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

CRM-M-5321-2011 (O&M)
Date of decision : 21.04.2023

Narayani Newar

.....Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Akshay Bhan, Senior Advocate with
Mr.HPS Sandhu, Advocate for the petitioner

Mr.Tanuj Sharma, AAG, Haryana

Mr.Rohit Sud, Advocate for respondent-No.2.

AMAN CHAUDHARY, J.

1. The present petition under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed for setting aside order dated 03.11.2009 whereby charges have been framed under Sections 406 and 120B IPC against the petitioner, and the order dated 14.12.2010, vide which the revision was also dismissed.

2. Learned Senior counsel had submitted that for any offence that may have been allegedly committed by the late husband of the petitioner, namely, Satish Newar (since deceased), she cannot be held liable. Neither in the partnership Firm of her late husband and her brother-in-law i.e., respondent No.2, was she a partner nor was any property of the Firm entrusted to her. The amount of refund from HSIDC to be adjusted against the liability of the Firm was intimated by the late husband of the petitioner and not her. There are no specific allegations against the petitioner in the

FIR. The ingredients of offence as under Section 405 IPC are not made out against her. Being a signatory to the MoU would not make the petitioner liable for the offences as charged by the trial Court vide order dated 03.11.2009 and wrongly affirmed by the revisional Court vide order dated 14.12.2010. Thus, the same are on the face of it erroneous and consequently liable to be set aside. Reliance is placed on the judgment by Hon'ble The Supreme Court in **Deepak Gaba and others vs. State of Uttar Pradesh and others** (2023) 3 SCC 423.

3. Learned counsel appearing on behalf of respondent No.2 while opposing the petition had firstly contended that, an application was filed by the petitioner in the present case to place on record certain documents that included an amended plaint dated 09.08.2005 by respondent No.2, as Annexure A-2, alongwith which a letter dated 18.09.2003 was attached, though it did not figure in the index of the said application. The same being the resumption letter sent to the Firm with the address of the tenanted premises, which as per MoU fell to the share of the first party i.e. petitioner and her late husband. He refuted the receipt of the said letter by stating that it was unlawfully kept by the petitioner in her custody and not disclosed to the answering respondent to cheat him. Further to substantiate that the said letter was not a part of the record of the suit, an application was filed by respondent No.2 for calling the record of the trial Court to check the authenticity of the letter placed on record. Thus, the petition needs to be outrightly dismissed on this solitary ground. It was next contended that the petitioner being in conspiracy with her late husband and also the beneficiary, has been rightly charged under Section 406 but also under Section 120B IPC. The premise of the MoU was *inter alia* that plot No.116, Sector-59,

Faridabad, Haryana, acquired in the name of the Firm shall belong to the second party-respondent No.2, while the Firm, along with the tenanted premises at 392, Chatta Lal Mian, Daryaganj, shall come to the exclusive share of the first party along with its assets and liabilities. The allegations levelled in the FIR are that even when as per the MoU, petitioner and her husband had no concern with the said plot or the refund of the amount of Rs. 15,15,604/- but cleverly informed the Income Tax Department to recover it from HSIDC on account of the liability against the Firm, which was actually sent to the Income Tax Department vide two cheques, dated 09.06.2004 and 30.07.2004 by HSIDC. He relied on judgments by Hon'ble The Supreme Court **State of NCT of Delhi and others vs. Shiv Charan Bansal and others** (2020) 2 SCC 290, **Amit Kapoor vs. Ramesh Chander** (2012) 9 SCC 460, and **Devender Pal Singh vs. State (NCT of Delhi)** (2002) 5 SCC 234.

4. Heard the learned counsel for the parties at length.

5. Apparently, it is a case of family feud, stemming out of a settlement.

6. FIR in the year 2006 was lodged at the hands of respondent No.2, which at the threshold be noted, was sought to be quashed by the petitioner, however, the same was ordered to be withdrawn after arguing at length, with liberty to raise similar pleas at appropriate stage.

7. Upon investigation of the case, the final report under Section 173 Cr.P.C. was presented before the trial Court, whereafter, vide order dated 03.11.2009, the charge under Sections 406 and 120B IPC was framed against the petitioner.

