

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on :05.02.2018

Date of decision:28.05.2019

CRL.M.C.716/2016 & CRL.M.A.3076/2016

RAJ PRATAP @ MANOJ SINGH & ORS. Petitioners

Through: Mr. Saurabh Tiwari, Advocate.

versus

STATE & ANR. Respondents

Through: Mr. Raghuvinder Varma, APP
for State.

Mr. Davinder N. Grover,
Advocate with Mr. Samant
Singh, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The present petition filed by the petitioner nos. 1 to 3 namely Raj Pratap @ Manoj Singh s/o Shri Laxmi Narayan, Rakesh Kumar s/o Shri Baldev Ramani and Digamber Vishkarma s/o Shri Bhola Vishkarma respectively against the respondent no.1/ State arrayed as proforma party and the respondent no.2 Mr. Naresh Kumar Mehta, the owner of 'Mehta Medicos' at Shop No.25, Gurunanak Market Block, Greater Kailash Part-1, New Delhi seeks quashing of the FIR No.100/2015 dated 03.03.2015 under Section 408 r/w Section 34 of the Indian Penal Code, 1860, PS Greater Kailash-I at the South East

District and the consequent charge sheet pending in the learned Trial Court of the MM-10, Saket which was filed by the State pursuant to order dated 05.02.2015 of the learned MM-10, South East, Saket and an application under Section 156(3) of the Cr.P.C., 1973 filed by the respondent no.2 herein as complainant of CC No.33/1A having been allowed, it having been observed that the facts of the case disclosed the commission of the cognizable offence and the same required detailed investigation by the investigating agency.

2. Vide order dated 05.02.2015 in CC No.33/1A, the SHO, PS Greater Kailash-I was directed to register the FIR forthwith under the relevant provisions of law against the alleged persons and investigate the case strictly as per law and also to file the compliance report within one month from the said date. Pursuant to the said order, FIR No.100/2015 dated 03.03.2015 is indicated to have been registered at PS Greater Kailash-I in the South East District of New Delhi. The charge sheet under Section 173 of the Cr.P.C., 1973 dated 28.07.2015 under the signatures of the SHO, PS Greater Kailash-I is indicated to have been filed and the matter was taken up for consideration on 09.09.2015 by the learned MM, South East and vide order dated 19.10.2015, cognizance of the offence since mentioned in the charge sheet was taken with the accused and complainant directed to be summoned for the next date of hearing.

3. The charge sheet and the proceedings dated 10.02.2016 of the learned Trial Court indicate that there are four accused persons i.e. the petitioner nos. 1 to 3 namely Raj Pratap @ Manoj Singh s/o Shri Laxmi Narayan, Rakesh Kumar s/o Shri Baldev Ramani and

Digamber Vishkarma s/o Shri Bhola Vishkarma and one Sh. Sanjay Kumar. Apparently, the said Sanjay Kumar arrayed as accused in the FIR No.100/2015, PS Greater Kailash-I under Section 408/34 of the Indian Penal Code, 1860, is not a party to the present petition.

4. The Trial Court record was requisitioned vide order dated 26.04.2017 and has been received and perused.

5. The FIR is based on a complaint dated 21.02.2014 filed by the respondent no.2 against the three petitioners herein and Brij Kishore Sharma, Ram Charit, Amit Kumar, Sanjay and Bhola Nath for alleged commission of the offence punishable under Section 408 read with Section 34 of the Indian Penal Code, 1860, submitting to the effect that he had employed all the said persons at his shop in which he sold medicines and all these persons had been selling of medicines and Amit Kumar worked as a helper. It was stated through the said complaint that the complainant used to keep open his shop from 9.00 AM to 10.00 PM and during the period 2.00 PM to 5.00 PM, he used to go for lunch and rest and at that time, his wife Mrs. Neerja Mehta took the charge of the shop but she was not much educated and not very clever and in the process, he suffered losses of Rs.50 lakhs in the shop and suffered debts of distributors and banks and despite the loss being incurred, he found that his shop was running properly and thus, he installed CCTV cameras at his shop and after installation of the same, he found that all the six persons together in furtherance of their common intention committed theft of the expensive medicines sold at his shop and that these persons named in the complaint used to send medicines outside the shop and through the CCTV footage, it was also

learnt by the complainant that these persons were also joined by Bhola Nath and Sanjay Kumar, who were guards at B-20, Pamposh Enclave, GK-I, Part-I, New Delhi and that these persons used to come to the shop in the absence of the complainant and used to take away the bags filled with medicines.

