

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-17414-2019 (O&M)

Date of decision : 22.10.2019

Muzaffar Hussain

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.P.S. Duggall, Advocate for the petitioner.

Mr. Anmol Malik, AAG, Haryana alongwith
ASI Salinder Singh.

Mr. Virender Partap Singh, Advocate for respondent No.2.

ANIL KSHETARPAL, J. (ORAL)

Prayer is to quash FIR No.117 dated 03.08.2018 registered under Sections 406, 506 of the Indian Penal Code at Police Station Panjokhra, District Ambala.

Undisputedly, the petitioner as well as first informant were partners in a firm running a partnership business. As per case of the petitioner, the share between the petitioner and first informant was 80:20 whereas first informant claims that it was 40:60 (60% of respondent-first informant).

Gravamen of the allegations made in the FIR are that the petitioner has run away with moveable assets of the partnership firm. It is

further alleged that when first informant spoke on telephone to the petitioner, he abused and threatened to kill.

This Court has heard learned counsel for the parties at length.

As noticed above, there is no dispute between the parties that they were running the business of decoration work in the functions held at the time of marriage.

Criminal breach of trust is defined under Section 405 of the Indian Penal Code, which is extracted as under:-

***“405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.*”**

On careful reading thereof, it is apparent that any person entrusted with property, or with any dominion over property, if dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law, prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, would be deemed to have committed offence of criminal breach of trust.

The immovable properties belongs to a partnership firm which itself has no legal entity. Therefore, the movable property is joint between

the parties. In absence of any special contract or agreement, entrustment of the aforesaid property to one partner cannot be assumed. It is the property which is being put to use in the conduct of business.

This issue has been examined in detail by Hon'ble the Supreme Court in the case of **Velji Raghavji Patel Vs. State of Maharashtra, AIR 1965 SC 1433** while relying upon three Judge Bench of the Calcutta High Court in the case of **Bhuban Mohan Das Vs. Surendra Mohan Das, 1950 (55) Cal. W.N. 541**. Para 6 of the Velji Raghavji Patel's case (Supra) reads as under:-

“6. It seems to us that the view taken in Bhuban Mohan Rana's case, by the later Full Bench of the Calcutta High Court is the right one. Upon the plain reading of Section 405 Indian Penal Code, it is obvious that before a person can be said to have committed criminal breach of trust it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use or disposed of in violation of any direction of law etc. Every partner has dominion over property by reason of the fact that he is a partner. This is a kind of dominion which every owner of property has over his property. But it is not dominion of this kind which satisfies the requirements of Section 405. In order to establish "entrustment of dominion" over property to an accused person the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment. Therefore, as rightly pointed out by Harris, C.J., the prosecution must establish that dominion over the assets or a particular assets of the partnership was, by a special agreement between the parties, entrusted to the accused person. If in

the absence of such a special agreement a partner receives money belonging to the partnership he cannot be said to have received it in a fiduciary capacity or in other words cannot be held to have been "entrusted" with dominion over partnership properties."

As regards threat to life, there is only bald allegations of first informant.

Keeping in view the aforesaid facts, this Court has come to a conclusion that the prosecution initiated is abuse of the process of the Court and, therefore, continuation thereof would not be justified. Hence, quashed. However, parties are left to get their dispute redressed from the Civil Court.

Accordingly, the present petition is allowed.

22.10.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No