

Kumar, who was a licensee contractor, entered into a partnership business and a deed of partnership was signed by all of them in the year 2009. In the year 2011, the complainant invested Rs. Nineteen Lacs in the business of partnership and the money was provided in installments. The Firm earned Rs. 2,50,000/- (Two Lacs Fifty Thousand) which was share of the complainant in respect of his money invested in the business. On 16.05.2011, the petitioner issued a cheque to the complainant of Rs.2,50,000/- (Two Lacs Fifty Thousand) and promised to return the principal amount within a short time. On 01.06.2013, the complainant asked the petitioner for refund of the aforesaid amount but the complainant did not refund the same rather executed an undertaking. A copy of the same is at Annexure-B to the counter affidavit. Annexure-B reveals that the petitioner had stated that the complainant had invested Rs. Nineteen Lacs and the said amount became Rs.21,0500/- in the year 2011. The petitioner issued cheque of Rs.2,50,000/- (Two Lacs Fifty Thousand) which was encashed by the complainant and petitioner promised to refund Rs. Nineteen Lacs within a year which was not refunded. Hence, the complainant found himself cheated.

4. Submission of the learned counsel for the petitioner is that the entire allegation is squarely governed by the Partnership



Act which provides for rights and liabilities of the partner against each other as well as against 3rd party. It further provides for remedy to the aggrieved partners against mismanagement of the business of the Firm by another partner and most important remedy is dissolution of the Firm either by mutual consent or with the intervention of the court and accounting of the profits and liability of the Firm. This is not a case of criminal liability as in a partnership business each of the partner has right and liability in respect of each and every property of the Firm even a sleeping partner bears the same rights and liabilities against the 3rd party.

5. Learned counsel for the complainant-opposite party No.2 submits that the learned court below has found prima facie case against the petitioner and the finding is based on material on the record. Hence, the probable defence cannot be looked into at this stage.

6. Since the most important ingredient of offence of criminal breach of trust i.e. entrustment of property is missing in this case, the cognizance for offence under Sections 406 I.P.C. is apparently against the material on the record. For simple reason that the complainant has categorically stated that the complainant first entered into partnership business with the petitioner and co-accused, a deed of partnership was signed by the partners and



thereafter money was invested in the business. Therefore, the claimed amount of Rs. Nineteen Lacs was not entrusted to the petitioner rather it was invested in the business of partnership. If the petitioner honestly admitted that the said amount of the complainant is due with him, the complainant may recover the same in a duly instituted civil proceeding and no criminal liability is made out. Likewise, no ingredient of cheating is disclosed in the complaint petition. It is not the case of the complainant that if the petitioner would not have induced and misled the complainant he must not have invested the money in the business. The complainant invested the money business of partnership to earn profit and profit of one year was already given to the complainant which the complainant received. Therefore, conduct of the petitioner does not depict that at any point of time, from very inception of the agreement, he ever acted with dishonest and fraudulent intention.

7. Therefore, the order of cognizance has been passed in a mechanical manner without satisfying that the offences are not disclosed in the complaint petition. Accordingly, it is held that continuance of the criminal proceeding against the petitioner amounts to an abuse of the process of the Court.



8. In the result, the impugned order is quashed and this application stands allowed.

9. It is needless to say that the complainant may institute civil proceeding for redressal of his grievance.

(Birendra Kumar, J)

Nitesh/-

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