6. As per the complainant, on seeing the CCTV footage, he had made inquiries from all these persons in the presence of Sh. Sunil Mehta and Sh. Rajan Mehta and all these five persons had admitted having misappropriated medicines worth Rs.45 lakhs and it was also learnt that these persons Sanjay Kumar and Bhola Nath used to give the medicines forward to their relative Rakesh Kumar who used to further sell the medicines. As per the said complaint, the five persons stated that they would return the money in two months but they only returned a sum of Rs.2,50,000/- and did not return the balance sum of Rs.42,50,000/- despite his demands nor were they traceable and that they had absconded.

7. The petitioners through the present petition submit that the allegations levelled by the respondent no.2 are wholly false and that on 02.01.2014, the respondent no.2 had entered into a settlement with the petitioner nos. 1 to 3 which read to the effect:-

“I Naresh Mehta S/o of Shri Sajjan Mehta owner of M/s Mehta Medicos writing this in my sound state of mind that (i) Digambar Vishwakarma S/o Shri Molly Vishwakarma (2) Brijkishore Sharma S/o Shri Sitaram Sharma (3) Manoj S/o Laxmi Singh (4) Rakesh Kumar S/o Shri Baldev Ramani (5) Amit Kumar S/o Shri Jayprakash Pandey (6) Sanjay Pandey S/o

Shri Harikishan who works as Guard at B-20, Pamposh Enclave, New Delhi, used to steal medicines altogether from my shop. All the aforesaid person altogether have paid me for the loss occurred to my M/s Mehta Medicos. Now I owner of M/s Mehta Medicos undertakes in writing that from today dated 02.01.2014 I will not take any legal action. Neither I nor all these persons will have anything against each other.”

and the petitioners annexed the copy of the statement of account of Smt. Sheela Singh, wife of the petitioner no.1 clearly showing withdrawal of Rs.80,000/- in cash on 30.12.2013 and also the copy of bank statement of the petitioner no.2 showing withdrawal of Rs.75,000/- in cash on 26.12.2013 and 30.12.2013 and submitted that the respondent no.2 despite having received the money vide the agreement dated 02.01.2014 became greedy and called the petitioners to pay more money to the respondent no.2 and when the petitioners refused to do so, the respondent no.2 filed a complaint under Section 200 Cr.P.C. and an application under Section 156(3) of Cr.P.C.

8. It has been submitted that the petitioners entered into a compromise with respondent no.2 clearly mentioning in the agreement that the petitioners had paid to respondent no.2 for the loss occurred to him and that the respondent no.2 would not take any legal action against the petitioners. It has further been submitted on behalf of the petitioners that the allegations made in the complaint under Section 156(3) of the Cr.P.C. alleging to the effect that there was a sum of Rs.42,50,000/- still payable by the petitioners, were wholly false. It has been submitted on behalf of the petitioners that the respondent

no.2 having entered into the said agreement with the petitioners, he could not resile from his statement.

9. The petitioners have further submitted that the FIR itself indicates that the complainant, i.e. the respondent no.2 used to open his shop at 9.00 AM to 10.00 PM and between 2.00 PM to 5.00 PM, the respondent no.2 used to go for lunch and to take rest, handing over the shop to his wife from 2.00 PM to 5.00 PM which clearly demonstrated that the said shop was entrusted by the respondent no.2 to his wife and never to the petitioners. It has been submitted by the petitioners further that the ingredients of Section 408 of the Indian Penal Code, 1860, have not been made out in the charge sheet.

10. Submissions were made on behalf of either side by the learned counsel.

ANALYSIS

11. The provisions of Section 408 of the Indian Penal Code, 1860, read to the effect:-

***“ 408. Criminal breach of trust by clerk or servant.-
Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”***

12. The petitioners were admittedly employed in the service of the respondent no.2. As per the allegations levelled by the respondent no.2, they worked in his shop and managed allegedly to remove

expensive medicines from his shop as reflected by the CCTV footage. The said circumstances put forth through the complaint on the basis of which the FIR was directed to be registered and the charge sheet having been filed, on investigation, the veracity of which can only be adjudicated on trial, apparently there is no infirmity in the impugned order summoning the petitioners and the accused Sanjay Kumar.

