**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 08th January, 2019

\+ CRL.M.C. 2364/2018

CHARANJEET SINGH & ANR .....Petitioners

Versus

STATE (NCT OF DELHI) & ORS ......Respondents

**Advocates who appeared in this case:**

For the Petitioner: Mr. Kuldeep Mansukhani, Adv.

For the Respondents : Mr. Akshai Malik, Addl. PP for theState with SI Davender Singh

**CORAM:-**
**HON'BLE MR JUSTICESANJEEV SACHDEVA**

**JUDGMENT**

**SANJEEV SACHDEVA, J.**

1. Petitioners impugn order dated 14.12.2017 whereby the revisional court had allowed the revision petition filed by the respondent nos. 2 and 3 impugning order on charge of the Trial Court dated 07.09.2013 and discharged respondent nos. 2 and 3 of the charges which were framed against them by the Trial Court for the offences under Section 420/120-B of the IPC.

2. Petitionersare the complainants and, on their complaint, FIR No. 156/2003 at Police Station Kotla Mubarakpur had been registered.

3. Petitioners and the respondent nos. 2 and 3 were partners in a partnership firm by the name – *Indian Organic Food* along with one Shri Baldev Singh. The current account in the name of the firm in State Bank of India was operated by all the five partners jointly and severally.

4. One Mr. Buecker of Germany who was friend of respondent nos. 2 and 3was inducted as partner in the firm. However, he subsequently resigned on 19.01.1999. Commercial relations between the firm and Mr. Buecker continued. It is alleged that in March 2002 differences arose between the partners of the firm – *Indian Organic Food*. Subsequently, respondent nos. 2 and 3 intimated the State Bank of India on 23.07.2002, instructing the bank to stop all withdrawals from the current account. The bank stopped operations of the current account, however, under orders of this court, operations of the bank account were restored. Subsequently, the firm was dissolved on 05.08.2002.

5. It is alleged that at that time approximately Rs. 2 crores was due and payable to the partnership firm by Mr. Buecker. Petitioner No. 1 filed a suit *inter alia*for recovery of the money against Mr. Buecker in Germany. It is alleged that the petitioners received a letter dated 29.03.2003 from Mr. Buecker informing that a sum of Euro 40000 had been paid by him in the bank account of the firm prior to its dissolution. It is alleged that enquiries revealed that respondent nos. 2

and 3 had opened a saving account with Canara Bank describing the same as an account *C/o Indian Organic Food*. It is alleged that the respondents despite receipt of the amount did not transmit the payment to the current account of the firm.

6. It is further alleged that during investigation the petitioners made another complaint that another payment of Rs. 22,80,000/- had been remitted in the firm of the relatives of the respondents and the said amount also belonged to *Indian Organic Food*. It is alleged that the respondents had terminated the cultivation agreement with farmers of the said firm and had got executed fresh agreements with farmers with *Indian Organic Farm* and the respondents are also alleged to have informed the Nodal Agency – Institute for Marketecology (IMO) that *Indian Organic Farm* was the new name of the firm *Indian Organic Food*.

7. It is alleged that during investigation Mr. Buecker informed that payments made by him to *Indian Organic Farm* were not related to *Indian Organic Food*.

8. As per the charge sheet investigation revealed that out of the amount received by the respondents, payments were made to various entities /creditors of *Indian Organic Food*.

9. In its order dated 07.09.2013 the trial court was of the view that no offence under Section 406 of the IPC was made out. However,

charges were framed under Section 420/120B of the IPC against the said respondents.

10. Respondent nos. 2 and 3 filed the revision petition. Revisional Court by the impugned order dated 14.12.2017 set aside the order dated 07.02.2013 on the ground that no offence under Section 420 or 120B IPC was made out. A civil dispute was given the colour of criminal action. The revisional court accordingly discharged respondent no. 2 and 3.

11. Petitioners have thus impugned the order of the revisional court discharging respondent nos. 2 and 3.

12. Section 415 IPC reads as under: -

> *Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.*

13. To constitute the offence of cheating under Section 415 IPC, a person, fraudulently or dishonestly has to induce another person so as to deceive him to deliver any property to any person, or to consent

that such person shall retain any property. Further, such inducement or deceit should be of a nature that if a person was not so deceived and induced, he would not have done the said act.

14. In the present case the allegations against the respondent nos. 2 and 3 are that they had opened a bank account giving the name C/o *Indian Organic Food*, the name of the partnership firm and further induced the erstwhile partner Mr. Buecker to remit sum of Euro 40000 as well as Rs. 22,80,000/- to the said account.

15. Investigation has revealed that Mr. Buecker paid the amount due to *Indian Organic Food* to the account opened by respondent nos. 2 and 3. Investigation further revealed that Mr. Buecker had confirmed that Rs. 22,80,000/- paid by him was not towards the amount due to *Indian Organic Food* but the amount was remitted for *Indian Organic Farm*. Further with regard to Euro 40000 stand was that the same was paid prior to the dissolution of the firm.

