

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

**CRM-M-24761-2013(O&M)
Date of decision:-16.1.2020**

Rajinder Kumar

...Petitioner

Versus

Vishal Dhingra

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Akashdeep Singh, Advocate
for the petitioner.

Mr.S.S. Brar, Advocate
for the respondent.

H.S. MADAAN, J.

By way of filing the present petition under Section 482 Cr.P.C., petitioner Rajinder Kumar craves for quashing/setting aside of order dated 26.8.2011 passed by Additional Chief Judicial Magistrate, Rohtak and order dated 10.5.2013 passed by Additional Sessions Judge, Rohtak.

As per the case of the petitioner – Rajinder Kumar, respondent - Vishal Dhingra is his real brother. Both of them had formed a firm under the name and style of M/s Vishal Auto Industries. Such concern had raised a loan of Rs.3 lakhs from Punjab National Bank, where both the brothers had signed as partners. However, due to

some family dispute, relations between the brothers got soured and thereafter the petitioner gave a legal notice dated 1.12.1998 stating therein that since he had lost faith in the respondent, therefore, the respondent was no longer authorized to deal with the affairs of the company. However, the respondent did not pay any heed to the notice and in order to cheat the petitioner opened a bank account No.1464 in Vijaya Bank, Rohtak under the name of M/s Vishal Auto Industries on 28.12.1998 showing it as a sole proprietorship concern belonging to the respondent, which was factually incorrect. The respondent had played a fraud with the petitioner and had committed criminal breach of trust by showing M/s Vishal Auto Industries as a sole proprietorship concern, as such the petitioner filed a complaint under Sections 406 and 420 IPC against the respondent Vishal Dhingra. The said complaint No.376/3 dated 12.8.1999 under Sections 406 and 420 IPC had been filed in the Court of Additional Chief Judicial Magistrate, Rohtak. After recording of the preliminary evidence, learned trial Court had summoned accused Vishal Dhingra to face trial for the offence under Sections 406 and 420 IPC vide order dated 12.12.2000. Thereafter, the case kept being adjourned for pre-charge evidence of the complainant, which was recorded and thereafter the trial Court discharged the respondent-accused vide order dated 26.8.2011.

The petitioner had approached learned Sessions Judge, Rohtak by way of impugning the order of discharge. However, the said appeal was also dismissed vide order dated 10.5.2013.

The complainant felt aggrieved by both the orders and has challenged the same by way of filing the present petition, notice of

which was given to the respondent, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

It may be mentioned here that the case in question was tried as a warrant case. After the accused had put in appearance, the case was fixed for pre-charge evidence of the complainant. During the course of such evidence, the complainant had examined Sh.M.P. Gupta, Manager, PNB Civil Lines Rohtak as CW1, who had stated that M/s Vishal Auto Industries, Hisar Road, Rohtak had taken loan from their bank. He had proved various documents i.e. transfer vouchers Ex.P1 to Ex.P6, provisional balance sheet of M/s Vishal Auto Industries as Ex.P7, hypothecation agreement of the said concern dated 14.11.1995 executed by both the partners as Ex.P8 and Ex.P9, loan application submitted with Punjab National Bank on behalf of Vishal Auto Industries as Ex.P10, copy of DP note as Ex.P11, guarantee agreement as Ex.P12 and Ex.P13, attested statement of account of Vishal Auto Industries as Ex.P14 and copy of the title deed deposited with the bank as Mark-B and copy of partnership deed as Mark-C.

The second witness examined by the complainant happened to be CW2 Karamchand, Clerk Vijaya Bank, Rohtak, who had brought the summoned record and stated that Vishal Dhingra accused had opened an account with their bank in the name of Vishal Auto Industries as proprietor of the said firm on 28.12.1998. Copy of the account being Ex.P15, copy of letter of partnership as Ex.P16, certified copy of specimen signature card as Ex.P17 and certified copy of the statement of

account was proved as Ex.P18.

CW3 Rajinder Kumar complainant repeated on oath the allegations in the complaint.

After hearing arguments, the trial Magistrate had discharged the accused vide order dated 26.8.2011. The relevant para No.10 of the said order for ready reference is being reproduced as under:

10. In the partnership deed Ex.C1 executed between the parties, it was specifically provided that partnership was at will and in the present case complainant admitted that legal notice Ex.D1 dt. 1.12.1998 was got issued by him through his counsel, as per said legal notice partnership firm between the parties stood dissolved. In the legal notice Ex.D1 in clear terms it was stated that the complainant had no faith in accused Vishal, power of attorney in favour of accused was cancelled, accused was no longer authorized to deal with the affairs of the firm in any manner, it was specifically mentioned that complainant had dissolved the partnership and complainant had asked the accused to give its account. Thus, by way of the notice Ex.D1 dissolution of the firm between the parties was implied. Vide judgment Ex.D3 also the suit of the plaintiff was dismissed by civil Court after holding that vide legal notice Ex.D1 the partnership being at will stood dissolved, said finding of civil Court in judgment Ex.D3 was upheld in first appeal vide judgment dated 27.4.05 marked as Ex.D12 and even in RSA by the Hon'ble High Court vide order Ex.D16 dated