13. As regards the contention raised on behalf of the petitioners that in the instant case, the settlement having been arrived at between the petitioners and the respondent no.2 on 02.01.2014, there could be no further FIR registered, presently cannot be accepted without giving an opportunity to either side to lead evidence, in as much as the contents of the FIR itself state to the effect that pursuant to the settlement arrived at between the petitioners and the respondent no.2, a sum of Rs.2,50,000/- only had been paid and a balance sum of Rs.42,50,000/- was still to be paid by the petitioners.

14. A status report has been submitted by the State under the signatures of the SHO, PS Greater Kailash-I, which indicate that the complainant had lodged a complaint on 23.02.2014 at PS Greater Kailash and later moved an application under Section 156(3) of the Cr.P.C. before the learned MM, Saket Court and the learned MM concerned directed the registration of the FIR on the basis of the complaint and the case was registered under Section 408/34 of the Indian Penal Code, 1860, against **Raj Pratap @ Manoj Singh, Rakesh Kumar, Sanjay Kumar, Brajkishore Sharma, Ramcharit and Digambar Vishwakarma** and further investigation was taken up by the Investigating Officer, ASI Jagbir Singh, and during the course

of the investigation, the charge sheet was filed. It was however submitted by the SHO concerned through his status report that the complainant had produced the copy of the compromise letter which was executed between the complainant and the accused persons in which he/ the complainant had stated that his loss had been paid by the alleged persons and that he also gave another letter stating that he had received a sum of Rs.5,00,000/- from another of the alleged persons namely Brijkishore Sharma.

15. The respondent no.2 through the reply to the petition has submitted that the inherent powers of the Court under Section 482 of the Cr.P.C, 1973, cannot be invoked in the instant case and has reiterated that there was **in fact no compromise deed and further the petitioners had offered to** pay a sum of Rs.45 lakhs which they had misappropriated while working in the shop of the respondent no.2 and that the petitioners herein had put forth a concocted story of payment of Rs.7,50,000/- to the respondent no.2, which can only be determined on trial.

16. The respondent no.2 has further submitted that the settlement agreement dated 02.01.2014 on which the petitioners relied upon is false and fabricated.

17. On a consideration of the submissions that have been made on behalf of either side, it is apparent that there are rival contentions that have been raised in relation to the amount of money paid towards the settlement and that whereas according to the petitioners, they paid a sum of Rs.7,50,000/- out of which Rs.2,50,000/- was mentioned to have been received by the respondent no.2 as per the averments made

in the FIR, whereas in the settlement, the respondent no.2 had stated that he had received all dues and it has further been submitted on behalf of the petitioners that the status report submitted by the State also indicates that a sum of Rs.5 lakhs was stated to have been received by the respondent no.2 from Brijkishore Sharma. The respondent no.2 through his reply to the petition has categorically denied the receipt of Rs.7,50,000/- and had submitted that the settlement that had been arrived at was only in relation to the aspect that the entire sum of Rs.42,50,000/- out of the misappropriated medicines worth Rs.45 lakhs that remained due, would be agreed to be paid.

18. In the circumstances, it is apparent that the said aspect can only be determined on trial. In view thereof, the prayer made by the petitioner nos. 1 to 3 seeking quashing of the FIR No.100/2015, PS Greater Kailash-I, New Delhi registered against them on the complaint of the respondent no.2 in relation to which the charge sheet has been filed qua the alleged commission of the offence punishable under Section 408/34 of the Indian Penal Code, 1860, cannot be quashed.

19. The petition and the accompanying application CRL. M.A.3076/2016 are thus, declined.

20. Nothing stated hereinabove shall, however, amount to any expression on the merits or demerits of the case pending before the learned Trial Court.

21. The Trial Court record be returned forthwith with directions to the learned Trial Court to proceed further in accordance with law. The

parties are directed to appear before the learned Trial Court on the date 30.07.2019 at 2.30 PM.

ANU MALHOTRA, J

MAY 28th, 2019
NC

