IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-5192-2017 (O & M)
Date of decision: 22.09.2022

Kulwant Singh …... Petitioner

V/s

M/s Roshan Lal Jagdish Rai and ors. ...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Gaurav Singla, Advocate, for the petitioner.

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JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the impugned order (Annexure P-4) dated 22.08.2016 passed by the Additional Sessions Judge, Sangrur, whereby the revision petition No.CRR 136/2016 filed by the respondents against the summoning order dated 28.03.2016 (Annexure P-2) passed in criminal complaint No.COMI/50/2015 (Annexure P-1) was allowed and the complaint filed by the petitioner against the respondents was dismissed.

2. Briefly, the case of the complainant/petitioner is that he is an agriculturalist and owns and possesses land at village Uppli. The accused/respondents were running a commission agent shop under the name and style of M/s Roshan Lal Jagdish Rai, New Grain Market, Sangrur. The complainant used to sell his agriculture produce at the said commission agency shop of the accused since long. As such, there had been a fiduciary relationship between complainant and accused. Earlier, the accused No.1/respondent No.1 was partnership firm of Roshan Lal and Jagdish Rai.

Roshan Lal died and after his death, accused No.3/respondent No.3 joined as a partner to the extent of 50% in the business ie. for the period from 2/8/2010 to 31/3/2015. The accused/respondents had never rendered and settled the accounts with the complainant/petitioner despite his repeated requests and they were putting off the matter on one pretext or the other. The complainant-petitioner handed over a sum of Rs.1,40,000/- to accused No.1/respondent No.1 as his trust money on 29/6/2012. At that time accused No.2 and 3 (respondents No.2 and 3 herein) being partners of accused No.1/respondent No.1 promised that they would return the said amount to complainant/petitioner. The complainant-petitioner on a number of occasions, approached the accused persons and requested them to return his trust money of Rs.1,40,000/- but the accused/respondents were putting of the matter on one pretext or the other and making false promises, that they would repay the amount with interest to the petitioner/complainant. Since he was in dire need of money, in the month of July-2014 he approached the accused persons and again requested them to return Rs.1,40,000 with interest but at that time, the accused/respondents flatly refused, rather threatened the complainant-petitioner that they would misuse signed blank cheques and other papers which the accused-respondents, had got signed from the complainant-petitioner during the course of fiduciary transactions held between them and threatened to implicate the complainant-petitioner in false cases. No payment was due towards the complainant-petitioner. In fact, the accused were liable to pay Rs. 1,40,000/- to the complainant-petitioner alongwith interest. In this manner, the accused-respondents had cheated the complainant-petitioner and had misappropriated the trust money of Rs.1,40,000/- entrusted by him to the accused-respondents during the course of a fiduciary relationship and as such, the accused-respondents were full of bad, malafide and dishonest intentions acting for their wrongful gains and had grabbed the amount of the complainant-petitioner and thereby causing wrongful loss to him. As such, accused persons were liable to be prosecuted under Section 406/420/120/120-B/506 of IPC.

3. In preliminary evidence, the complainant-petitioner got himself examined as CW1 and examined Gurdhian Singh as CW2, Balwant Singh as CW3, Gurmail Singh as CW4 and thereafter closed his preliminary evidence. The complainant-petitioner proved on record copy of legal notice dated 21/5/2015 as Ex.C1, postal receipts Ex.C2 to Ex.C4, replies of legal notices as Ex.C5 and Ex.C6 and J forms as Ex.C7 to Ex.C9.

4. Pursuant thereto, the accused were summoned to face trial under Sections 406, 506 and 12-B IPC vide order dated 28.03.2016 passed by the Judicial Magistrate Ist Class, Sangrur (Annexure P-2).

5. Against the aforementioned order of summoning, a revision petition was preferred before the Court of Additional District & Sessions judge, Sangrur, who set aside the order of summoning vide order dated 22.08.2016 (Annexure P-4).

The Additional Sessions Judge, Sangrur, came to the conclusion on the basis of the evidence on record that the reply to the legal notice sent by Deepak Garg-respondent No.3/accused No.3 showed that a sum of Rs.3,52,600/- was to be paid by the complainant-petitioner Kulwant Singh and the said amount was paid on 26.05.2014 after which a clearance slip was issued to him. Thereafter, no transaction took place between the parties. Therefore, the claim of the petitioner-complainant that a sum of

Rs.1,40,000/- was given by way of a loan to the respondents-accused was false.

The Court further came to the conclusion that there was absolutely no documentary evidence to substantiate the fact that any loan of Rs.1,40,000/- was given to the respondents/accused for promotion of their business.

It was further found that as per the case of the petitioner-complainant, the amount was advanced on 29.06.2012, final demand raised by the petitioner-complainat in July, 2014 and the criminal complaint came to be filed only on 29.07.2015. Therefore, not only was the entire transaction leading to the inference of a civil dispute but even the said civil dispute was barred by limitation.

It was further held that no offence under Sections 503/506 IPC was made out against the respondents-accused.

6. Against the aforementioned order, the complainant-petitioner has preferred the present petition.

7. The learned counsel for the petitioner-complainant contends that there was sufficient oral and documentary evidence produced by the petitioner in support of his complaint, and therefore, the summoning order (Annexure P-2) under Sections 406, 506, and 120-B IPC was rightly passed and the impugned order (Annexure P-4) whereby the summoning order was set aside is liable to be quashed.

He contends that the respondent-accused were not only acting as commission agents but rather their intentions were dishonest and mala fide and with an aim to claim wrongful gain, they had grabbed a huge amount from the petitioner-complainant thereby causing loss to him. In fact, it was clearly a case of breach of trust made out against the respondents-accused.

The material facts and circumstances of the case had been ignored and the mandatory provisions of the law and well established legal principles had not been adhered to and unwarranted inference had been drawn by the Revisional Court, which had passed the impugned order based on conjectures and surmises.

It was, thus, contended that the impugned order (Annexure P-4) is liable to be set aside.

8. I have heard the learned counsel for the petitioner at length.

9. A bare perusal of the complaint would reveal that the allegations, at best, would constitute a civil liability. Taking the allegations to be true, the amount of Rs.1,40,000/- was allegedly paid on 29.06.2012, final demand was raised in July, 2014 and the complaint filed on 29.07.2015. Even a civil remedy of filing a suit for recovery would be barred in the present case.

It is also pertinent to note that there were ongoing transactions between the parties, which is apparent from not only the pleadings but also from the reply to the legal notice submitted by accused/respondent No.3 Deepak Garg. It is indeed strange that despite this fact, this sum of Rs.1,40,000/- was purportedly advanced as a loan without any corresponding document having been executed. In fact, it was the complainant-petitioner who owed a sum of Rs.3,52,600/- which had been paid to the respondent-firm and a clearance slip was issued to him, pursuant to which, there had been no documentary evidence of any transaction between the two parties. Therefore, apparently, there is no illegality in the order of the Revisional Court whereby the summoning order (Annexure P-2) has been set aside.

Further, once the substantial offence under Section 406 IPC is not made out, the question of accused-respondents being summoned for having committed an offence under Section 506 IPC on the same bald assertions of the complainant-petitioner would not arise.

10. In view of the aforementioned discussion, I find no merit in the present petition and therefore, the same is dismissed.

September 22, 2022 **(JASJIT SINGH BEDI)**
sukhpreet **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No