8. It would be apposite to, at first, refer to the relevant part of the

MoU entered into between the parties, whereby their shares and liabilities were depicted, which reads thus,

> "This Memorandum of Undertaking (MOU) is executed at Delhi on this 11th day of Sept. 2001 between (1) Shri Satish Newar s/o late Shri B.M. Newar and (2) Smit. Naraini Newar w/o Shri Satish Newar, both resident of 5-B.D. Estate, Lancers Road, Timarpur, Delhi- 110054, hereinafter referred to as FIRST PARTY, and (3) Kailash Newar s/o late Shri B.M. Newar and Smt. Seema Newar w/o Shri Kailash Newar both resident of 5-B.D, Estate, Lancers Road, Delhi- 110054 hereinafter referred to as SECOND PARTY.
>
> xxx xxx xxx
>
> D. That the firm M/s Excellent Hosiery Products and tenancy premises at 392, Chatta Lal Mian, Daryaganj, New Delhi shall fall and belong to the exclusive share of the FIRST PARTY alongwith its assets and liabilities including tenancy rights in the premises in the aforesaid business. However, the plot No. 116, Sector 59, Faridabad (Haryana) which has been acquired in the name of firm M/s Excellent Hosiery Products shall belong to the SECOND PARTY."

9. Reference to the relevant portion of the FIR is essential, which reads thus:-

> "That the plot in dispute bearing No. 116, Sector 59 faridabad, Haryana stood resumed vide order dated 18.09.2003 by HSIDC on Account of Non-implementation of project by 16.3.1998 and further Sent to the accused herein on 18.9.2003 itself.
> The copy of the written statement is enclosed as Annexure C-8. (12) That at the time of signing of the said m.o.u dated 11.09.2001 the pendency of the said suit was never disclosed to the complainant. Even after the pendency of the said Suit was never disclosed to the Complainant. The said proceedings even not disclosed malafidely by the accused to cause loss to the Complainant and gain unfair advantage under the mou. The accused as such with dishonest intentions in conspiracy with each other caused wrongful loss to the Complainant and made wrong gains. (13) That on the overhand during the period prior to signing of mou the accused falsely assured at various meetings that took place in faridabad. That the entire payment of the plot has been made to the HSIIDC and the firm will get the

registered deed of plot in the name of firm very soon by this act, the accused kept the complainant Kailash Newar in dark. In order to succeed in their conspiracy. (14) That it further transpired that the accused who had no interest in the said plot or the refund issued by HSIIDC dishonestly through the income tax department got an amount of Rs. 9,85,100/- attached from the refund amount on account of rebate of income tax against the said firm m/s excellent Hosiery Products. The accused apparently cheated the complainant. (15) That the income tax department said give the certified copy of statement of Satish Newar dated 11.03.2004 on 31.7.2006 in which the accused No. 2 on oath given the statement on the question No. 5 "that the firm has no immovable assets excluding a plot no. 116 Sector 59, Industrial Estate, faridabad, which was allotted by Haryana Estate Industrial development Corp. Ltd. in which we deposited Rs. 17,14,478/- for the price of plot. But due to sum reason the plot was cancelled by the Haryana State Industrial Development Corp. Ltd. and the amount deposited by the firm awaited. I hereby certify that no refund has been received by the firm or partner's till today and the said amount has also been credited with the firm bank A/c I am giving a copy of letter from Haryana Estate Industrial Development Corp. Ltd. from which this can be verified. (16) That the accused No. 1 in the question No. 7 has given the answer that as I have got no source of income and no assets hence I am not in a position to pay this demand personally, however there is asset of the firm i.e refund of plot from Haryana Estate Industrial development Ltd. As and when the amount received from the corporation the tax will be paid accordingly. The copy of the statement of accused enclosed as Annexure C-9." (emphasis supplied)

10. Reference is being made to the definitions of offence punishable under Sections 120B and 406 of IPC, under which the charge came to be framed by the trial Court, which read thus:

> **"120A. Definition of criminal conspiracy.**-- When two or more persons agree to do, or cause to be done,
> (1) an illegal act, or
> (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:
>
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust"."

11. The letter dated 18.09.2003, sent by HSIDC, at the tenanted premises of the Firm, which came to the share of the First Party-petitioner and her late husband, intimating resumption of plot in question and refund of the amount, that was placed on record of this case by the petitioner alongwith the amended plaint as Annexure A-2, reads thus:

"M/s Excellent Hosiery Products, No.HSIDC/Estate/2003/2879
392, Chhatta Lal Mian, Daryaganj, Dated:18.9.03
New Delhi-110002.

