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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
\+ CRL.M.C. 474/2018

MEGHA SINGH ..... Petitioner

Through: Mr. Puneet Mittal, Sr. Adv. with Mr. R.P. Singh and Mr. Rajan Chutami, Advs.

versus

STATE & ANR ..... Respondents

Through: Ms. Meenakshi Dahiya, APP with SI D.V. Singh, P.S. Kalkaji.

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

<u>O R D E R</u>

% 31.01.2018

On the complaint of petitioner, FIR No. 8/2013 under Sections 406 IPC was registered at police station Kalkaji. Petitioner alleged in the FIR that she was running a resort under the name and style Hotel Queen Fair Mont Bhavamber Vilas Group, Ram Nagar, Nanital right from February, 2011. Respondent no.2 approached her and represented that he would given her business of ₹3 crores per annum on the commission of 10%. Draft agreement was prepared but was not finalised due to some changes. Respondent procured bookings of some guests from Sachin Travels Pvt. Ltd. Total business to the tune of ₹22,54,830/- approx. was done between 15th March, 2011 and 28th June, 2011. Though Sachin Travels Pvt. Ltd. had paid the entire amount to respondent, but he did not pay entire amount to petitioner. ₹10,68,835/- was still due towards the bookings for the aforesaid period. Thus, respondent had misappropriated about ₹10 lacs.

After completion of investigation charge-sheet was filed. Vide order dated 17th December, 2016, learned Metropolitan Magistrate discharged the respondent. Learned Metropolitan Magistrate held that no material was there on record to form a, prima facie, view that respondent had misappropriated ₹10.35 lacs of the petitioner; rather, during the investigation, it was found that (a) Sachin Travels had never dealt with complainant and it was dealing only with accused, (b) with Sachin Travels accused had conducted total business of ₹20.23 lacs. He received ₹11.58 lacs from Sachin Travels which he paid entirely into the account of complainant (c); Arithmetically, now a sum of ₹8.65 lacs was payable by Sachin Travels to accused towards liability of complainant; (d) Sachin Travels admitted liability of ₹10.30 lacs towards accused and issued a cheque of ₹10.30 lacs which got dishonoured; (d) accused had filed 138 NI Act case against Sachin for dishonour of said cheque of ₹10.30 lacs and (e) The amount of ₹8.65 lacs, as due towards complainant from Sachin Travels, was never received by accused. There is nothing on record to suggest or indicate otherwise. As the sum of ₹8.65 lacs was never received by accused from Sachin, so, there cannot be any question of misappropriation/embezzlement of the same or commission of criminal breach of trust.

Petitioner preferred a revision which has been dismissed by the learned Additional Sessions Judge on appreciation of material collected during the investigation. Learned Sessions Judge has held that no document could be collected during the investigation that Sachin Travels Pvt. Ltd. had transferred entire amount of ₹23,06,000/- in the account of the respondent for handing over the same to the petitioner. Record indicated that Sachin Travels Pvt. Ltd. had admitted liability of ₹10 lacs towards the respondent as on 6th August, 2010. A sum of ₹10,70,525/- was released by Sachin Travels Pvt. Ltd. to the respondent from 15th March, 2011 till 28th June, 2011. A sum of ₹3,88,426/- was released in the year 2012 and a sum of ₹2,09,700/- was released in the year 2013. Record nowhere indicated that Sachin Travels Pvt. Ltd. has credited the amount of ₹20,23,000/- in the account of respondent on account of the business given to petitioner. Respondent had received a cheque of ₹10,30,000/- from Sachin Travels Pvt. Ltd. which was dishonoured and a complaint under Section 138 of Negotiable Instruments

Act, 1881 was filed.

Trial court as well as revisional court have returned findings that nothing was there on record to indicate that petitioner had entrusted any money to the respondent which he had misappropriated. Ingredients of Section 406 IPC were not attracted.

Findings have been returned by the two courts below on appreciation of the material collected during the investigation which, in my view are not perverse. It was a business transaction wherein certain money appears to has remained unpaid by the respondent to petitioner. That by itself would not be sufficient to attract the ingredients of Section 406 IPC. Petition is dismissed. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

JANUARY 31, 2018
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