16. It is an admitted position that as per the partnership deed the operation of the bank account of the partnership firm was joint and several. The bank account in Canara Bank was opened *C/o Indian Organic Food* and the amount remitted into the said account had been utilized by the respondents for payments to some of the creditors of the erstwhile partnership firm *Indian Organic Food*.

17. A partnership firm is not a separate legal entity but is a name

given to a group of persons acting together: each one acting for himself and as also on behalf of the other partners. A partnership firm does not own or hold any property, all properties held by the partnership firm are in fact held and owned by the partners. All the partners are owners of all payments and remittance received in the account of the firm each one holding the same for himself as also for the other partners.

18. On dissolution of a firm accountsare to be reconciled and on reconciliation of accounts one or other partner may be found entitled to receive money from the other partners. Till the accounts are rendered or reconciled, it cannot be said that amount received or held by one partner is payable to the other. On rendition of account, it may transpire that an asset or money held by one partner, may in fact fall into his own share. It is only on rendition of account or on dissolution of firm one can determine as to which partner is entitled to receive from or deliver to the money or assets to the other partner. Till accounts are reconciled/rendered there is no distinct or definite share of any partner in any assetof the partnership firm.

19. Without reconciliation of accounts, it cannot *exfacie*be held that merely because the firm has been dissolved and respondents have received and are holding some money of the partnership firm, that they are not entitled to the same. It is only on reconciliation of account, it could be ascertained that the amount received by

respondents 2 and 3 from Mr. Buecker, was held by them rightfully or that they were not entitled to hold the same and were liable to pay the same to the petitioner.

20. It accordingly cannot be held that there was any wrongful inducement of fraudulent deceit on the part of the respondent to Mr. Buecker to deliver the said amount to the respondents.

21. The Revisional Court in the impugned judgment has held as under: -

> *"17. Falling back to the present case, broadly speaking, prosecution case is that the revisionists were partners of the complainants defacto in a firm by the name M/s Indian Organic Food; that the said firm M/s Indian Organic Food held a current account in State Bank of India, which was operated by all five partners; that on account of disputes between the partners which arose in the month of March, 2002, the said firm M/s Indian Organic Food got dissolved on 05.08.2002; that prior to dissolution of the said firm the revisionists opened a savings bank account in Canara Bank describing it as an account C/o Indian Organic Food; that a sum of 40,000 Euros payable by Mr. Buecker to the said firm M/s Indian Organic Food was remitted to the said savings bank account in Canara Bank, opened by the revisionists; that the revisionists siphoned off funds from the said savings bank account and thereby committed offence punishable under Section 420 IPC.*
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> *18. In view of judicial precedents cited above, it is the substance of the complaint and not merely the expressions "cheating" used therein, which has to be*

*looked into in order to probe as to whether there is any allegation so as to infer fraudulent or dishonest inducement having been made by the revisionists to the complainants defacto at the time of the very inception when partnership firm was created by them. Simply because during subsistence of the said partnership firm the revisionists opened another bank account describing the same as C/o Indian Organic Food, the requisite mens rea cannot be attributed to the revisionists.*

*19. As mentioned above, even according to prosecution, by 16.07.2002 when the revisionists applied for the savings bank accountwith Canara Bank, the disputes between the partners of M/s Indian Organic Food had already started. As also mentioned above, on account of partnership disputes, the revisionists lawfully acted by calling upon their bankers to stop all withdrawals, which would not have been done by them if they intended to cheat the other partners or anyone else for that matter.*

*20. Rather, the very description of the said Canara Bank savings account as "C/o Indian Organic Food" in itself reflects that the revisionists intended to use that account specifically for remittancespertaining to M/s Indian Organic Food.*

*21. Unlike in the case of Ira Juneja (supra) in which the accused had gone much further and even floated a proprietorship concern with the same name as that of the partnership firm (which, was held to be not fraudulent), in the present case no such separate business entity was floated by the revisionists.*

*22. The investigating officer also annexed with the chargesheet a copy of account opening form pertaining to the said savings bank account no. SB195 dated*

*16.07.2002, which clearly shows that the said account was opened by only the revisionists, describing the account to be as C/o Indian Organic Food. There is no documentary evidence or even allegation in the chargesheet to show that the revisionists submitted any false information or any forged document while applying for the said savings bank account with Canara Bank. Opening a new bank account with residential address of one of the revisionists in the backdrop of partnership dispute between the parties is not sufficient to infer the requisite mens rea. Even according to prosecution, M/s Indian Organic Food did not hold only one bank account; as mentioned above, even according to prosecution, M/s Indian Organic Food held yet another bank account in Sirsa.*

