suit, the complainant will be required to prove that any agreement was entered into between him and the company or any of the directors or chairman for payment of interest and share out of the profit.

The learned counsel for the petitioner contends that Luxmi Narayan Shandyal had written a letter to the complainant, acknowledging the liability of Rs. 4 lacs and willingness to repay the same. If despite the said assurance, the money is not returned, the remedy is to file the civil suit.

During the course of arguments, the learned counsel for the petitioner even went beyond the pleadings in complaint to state that the offence of criminal breach of trust and misappropriation of funds is also made out and that offence of falsification of accounts under Section 477-A IPC is also made out as the amount is shown in the account books of the company without showing accruing interest.

At the first instance, even if the offences are proved, the

company is a separate entity, which has not been made accused. Without the company being added as an accused, company or its directors, who are responsible for running the affairs of the company, cannot be prosecuted. The present accused were not in the picture when the unsecured loan was advanced. The fact remains that the amount is still shown in the account books of the company. Therefore, it will amount to going too far to hold that there is falsification of accounts or that there is any criminal breach of trust. It is a case of simple advancement of unsecured loan, invested in the company and the complainant seeks refund of the same, which is basically a civil dispute and the criminal complaint and chargesheet to the accused under Section 420 IPC, is nothing, but misuse of process of Court.

All the averments made by the learned counsel for the petitioner were met by the learned Additional Sessions Judge, Moga, and it was observed that Vijay Kumar Jain, Vinay (Vini) Raj Modi and Sachin Shandyal were not party to the transaction. They were not present at the time of alleged deal. Sachin Shandyal has been inducted as a director in the company in March, 1998 and there is nothing on file to show that the other accused have got any concern with Gian Ganga Academy and the sister concern of Gian Ganga Education Institute Private Limited earlier to March, 1998. While

dealing with the allegation of forgery, the learned Additional Sessions Judge, Moga, has observed as under :-

“30. Ex.CW4/A to Ex. CW4/W are copies of minute book regarding various meeting carried out by Board of Gyan Ganga Academy Pvt. Ltd. Bhopal. In Ex.CW4/A, Chairman was authorized to issue shares after considering the share applications. Matter regarding installation of telephones in school premises and memorandum of undertaking regarding construction of hostel, office complex, dining hall and three shops was also discussed and it does not show that any wrongful loss was caused to complainant by this document. Similar matter was considered vide resolution Ex.CW4/B. Ex.CW4/C speaks about procurement of additional land and temporary electric connection and I fail to understand how this resolution attracts aforesaid provisions. Ex.CW4/D again speaks about construction of hostel building and dining hall. Ex.CW4/E speaks about money received by share holders and for term loan and induction of Shri Vini Raj Modi in the Board of Directors of the company. It is also not a forged and fabricated document. Ex.CW4/F discusses about the progress of school building and it is also not a forged and fabricated document. Actually all the documents i.e. certified copies of minute book have been prepared in accordance with various meetings convened by Board of Directors of Gian Ganga Academy Pvt. Ltd. and these documents cannot be said to be forged and fabricated. Through these documents, accused has not alleged in

complaint that these have been fabricated for misappropriating his amount, therefore, it is hard to believe that provisions of Sections 406, 465, 467, 468, 469, 471 read with Section 120-B of Indian Penal Code are attracted in this case or any prima-facie case is made to charge the accused with these offences.

31. Terse crux of the discussions above is that no prima-facie is made out against Vijay Kumar Jain, Vini Raj Modi and Sachin Shandialya petitioners of petition No. CRR302014 and there is no prima-facie case made out to charge accused Laxmi Narin Shandley and Ravinder Pal Singh for the offences under Sections 406, 465, 467, 468, 469, 471 read with Section 120-B of Indian Penal Code. Accordingly, revision petition filed by Vijay Kumar Dhir is dismissed whereas revision petition filed by Vijay Jain, Vini Raj Modi and Sachin Shandilya is accepted. Order under challenge qua these persons is set aside and they are discharged in complaint case.”

The learned counsel for the petitioner has relied upon the following authorities of the Apex Court :-

1. Stree AtyaChar Virodhi Parishad Versus Dilip Nathumal Chordia and another with connected case, (1989) 1 Supreme Court Cases 715 ;
2. State of Tamil Nadu Versus Mahi Traders and others with connected cases, (1989) 1 Supreme Court Cases 724 ;
3. Om Wati (Smt.) and another Versus State, through Delhi Admn. and others, (2001) 4 Supreme Court Cases 333 ;
4. Sanghi Brothers (Indore) Private Limited Versus Sanjay Choudhary and others, (2008) 10 Supreme Court Cases 681 ;
5. Palwinder Singh Versus Balwinder Singh and others, (2008) 14 Supreme Court Cases 504 ;

6. Lee Kun Hee, President, Samsung Corporation, South Korea and others Versus State of Uttar Pradesh and others, (2012) 3 Supreme Court Cases 132 ;
7. Rajvir Singh Versus Secretary, Ministry of Defence and others, (2012) 3 Supreme Court Cases 167 ;
8. Dinesh Seth Versus State of NCT of Delhi, (2008) 14 Supreme Court Cases 94 ;
9. Pareena Swarup Versus Union of India, (2008) 14 Supreme Court Cases 107 ;
10. Kangaroo Court in West Bengal Versus None, 2014 (2) RCR (Criminal) ;
11. SWIL Ltd. Versus State of Delhi and another with connected cases, (2001) 6 Supreme Court Cases 670 ;
12. Keshub Mahindra Versus State of Madhya Pradesh, 1996 (6) SCC 129.

It has been argued that the charge can be altered at any stage and that even if the allegations are not made in the complaint and the Court finds that some charges are made out, the accused can be charged with the said offences.

I am of the view that from the contents of the complaint and evidence led in support of the charge, it comes out that no offence against the accused Vijay Kumar Jain, Vinay (Vini) Raj Modi and Sachin Shandyal is made out. Consequently, there is no illegality or infirmity in the impugned order. Hence, both the petitions are dismissed.

(KULDIP SINGH)
JUDGE

18.2.2016
sjks