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

CRM-M-22262-2019
Date of decision: May 28, 2019

Amandeep Arora

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. J.S. Toor, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of FIR No.20 dated 28.01.2010 registered under Sections 420, 406, 34 IPC at Police Station City Khanna and for setting-aside the order dated 14.01.2013 passed by the Judicial Magistrate Ist Class, Khanna vide which the petitioner has been declared as proclaimed offender.

On 16.5.2019, the following order was passed :-

> "Counsel for the petitioner has submitted that the FIR was registered against 03 persons namely Jagdish Lal, Gagandeep Arora and Amandeep Arora (the petitioner herein) with the allegations that the complainant is a NRI and he has entered into a partnership with the accused persons in order to run a joint business and a dispute has arisen between the parties regarding sharing of profit and

loss and the accused persons have failed to pay the share of the complainant. It is further submitted that the petitioner has travelled abroad and therefore, vide impugned order dated 14.01.2013, he was declared as proclaimed offender without following the procedure laid down as per the amended provisions of Cr.P.C. Chapter VII-A and without securing the presence of the petitioner as per law, as he was residing abroad. In the meantime, 02 other accused persons, who were facing the trial were discharged by the trial Court vide judgment dated 25.04.2013 as it was found that no offence punishable under Section 406 IPC was made out against those accused persons.

Counsel for the petitioner has also argued that, thereafter, the complainant filed a revision challenging the order dated 25.04.2013 passed by the trial Court and the revision was dismissed by the Additional Sessions Judge on 30.11.2014 and this order has attained finality.

Counsel for the petitioner has relied upon the judgment passed by the Division Bench of this Court **"Sudo Mandal @ Diwark Mandal vs State of Punjab"**, **2011(2) RCR (Criminal) 453**, wherein it has been held that where the co-accused of a person who was declared as proclaimed offender stands acquitted and the order has attained finality then, no purpose will be served in directing such person to face the trial.

Notice of motion.

Mr. Sidakmeet Singh Sandhu, AAG, Punjab who is present in the Court accepts notice on behalf of the respondent.

> Counsel for the petitioner is directed to supply a copy of paper-book to counsel for the State during course of the day.
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> List again on 28.05.2019.
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> In the meantime, the petitioner is directed to deposit the costs of Rs.2,00,000/- with the Punjab and Haryana High Court Advocates Bar Association."

Counsel for the petitioner has placed on record the receipt dated 24.5.2019 showing the deposit of costs of Rs.2,00,000/- by way of a cheque with the Punjab and Haryana High Court Bar Association.

Counsel for the petitioner has submitted that the petitioner is residing abroad since long and the co-accused of the petitioner, who has faced the full length trial stands discharged vide judgment dated 25.4.2013. The operative part of the order reads as under :-

> "I have perused the record of the file. From the above said complaint, the specific amount of Rs.3,70,46,307/- belonging to the share of complainant is alleged to have been misappropriated. In the compromise dated 6.11.2009 arrived at between the parties, such amount is show to be Rs.47,51,075/- whereas, in the inquiry report dated 7.1.2010 of the police placed on record, there is reference of amount of Rs.75,00,000/-. In the original complaint, it is stated by complainant that a legal partnership deed was drafted and signed by Notary Public with appropriate witnesses in 2004 whereas, in statement recorded under Section 161 Cr.P.C., he says that he became partner in the firms already existing, consisting of accused as partners. The complainant himself is not clear as to the amount allegedly misappropriated by

accused. Secondly, till date, settlement of accounts has not been made between the parties. Neither any case has reportedly been filed for rendition of accounts before any authority/Court. Further, a partner has undefined ownership along with other partners over all the assets of the partnership. If he chooses to use any of them for his own purpose, he may be accountable civilly to the other partners. But, he does not thereby, commit any misappropriation. Admittedly, partnership firms have not yet been dissolved as per law and the partners have dominion in common over the property and the respective shares allotted to each of the partners. Unless, the dissolution of firm is taken place and account is settled, all the partners of the firm have dominion in common over the property and, therefore, if any of the partners misappropriated the property of the firm, it cannot be said that he has committed criminal breach of trust. The essential ingredients to construe the offence under Section 406 IPC of entrustment of the property is missing in this case. Reference, for my this view, can be made to the citation **Hari Mohan Vs. State of Rajasthan and another, 2007 (2) 821.**

In view of what is discussed above, no ground is made out to frame charges against accused for any offence. Accused, namely, Jagdish Lal and Gagandeep Batra are, accordingly, discharged. File be consigned to record room."