Reg:- Resumption of Plot No. 116. Sector-59. Indl. Estate Faridabad.

Dear Sir,
You were allotted Plot No. 116, Sector-39, LE. Faridabad measuring 3960 sq.mts. for the project of readymade garments on 30.01.1996. As per terms & conditions of allotment, you were allowed to implement the project upto 16.03.1998 but you failed to set up the unit within the given period and the plot is lying vacant without any activity at site. You were also issued a show cause notice on 28.12.2001 but you failed to give reply to the said notice; hence, Plot No.116 measuring 3960 sq.mts. is hereby resumed. Accordingly, we are enclosing Cheque of refund bearing No.626950 dated 08.09.2003 drawn on Punjab National Bank, Chandigarh amounting to Rs. 15,15,604/- (Rs. fifteen lacs, fifteen thousand six hundred and four only) towards refund of money deposited by you for allotment of plot after making deductions equivalent to 5% cost of the plot as per terms & conditions of allotment/ agreement. Further you are requested to hand over vacant possession of plot to AGM(IA), Industrial Estate, Faridabad.

Thanking you,

Yours faithfully,
for Haryana State Ind Dev.
Corp. Ltd."

12. It would also be worthwhile to refer to the order dated 03.11.2009, whereby the charge had been framed against the petitioner, which reads thus;-

> "For the allegations under Section 406 IPC as punishable under the provisions of criminal breaching of trust as defined under Section 405 IPC. the essential ingredients for the offence:
>
> 1. The entrustment with the accused and
> 2. The misappropriation of the entrusted property by the accused in falls of such trust
>
> The complainant has acted in furtherance of the memorandum whereas it prima-faice apparent that accused could not perform his part. It is not simply breach of contract of the reasons that the accused only admittedly got the memorandum prepared on his own still failed to mention that the property which is agreed to be given to the complainant is under litigation with HSIDC or that the property has certain claim of HSIDC pending with the firm. Accused rather was still asserting claim on the said property as is apparent from his statement before income tax authority. This on part of the accused when clubbed with the fiduciary relationships which he carries with the complainant. In my opinion, prima- facie establishes the entrustment as defined under Section 405 IPC. The arguments of defence about delivery of possession as essential ingredient for entrustment is not suitable in the peculiar circumstances of the present prosecution case. Here the question of possession is irrelevant as neither the firm nor any parties to the present complaint/FIR were having possession of the property. Admittedly, HSIDC had never delivered possession of the property allotted to the firm, hence, the question of transferring the possession by the complainant or retaining it with the accused has no significance. Thus in these peculiar facts, to my opinion, it is not sufficient to take this prosecution case out of the scope of entrustment as defined under Section 405 IPC.
> Further, prosecution has prima facie reflected that impugned property No. 116, Sector 59 was later resumed in favour of HSIDC where after, HSIDC returned the amount already deposited with respect to the said

> property. <u>It is prima-facie apparent that the said amount was returned almost two year later after the dissolution of the firm i.e on 8.9.03. On the date of receiving the said amount, the firm was no more a partnership firm.</u> it was sole proprietorship of the accused and complainant had no liability either qua the partnership firm or the sole proprietorship firm.
> It is also apparent from the document with the challan ie order of HSIIDC dated 12.1.06 that the <u>amount w.r.t plot No. 116, Sector 59, Faridabad was refunded to M/s Excellent Hosiery Products Ltd. vide cheque No. 626950 dated 8.9.03 but the cheque was never presented to the reasons best known to the accused. Finally, it became stale. Firm did not put any efforts to get the same revalidated.</u> Later vide order dated 18.3.04 & 28.6.04 of the Income Tax Department, HSIDC was directed to deposit Rs. 9,85,100- on behalf of firm on account of recovery of Income Tax against the firm. T<u>he retention of the cheque with the accused till it go invalidated and absence of the efforts on his part during this period, to bring this amount to the notice of the complainant, is opined prima-facie sufficient breach of trust. Especially when para 3 of MOU is there for relieving complainant from any further liability of the firm and when the property on whose account the said cheque was issued by HSIDC was agreed to be given to the complainant and that the said MOU was duly acted upon except w.r.t property no. 116, Sector 59, Faridabad. The co-accused is the beneficiary of the relinquishment deed executed after the MOU. The element of conspiracy on his part for commission aforesaid breach of trust can not be ruled out.</u>" (Emphasis supplied)

