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

\+ CRL.M.C. 2169/2017

VIJAY KUMAR CHAUDHARY ..... Petitioner

Through Mr. Pawan Sharma, Advocate

versus

STATE & ORS ..... Respondents

Through Ms. Aashaa Tiwari, Addl. PP for State with SI Sanjay Kaushik, P.S.Sarai Rohilla

CORAM:
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% 24.05.2017

Crl.M.A.No. 8881/2017 (Exemption)

Exemption allowed, subject to just exceptions.

Application stands disposed off.

Crl.M.A.No.8882/2017 (condonation of delay)

By the application, the applicant seeks condonation of delay of 50 days in refilling of the petition. For a petition filed under Section 482 Cr.PC, no time limit is prescribed. Application is formal in nature and is granted.

The application stands disposed off.

Crl.M.C.No. 2169/2017

By the petition filed under Section 482 Cr.PC, the petitioner seeks quashing of the order dated 11.2.2013 passed by the learned MM refusing to issue summons on the complaint filed by the revisionist, as also the order dated 16.7.2014 passed by the learned ASJ dismissing the revision preferred there against. The instant petition has now come to be filed after about two years thereafter. Learned MM dealt with the complaint with the following observations, which is, as under:

> "However before deciding the question of summoning, it will be pertinent to mention facts of the case. The facts of the case as per PSE are that the complainant was appointed as sub-broker by the accused company after taking necessary documents and was allotted branch No. 2873 at Moti Bagh. The complainant opened various trading accounts as mentioned in the PSE from December, 2010 to March, 2011. Thereafter complainant was told by the accused company to join the Roorkie branch of the accused company as said branch was running in losses by accused Manoj. Thereafter the complainant took charge of Roorkie branch. **He executed an agreement with Manoj, copy of which is mark A. The grievance of the complainant is that amount of over Rs.2,00,000/-as mentioned in PSE on Page 2(bottom) which was due to him was illegally given to Manoj for which complaint was also given by the complainant to SEBI.** In retaliation the accused persons threatened the complainant and his wife both at Delhi residence as well as Haridwar residence on various dates. Further complaint is that his account was operated including his MCX-SX without his permission. Due to said unauthorized trading his clients sustained loss of Rs. 10 to 15 lakhs. As account no. 62031 was short of margin hence complainant paid Rs.1,55,000/- out of which Rs.1,00,000/- was deposited in the account of accused no.2. Accused Manoj Kumar also got an FIR registered against the complainant at Roorkie. Accused Manoj Kumar was unauthorizedly made a partner in the Roorkie branch even though he is not a

sub-broker registered with SEBI and Manoj is not in any way linked with said branch. Accused Manoj also indulged in unauthorized trading. The accused persons also took certain documents from the complainant for his registration with SEBI as sub-broker but did not fulfil their promise of doing so. As per the suspicion of the complainant unauthorized trading was done in his account, copy of which is mark K.

In my view the facts of the case would clearly show that no offence is made out and dispute is of civil nature. It is merely a case where some commission is accrued to the complainant which has not been paid to him. As far as unauthorized trading in account of the complainant are concerned firstly on perusal of the file there are no documents which show that the complainant is a sub-broker because for being a sub-broker a person is required to be registered with SEBI. Also even if the complainant is a sub-broker then non-payment of commission is merely a dispute of civil nature. As far as unauthorized trading is concerned, it is not shown as to how the same would fall under any offence in IPC or any other law which this court can try. Also in my view the complainant has forums like SEBI to deal with unauthorized trading. Even otherwise as far as amount due towards commission is concerned no client introducer proofs have been attached by the complainant regarding the clients which he provided to the accused company and as above mentioned recovery of commission is merely a dispute of civil nature.

Further in my view on the evidence led by the complainant there are few reasons which lead me to believe that the complaint is inherently improbable, lacks intrinsic quality of a credible case and intrinsically untrustworthy. There reasons are:-

(i) **It seems unbelievable as to how the complainant can reimburse the margin money of Rs.1,55,000/- to the accused when he himself stated that his clients suffered a loss of Rs. 10 to 15 lakhs on account of unauthorized trading.**

(ii) **The complainant has not shown his own registration as a sub-broker with SEBI which is a mandatory requirement before acting professionally as such.**

(iii) **As above said the complainant has not shown a single document i.e. client introducer form or has not even named a single client whom he introduced to the accused company for which he is claiming commission.**

Here, it would be pertinent to mention some laws laid down by Hon'ble Supreme Court of India as to when a complaint can be dismissed under Sec. 203 Cr.PC. In Chandra Deo Singh Vs Prakash Chand Bose AIR 1963 SC 1430 (paragraph 8) it has been laid down that the complaint can be dismissed where the PSE lacks intrinsic quality due to which it cannot be believed. A complaint can also be dismissed where on consideration of evidence it seems to be inherently improbable **(Smt. Nagawwa Versus Veerana AIR 1976 SC 1947 (paragraph 4 & 5) or intrinsically untrustworthy (Nirmaljit Singh Hoon Versus State of West Bengal, AIR 1972 SC 2639 (paragraph 22). It is also laid down in Subol Vs Ahadulla 1926 (53) Calcutta 606** that a complaint can also be dismissed where it is of civil nature. It was also held in **Nagawwa Versus Veerana AIR 1976 SC 1947 (paragraph 4 & 5)** that where the allegations made in complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint

> does not disclose the essential ingredients of an offence which is alleged against the accused then the complaint is liable to be dismissed."

Learned ASJ equally adverted to the averments in the complaint and did not see any reason to the conclusions arrived at by the learned Metropolitan Magistrate. I do not see any legal infirmity in either of the two orders to invoke the jurisdiction under Section 482 Cr.PC. Suffice to say, the ld. Counsel has not urged anything new, which was not looked into by either ld. MM or the revisional court.

Dismissed.

A. K. CHAWLA, J

MAY 24, 2017
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