Counsel for the petitioner has further argued that the trial Court has recorded categorical findings that during the subsistence of the partnership firm, even if it is alleged by the one partner as other partner has misappropriated the property of the firm, no offence under Section 406 IPC is made out.

Counsel has further submitted that thereafter, the complainant Raghubir Singh Dhillon has filed a revision challenging the aforesaid order on 25.4.2013 before the Court of Sessions and after hearing the contesting persons, who faced the trial, the said revision petition was dismissed by passing the following order :-

> "5. I have heard the learned counsel appearing for the respective parties and gone through the record of the case sparingly.
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> 6. Assailing the order of discharge passed by the learned trial Court, learned counsel for the revisionist has argued that the learned trial Court has neither considered the facts nor the law in the correct perspective, and as such reached on an erroneous judgment, which is liable to be set aside by accepting the present revision petition. Elaborating this , learned counsel for the revisionist has argued that the view of the learned trial Court is erroneous for the reasons that at the time of framing of charge, the learned trial Court is not to weigh the prosecution evidence in between the lines and at the time of framing charge, ti is not to be seen as to how much amount has been embezzled or misappropriated by the accused as the same can be decided only during the trial. He further submitted that since the respondents have cheated the revisionist who is also one of the partner during business transaction, as such, the respondents are also criminally liable. He further submitted that although the complaint under Section 138 of the Negotiable Instruments Act has been filed against the respondent

No.1 and 2, but the respondents No.1 and 2 can be held liable under Section 420 IPC apart from the Section 138 of the Negotiable Instruments Act. He further submitted that if the firm has not yet been dissolved and the respondents had misappropriated the share of the revisionist, then all the respondents being partners are liable for breach of trust as they had the *malafide* intention from the very beginning to grab the share of the revisionist. He further submitted that by passing the impugned order, the learned trial Court has scuttled the process of law and wrongly discharged the respondents No.1 and 2. With these submissions, he prayed that the instant petition may be allowed and the trial Court is directed to frame the charge against the respondents No.1 and 2 under Sections 420/406 IPC.

7. On the other hand, learned counsel for the respondent has argued that the learned trial Court has passed very well reasoned order. He further submitted that the learned trial Court has rightly held that a charge under Sections 406/420 IPC could not be framed against the respondent No.1 and 2 as according to the version of the complainant, they are partners with him and can not be accused of an offence in respect of property belonging to respondents No.1 and 2 as well as revisionist as partners. He further submitted that at the best the liability of the respondents would be only of a civil nature. With these submissions, he prayed for the dismissal of the instant revision petition.

8. I have filtered the submissions of learned counsel for the parties and find that the revisionist has lodged a complaint against the respondents *inter alia* on the ground that he entered into a partnership with the respondents No.1 and 2 to run joint business and they set