13. The aforesaid order having been assailed in revision, was affirmed vide order dated 14.12.2010, the relevant portion whereof reads thus:-

> "26. Vide MOU the plot had been settled in favour of the complainant, who had washed off his hands of the firm which in turn had been settled in favour of the revisionists Satish Newar and his wife. Prominent signatory of the MOU is Smt. Narayani wife of Satish Newar. <u>Notwithstanding the fact that she was not a partner of the firm but she was participating in all the proceedings of the firm associatively and participatively. Had she not been an active and effective participant, her signatures on the MOU were not even necessary. In the given set of circumstances and the chronology of events</u>

> culminating in signing of the MOU, she has a prominent place and pivotally perceptible role.
>
> xxx xxx xxx
>
> 30. What to talk of transferring the plot in favour of the complainant, he not only suffered a resumption order from HSIDC about the plot of the firm hitherto to own by him and the complainant, and then allowed the amount of refund of the plot from HSIDC to the adjusted in discharge of income tax liabilities of the firm. There is no denying the fact that as per the MOU, the income tax liabilities were to be discharged by Satish Newar who had took over the entire business. Moreover, being signatories of the MOU Satish Newar and his wife both were legally bound to inform the complainant about the pending demand of HSIDC qua the plot and were to further caution him that in case of non-payment of such amount the plot was likely to be resumed. Factum of pendency of litigation initiated by Satish Newar was also to be disclosed to the complainant. In fact, the plot and if any refund had come on that account were lying in trust with the revisionists.
>
> 31. Keeping in view the totality of facts and circumstances of the plot and later the refund amount consequent upon resumption of the plot (which resumption resulted due to lapse of the revisionist Satish Newar) was lying in trust with the revisionists for and on behalf of the complainant. Thus could not have appropriated the said amount of refund towards liability of the income tax department qua the firm which had come to the share of the revisionists Satish Newar. Thus clear misappropriation was done by the revisionists."
>
> (Emphasis supplied)

14. Indubitably, the bone of contention is the industrial plot, that fell to the share of respondent No.2 as per the MoU of the year 2001, which got resumed by HSIDC vide letter dated 18.09.2003 and as a consequence of which, the amount of Rs.15,15,604/- deposited towards its allotment was refunded to the Firm vide cheque bearing No.626950 dated 08.09.2003 drawn on Punjab National Bank.

15. As is discernible from the record, when the Income Tax Department had initiated recovery proceedings against the Firm in the year 2004, the late husband of the petitioner, in response to question Nos.5 and 7,

in his statement recorded on 11.03.2004 had stated that the Firm has no immovable assets excluding the industrial plot which stands cancelled and the refund of the amount deposited for the same is awaited. The due amount of tax will be paid as and when refund would be received.

16. Pertinently, as is clearly depicted in the MoU, the Firm alongwith its assets and liabilities came to the share of the first party-petitioner and her husband, of which she also a signatory. The industrial plot, that was in the name of the Firm, fell to the share of Respondent No.2. The cheque with regard to the refund of the amount alongwith the letter of resumption of the said plot in question, were sent to the address of the Firm. As is apparent from the impugned order passed by the trial Court, the above cheque was neither presented nor got revalidated nor brought to the notice of complainant-respondent No.2, rather part of the amount was got transferred to the Income Tax Department towards the outstanding dues of the Firm, in discharge of liability, which as per MoU of 2001 was of the First party-petitioner and her husband. It was held in **Devender Pal Singh** (supra), by Hon'ble The Supreme Court that, "…Direct evidence in proof of a conspiracy is seldom available, offence of conspiracy can be proved by either direct or circumstantial evidence…" Its existence is a matter of inference, normally deduced from acts of parties in pursuance of purpose in common between the conspirators was the observation by Hon'ble The Supreme Court in **State of Kerala vs. P. Suhagathan & Another**, (2000) 8 SCC 203. The final object of conspiracy in the first charge being the offence of cheating, the other offences described therein are steps, *albeit* offence themselves, in aid of the ultimate crime. The charge does not connote the plurality of objects of the conspiracy. The appellant himself is not charged

with the ultimate offence, which is the object of the criminal conspiracy, is besides the point in a charge under Section 120B IPC as long as he is a party to the conspiracy with the end in view. Whether the charges will be ultimately established against the accused is a completely different matter within the domain of the trial Court was held in **Yashpal Mittal vs. State of Punjab** (1977) 4 SCC 540 by Hon'ble The Supreme Court.

