

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Date of Decision: May 26, 2016

1. CRM M-33365 of 2015

Japesh Sharma

.....Petitioner

Vs.

State of Punjab

.....Respondent

2. CRM M-34301 of 2015

Bharat Bhushan Sharma

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.P.S. Ahluwalia, Advocate
for the petitioners
in both cases.

Mr.Simsi Dhir Malhotra, DAG, Punjab.

Mr. S.P.S. Sidhu, Advocate
for the complainant.

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M.M.S. BEDI, J.

This order will dispose of two petitions bearing CRMs M-33365 and M-34301 of 2015 for grant of pre-arrest bail. The FIR was registered at the instance of Gurvinder Singh alleging that the complainant was retired as Warrant Officer from Air Force of India in the year 2010. He used to come to the office of Rajan Thakural, his friend situated at Sirhind Mandi where he came in contact with one Ajay Kumar, resident of Mandi Gobindgarh and developed friendly relations with him. Ajay Kumar told him that his relative Shailender Kumar @ Shalli has earned handsome money in the business of property dealer as such the complainant was induced by Ajay Kumar to invest money in property and on inducement of Ajay Kumar, the complainant became ready to invest money in the property dealing business of Shailender Kumar. The complainant was then introduced by Ajay Kumar to Shailender Kumar and the petitioner Bharat Bhushan Sharma in the office of Satish Kumar Nanda, friend of complainant at Nanda Petrol Pump, GT Road, Sirhind. The complainant gave a sum of Rs.15 lacs to Bharat Bhushan Sharma in presence of his friend Satish Kumar in the last week of June. Complainant after selling his three plots and residential house deposited an amount of Rs.1.42 crores in cash with petitioner Bharat Bhushan Sharma during the period July 5, 2011 to September 2, 2011 on different dates in saving account No. 07910500103 of ICICI Bank Branch, Kharar in the name of RRS Developers of accused Bharat Bhushan Sharma. Complainant in this way invested sum of Rs.1.57

crores in property business of Bharat Bhushan Sharma and Shailender Kumar. Bharat Bhushan Sharma further invested amount of Rs.5.17 crores in firm M/s Manohar Infrastructure and Construction Pvt. Ltd. for purchasing the land situated at Village Dhanora, near Mullanpur Garibdas, Mohali. Complainant, Bharat Bhushan Sharma, Shailender Kumar Sharma and Rajesh Aggarwal of M/s Progressive Properties, Sector 16, Panchkula, through RRS Developers struck a written deal with Manohar Infrastructure and Construction Pvt. Ltd. in which petitioner Bharat Bhushan Sharma had 40% share. Thereafter Manohar Infrastructure and Construction Pvt. Ltd. backed out of the deal and refused to give him land resulting in registration of FIR No. 262 dated September 15, 2014 under Sections 406, 420 IPC registered at Police Station Sector 17, Chandigarh by Bharat Bhushan Sharma against Manohar Singh and Tarinder Singh Sunny but later on matter was compromised and entire amount was returned to Bharat Bhushan Sharma by firm Manohar Infrastructure and Construction Pvt. Ltd. Bharat Bhushan Sharma returned amount of Rs.12.50 lacs to the complainant through saving account No. 0370040100004179 maintained J&K Bank Branch, Mohali and Rs.8 lacs through other saving accounts on different dates but the amount of Rs.24 lacs was still due towards Bharat Bhushan Sharma. Both the petitioners came to the house of the complainant at Sirhind in the month of October 2014 and allured him to start the business of property again. The complainant took keen interest in the talks of the petitioners and was ready to start property business with them. Both the

petitioners met the complainant in the office of Jaggi Finance Railway Road, Sirhind and received an amount of Rs.21 lacs from the complainant, in the presence of his friend Pritpal Singh. The complainant and his friend Rakesh Kumar had also gone to the house of petitioner Bharat Bhushan Sharma in the month of February 2015 and gave another amount of Rs.26 lacs to the petitioner which was received by his wife in the presence of petitioner Bharat Bhushan Sharma. In this manner, the petitioners have received total amount of Rs.47 lacs from the complainant for the purpose of business of property. On demand having been made by the complainant for refund of the money and to give him the benefit earned in the business of property, matter was put up on one pretext and another.