31.10.06 passed by Hon'ble High Court. Thus, finding about the fact that partnership between the parties was dissolved vide notice Ex.D1 dated 1.12.1998 has been upheld up till the Hon'ble High Court. The finding of the civil Court are certainly binding on the criminal court. Judgments relied upon by learned counsel for the complainant are not applicable to the facts of the present case. In the present case, it has come on record that the bank account No.1464 was opened by the accused with Vijaya Bank on 28.12.1998 i.e. subsequent to the notice Ex.D1 dated 1.12.1998 thus act of opening bank account by the accused as proprietor after dissolution of partnership cannot be said to be act of cheating and criminal breach of trust. Under these facts and circumstances, therefore, the present complaint is hereby dismissed. No prima facie case regarding cheating and criminal breach of trust is made out against the accused. The accused is therefore discharged. File be consigned to the record room after due compliance.

When this order was assailed before learned Sessions Judge, Rohtak in criminal appeal, learned Sessions Judge had found himself in agreement with the trial Court and dismissed the appeal. The reasoning given by him is contained in para No.11, which for ready reference is being reproduced as under:

11. Therefore, after going through the evidence and circumstances on record and hearing learned counsel for

the parties, it emerges that the partnership deed between the parties was partnership at will and a legal notice dated 1.12.1998 Exhibit D1 was got issued for dissolution of the said firm. The factum of dissolution of the firm has been held by Shri Vimal Sapra, the then learned Additional Civil Judge, Senior Division, Rohtak vide judgment dated 9.8.2004 Exhibit D3 passed in civil suit No.194-C of 1999/2004, titled Rajender Kumar Versus Vishal Dhingra. The said verdict was upheld by the First Appellate Court vide judgment dated 27.4.2005 Exhibit D12 passed by Shri Hari Paran Singh, the then learned Additional District Judge, Rohtak in civil appeal No.155 of 2004, titled Rajender Kumar Versus Vishal Dhingra and then by the Hon'ble High Court vide order dated 31.10.2006 passed in RSA No.1784 of 2005, titled Rajender Kumar Versus Vishal Dhingra and another. Therefore, after going through the legal notice Exhibit D1, judgment Exhibit D3 and the order dated 31.10.2006 passed by the Hon'ble High Court, it has to be held that the matter regarding dissolution of the firm with effect from 1.12.1998 has been conclusively proved. Therefore, when the matter regarding dissolution of the firm with effect from 1.12.1998 has attained finality upto the Hon'ble High Court, so, the said finding of the Hon'ble High Court is binding upon this Court. It is pertinent to mention here that an account in the name of the accused/respondent was opened on 28.12.1998 i.e. after

dissolution of the firm and thus, any act done by the accused/respondent after 1.12.1998 cannot in any way lead to an inference that there was any cheating and criminal breach of trust as alleged by the complainant/appellant. As such, the learned trial Court has rightly discharged the accused by not finding any prima-facie case against him. As such, the present appeal/revision being devoid of merit is hereby dismissed.

Though the complainant has assailed those orders by way of filing the instant petition but I do not find any merit therein.

Though learned counsel for the petitioner/complainant has submitted that there was enough material available on the record for the purpose of framing formal charge against the accused but the Courts below did not do so.. Furthermore, judgment of Civil Court was wrongly given undue importance by such Courts when judgment of Civil Court is not binding upon the criminal Court and furthermore offence under Sections 406 and 420 IPC were made out against the accused.

However, learned counsel for the respondent/accused has vehemently controverted such contentions.

Section 245 Cr.P.C. deals with an eventuality when an accused shall be discharged in a warrant case. It provides that if, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

Sub-Section (2) provides that nothing in this section shall

be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Section 246 Cr.P.C. deals with procedure where accused is not discharged dilating that if when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

Thus it means that the Magistrate is to proceed further only if he is of the opinion that there is a ground for presuming that the accused has committed an offence. Here, the Magistrate did not find sufficient material to record that there is a ground for presuming that accused had committed an offence, rather learned trial Magistrate has categorically observed that the partnership deed between the parties was dissolved vide notice Ex.D1 dated 1.12.1998, which has been upheld up to the High Court. The bank account No.1464 was opened by the accused with Vijaya Bank on 28.12.1998 i.e. subsequent to the notice Ex.D1 dated 1.12.1998, therefore, the act of opening bank account by the accused as proprietor after dissolution of partnership cannot be said to be an act of cheating and criminal breach of trust and no prima facie case regarding cheating and criminal breach of trust is not made out against the accused.

Section 482 Cr.P.C. deals with inherent powers of the High Court. No ground is there to exercise such powers in this case since the

impugned orders cannot be said to be abuse of process of the Court and no interference therewith in any manner is called for.

The petition being without merit stands dismissed accordingly.

16.1.2020
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No