up three firms and each firm complainant is having 40% share. He submitted that business was started in the year 2004 and as per his share, he is entitled of his share amounting to Rs.3,70,46,307/, but the respondents No.1 and 2 did not pay the said amount and they have misappropriated the share of the complainant. Admittedly, partnership firm has not been dissolved so far. In **Bhuban Mohan VS. Surindra Mohan, AIR 1951, Calcutta 69**, a Full Bench of the Hon'ble Calcutta High Court held that a charge under Section 406 IPC can not be framed against a person who according to the complainant is a partner with him and is accused of an offence in respect of property belonging to both of them as partners. Furthermore, in **Anil Saran Vs. State of Bihar and others, 1995 SCC (Criminal) page 1051**, the Hon'ble Supreme Court held that the partnership firm is not a legal entity, but a legal mode of doing business by all the partners. Until the firm is dissolved as per law and the accounts settled, all the partners have dominion in common over the property and funds of the firm. Only after the settlement of account and allotment of respective shares, a partner become owner of his share. As referred above, in the instant case, neither the partnership firm has been dissolved as per law nor the accounts settled. In the ratio of law **Anil Saran Vs. State of Bihar** *(Supra)*, unless the dissolution of firm is taken place and account is settled, complainant and respondents No.1 and 2 being partners of the firms have dominion in common over the property and even if the respondents No.1 and 2 misappropriated the property of the firms, it can not be said that they have committed criminal breach of trust. The imputations alleged by the revisionist against the respondents No.1 and 2 have been done in their capacity as partners of the firms. Keeping in view of the judicial

> verdicts referred above, in my view, from the material on record, the very essential ingredients to construe the offence of criminal breach of trust and cheating are missing in the instant case and therefore, for want of the legal requirement having not been fulfilled, this Court has no option but to concur with the findings arrived at by the learned trial Court. Consequently, I find no illegality or impropriety in the order passed by the learned trial Court, whereby the Court has discharged the accused-respondents.
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> 9. For the foregoing reasons, I find no merit in the present revision petition and the same is accordingly dismissed. Lower Court record be sent back along with copy of this order and file of the revision petition be consigned to the record room."

Counsel for the petitioner has submitted that both the Courts below have concurrently held that no offence under Section 406 IPC is made out as it is only the case of the complainant that he, along with other accused, was a partner in the firm and the partners have committed criminal breech and trust during the subsistence of the firm and, therefore, the complainant has a civil remedy for the rendition of his account.

Counsel has further argued that the order dated 14.1.2013 passed by the trial Court declaring the petitioner a proclaimed offender is without following the procedure laid down under Section 82(3) Cr.P.C. as no proper communication was made at the ordinary place of his residence. Counsel has further argued that that the since the petitioner was residing abroad and even the provision to Section 105 Cr.P.C. and amended provisions of Sections 105-A and 105-B of Cr.P.C. were not adhered to by the trial Court before declaring the person a proclaimed offender.

Counsel for the petitioner has further relied upon **"Sudo Mandal @ Diwark Mandal vs State of Punjab"**, **2011(2) RCR (Criminal) 453,** wherein it has been held that where the accused persons, who have faced the trial and were acquitted, the proceedings even against the absconding accused can be quashed if the evidence produced by the prosecution is untrustworthy.

Counsel for the petitioner has further argued that in the instant case, both the Courts below while acquitting the co-accused has recorded a categorical finding that no offence under Section 406 IPC is made out and accordingly, they were discharged and therefore, putting the petitioner at trial, at this stage, is nothing but the misuse of process of law.

Reliance has also been placed upon **Vinod Kumar Vs. State of Punjab 2011 RCR (Criminal) 438,** and **Jaswinder Singh Vs. State of Punjab, 2013(1) RCR (Criminal) 310,** wherein a similar view has been taken by this Court.

Learned State counsel, on the basis of the two orders passed by the trial Court discharging the co-accused as well as the dismissal of the revision petition filed by the complainant could not dispute the fact that a categorical finding is recorded that during the subsistence of the partnership firm, the complainant, who himself is a partner along with other accused had no *locus standi* to register the FIR, as primarily it was a case of settlement of account and the essential ingredients to constitute the offence of criminal breach of trust or cheating are missing from the bare perusal of the FIR.

Accordingly, this petition is allowed, the impugned order dated 14.1.2013 declaring the petition to be proclaimed offender is set aside the FIR No.20 dated 28.01.2010 registered under Sections 420, 406, 34 IPC at Police Station City Khanna is, hereby, quashed.

The petition stands disposed of, accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

May 28, 2019
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No