*23. While examining if prima facie case of cheating has been made out, it remains unanswered as to who was deceived and /or inducedby the revisionists. There is no allegation that it is the complainants defacto who were induced - dishonestly or fraudulently or even otherwise by the revisionists into creating the partnership firm M/s Indian Organic Food. Even as regards Mr. Buecker, there is no allegation that the revisionists induced him to pay 40,000 Euros. Rather, on the chargesheet, the investigating officer has placed a print out of e-mail dated 28.04.2003 addressed to the investigating officer, in which Mr. Buecker clarified that the said amount of 40,000 Euros was remitted to M/s Indian Organic Farms and the same was not payable to M/s Indian Organic Food and also alleged that it is the present complainants defacto who have defrauded M/s Indian Organic Food.*

*24. Most importantly as further revealed during investigation, out of the remittances received by them in the savings bank account held in Canara Bank, the* *revisionists paid the creditors of even M/s Indian Organic Food and its sister concern M/s Himalaya International, which would not have been done if they had any dishonest intention to siphon off money of the said firm and cause wrongful loss to the complainants defacto.*

*25. It is nobody's case that when the said firm M/s Indian Organic Food was created, the revisionists dishonestly or fraudulently induced the complainants defacto into creating a partnership firm and had intention to deceive the complainants defacto. The subsequent conduct of the revisionists in opening a savings bank account with Canara Bank, describing the same as C/o Indian Organic Food cannot be the sole test of inferring dishonest intention. The same can show at the most civil disputes between the revisionists and the complainants defacto being partners of the said firm M/s Indian Organic Food. What should have been a civil dispute of rendition of partnership accounts has been given colour of criminal action in this case.*

*26. As regards the argument of learned counsel for complainants defacto that even the bail granted to the revisionists was subject to deposit of Rs.6,00,000/-, I have examined the bail order also. As reflected from order dated 07.07.2003 in Crl. M. (M) 2034/03, the Hon'ble Single Judge of the Delhi High Court observed that according to the present revisionists, the dispute between the parties was a civil dispute and the total amount involved was Rs.6,40,000/-, which the revisionists were ready and willing to deposit in the court and under these circumstances, bail was granted to the revisionists.*

*27. In the impugned order, the learned trial Magistrate took a view that the revisionists had* *"induced" Mr. Buecker to deposit 40,000 Euros in their "personal account", which was opened, describing the same as C/o Indian Organic Food and the said 40,000 Euros belonged to Indian Organic Food, thereby wrongful loss was caused to the complainants defacto. In view of judicial pronouncements cited above, merely because the revisionists opened another bank account in the backdrop of partnership disputes, the requisite mens rea cannot be attributed to them. Even as regards the "inducement", the view taken by the learned trial Magistrate does not appear to be in conformity with the chargesheet and material annexed therewith, which, as mentioned, above clearly establish that Mr. Buecker consciously remitted 40,000 Euros to the account of M/s Indian Organic Farm emphasizing that the said amount was not payable to M/s Indian Organic Food.*

*28. The crux of the dispute appears to be only a business rivalry, the main allegation of the complainants defacto being that the revisionists did not remit the 40,000 Euros received by them to thecomplainants defacto {which money even as per Mr. Buecker was not owed to M/s Indian Organic Food) and that the revisionists got the bank account operations of M/s Indian Organic Food frozen; and that the revisionists got terminated agreements of the farmers with the M/sIndian Organic Food and got executed their fresh agreements with M/s Indian Organic Farm; and that the revisionists did not support theComplainants defacto for recovery of money payable by various buyers including Mr. Buecker. As mentioned above, a simple financial dispute of rendition of partnership accounts has been given cloak of criminal action in this case."*

22. The reasoning given by the Revision Court in discharging the

Respondent nos. 2 and 3 is sound in law and does not suffer from any illegality warranting any interference by this court.

23. Further, in view of the above facts and circumstances of the case, it cannot be *prima facie* held that respondents siphoned of funds belonging to the partnership firm or that they were not entitled to the same or any part thereof. Admittedly no false information or forged document has been supplied to the bank for opening the bank account. The partnership firm had more than one account which was being operated jointly and severally. Further there is no allegation that Mr. Buecker was induced to remit the amount which was not payable to the partnership firm.

24. Clearly what the petitioners had sought to do, was to convert a civil dispute of dissolution of partnership firm and rendition of account into a criminal action. The dispute between the parties, in the facts and circumstances of the present case, is clearly of a civil nature which has been sought to be given the colour of a criminal action. Till accounts are taken, it cannot be said that there is any wrongful loss caused to the complainant.

25. In view of the above, I find no infirmity in the view taken by the revisional court in discharging respondent nos. 2 and 3. Facts do not give rise to a strong suspicion of the respondents nos. 2 and 3 having committed an offence under Section 420/120-B of the IPC.

26. In view of above, there is no merit in the petition. The petition is accordingly dismissed with no cost.

27. It is clarified that any observation contained herein shall have no bearing on the civil dispute, if any, pending between the parties with regard to the dissolution of the partnership firm – *Indian Organic Food*or rendition of account.

28. Order *Dasti* under the signatures of the Court Master.

**JANUARY 08, 2018** **SANJEEV SACHDEVA, J**
**'*rs*'**