Mr. P.S. Ahluwalia, learned counsel for the petitioners has vehemently contended that no offence is made out against the petitioners, as liability, if any, arisen out of the business transaction would be a civil liability which can be enforced in the appropriate forum. It was urged that as the allegations of cheating and misappropriation have been amongst the partners claiming that the complainant had entered into partnership with the accused to share profits out of the property business, no offence can be said to have been committed by the petitioners. Reliance was placed on the judgment of the Apex Court in **Velji Raghavji Patel Vs. State of Maharashtra**, AIR 1965 SC 1433, wherein it was held that all the partners enjoy dominion over every partner over partnership assets. Their cannot be

any entrustment unless there is special agreement. No offence of breach of trust can be said to have been made out against the petitioner.

The case referred to by counsel for the petitioner pertain to a controversy amongst the partners of a building construction Company. A dispute arose resulting in an award. The shares were determined by the award. The accused had misappropriated six items of the partnership concern. As the partners had utilized the items for business of the partnership, it was held that the partners cannot be said to have misappropriated the property but relief could be sought by seeking rendition of accounts.

In the present case it is not a case of breach of trust but it is claimed that the petitioners have cheated the complainant by persuading him to initially part money in a well planned fraudulent manner and later on causing wrongful loss to the complainant in a fraudulent manner as such the ratio of the judgment will not be applicable to the facts of the present case.

Learned counsel for the petitioners has vehemently contended that the allegations of the complainant is that he had invested Rs.1.57 crores but a sum of Rs.1.33 crores has been paid back by the petitioner in the year 2014 and the balance amount of Rs.24 lacs had to be paid by the petitioners to the complainant. Counsel for the petitioners has submitted that as per the bank statement copy which has been appended as annexure P-2, a sum of Rs.37.75 lacs was paid by the complainant. Referring to the oral terms of the partnership, Mr.P.S. Ahluwalia contended that the complainant was

entitled to 20% in the profit of partnership business but as per the admissions and the accounts the complainant has been paid more amount than his amount due. The total amount which has come to the account of the petitioner was Rs.4.58 crores and if the share of the complainant is to be 20%, he has received much higher than the amount then the petitioner.

On the other hand, learned counsel for the complainant has submitted that at one stage the petitioner had admitted his liability to the extent of Rs.35 lacs and had promised to pay the money but on account of his having resiled from the said admitted liability he would be said to have cheated the complainant in the business. It was argued that the FIR has been registered after a delayed inquiry conducted by the police. The petitioners are guilty of having forged certificate of account to evade the liability.

After hearing counsel for the petitioner, counsel for the complainant, State counsel and going through the record it appears that the main grievance of the complainant is qua Bharat Bhushan Sharma. His son Japesh Sharma is alleged to have connived with his father to dupe the complainant.

Counsel for the petitioners has submitted that it is a case of civil liability and the only remedy to the complainant is to file suit for recovery or rendition of accounts.

In view of the material available on the record, the investigation conducted by the police and the inquiry report, it appears to be a case which is a combination of both civil and criminal liability as per the judgment of

Lee Kun Hee Vs. State of UP and others, 2012 (1) Recent Apex Judgments 259, wherein it was held that both the civil and criminal proceedings can be initiated depending upon the circumstances of each case.

Counsel for the petitioners, at this stage has submitted that petitioner Bharat Bhushan Sharma is ready to deposit any amount desired by this Court to show his bonafide subject to rendition of accounts between the parties.

I have considered the said contention of learned counsel for the petitioners and I am of the opinion that dismissal of petition filed by Bharat Bhushan Sharma will not prejudice his rights to approach this Court again in case the matter is amicably resolved between the parties.

Both the petitioners though have joined investigation but I do not find any extraordinary exceptional circumstances to grant the concession of anticipatory bail to petitioner Bharat Bhushan Sharma (CRM M-34301 of 2015).

The petition bearing CRM M-34301 of 2015 is thus dismissed but the petition bearing CRM M-33365 of 2015 filed by Japesh Sharma is allowed and it is ordered that in case of arrest of the petitioner he will be released on bail to the satisfaction of the arresting officer subject to the conditions that he will join investigation as and when required by the police and that petitioner Japesh Sharma will not tamper with the evidence or hamper the investigation in any manner.

May 26, 2016
sanjay

(M.M.S.BEDI)
JUDGE