17. At the initial stage, if there is a strong suspicion which leads the Court to think that there is a ground for presuming that the accused has committed an offence then the Court should proceed with the trial, was laid down by Hon'ble The Supreme Court in **State of Bihar vs. Ramesh Singh** 1977 SCC (Cri.) 533 and followed in **Union of India vs. Prafulla Kumar Samal and others** 1979 SCC (Cri.) 609 and **Dipakbhai Jagdishchandra Patel vs. State of Gujarat,** (2019) 16 SCC 547. There cannot be a roving enquiry into the pros and cons of the matter, the evidence is not to be weighed as if the trial is being conducted, as was observed in **Shiv Charan Bansal and others** (supra). Thus, to hold that at the stage of framing the charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of the Code of Criminal Procedure. It is not a stage at which the final test of guilt is to be applied. [See **State of Rajasthan vs. Fatehkaran Mehdu**, (2017) 3 SCC 198].

18. In **State of Madhya Pradesh vs. Deepak,** (2019) 13 SCC 62, Hon'ble The Supreme Court, after considering the other binding decisions in **Amit Kapoor** (supra) and **Chitresh Kumar Chopra vs. State (Government of NCT of Delhi)** (2009) 16 SCC 605 observed and held that the Court at the stage of framing of charges, has to consider the material

only with a view to find out if there is a ground for "presuming" that the accused had committed the offence. The High Court is not required to appreciate the evidence on record and consider the allegations on merits and to find out on the basis of the evidence recorded the accused chargesheeted or against whom the charge is framed is likely to be convicted or not.

19. Hon'ble The Supreme Court in **Manendra Prasad Tiwari vs. Amit Kumar Tiwari,** 2022 SCC OnLine SC 1057 and **State of Orissa vs. Debendra Nath Padhi** (2005) 1 SCC 568, while relying on the dictum laid down in **State of Delhi vs. Gyan Devi and Others** (2000) 8 SCC 239, reiterated that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that *prima facie* case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section 482 Cr.P.C. or a revision Petition under Section 397 read with Section 401 of Cr.P.C. seeking for the quashing of charge framed against him, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in

mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases.

20. Hon'ble The Supreme Court in **Amit Kapoor** (supra) held that, "Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*."

21. Bearing in mind the law as explicated in the forgoing judicial pronouncements, this Court having regard to the factual matrix, when for a property-industrial plot that had come in the share of respondent No.2, the information of its resumption or the amount of refund not having been shared and intimated but above and beyond virtually utilizing the said amount to discharge the liabilities of the Firm, which as a matter of fact was the responsibility of the first party-petitioner and her husband, as per the MoU, to which she was a signatory as well, though the entitlement to receive the refund was of respondent No.2, would hasten to add that the petitioner cannot disassociate herself to an extent that it can be construed in the present proceedings that she was neither the beneficiary nor in cahoots with her late husband. Therefore, the issue as raised in a case of present

nature, is only a matter of evidence to be considered and appreciated in the judicial proceedings to arrive at a conclusion, thus, it would not be justified or required to be interfered with, at this juncture. There are no reasons, much less strong for terming this case to be exceptional, where the charge framed against the petitioner can be quashed. The revisional Court has rightly affirmed the order of the trial Court framing charge.

22. The petitioner will have ample opportunity to put forth her defence in the proceedings before the trial Court to refute and disprove the allegations, as well as to assert and substantiate the contentions urged on her behalf. This, essentially would be the defence in the criminal trial. The petitioner in any event would have the further remedy to legal recourse, if dissatisfied.

23. Hon'ble The Supreme Court in **Rajiv Thapar & others vs. Madan Lal Kapoor** (2013) 3 SCC 330 observed that, "The High Court, in exercise of its jurisdiction under Section 482 CrPC, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/ complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/ complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The

accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law…"

24. The judgment relied on behalf of the petitioner is of no support to her, being distinguishable on facts.

25. Evaluating the factual foundation of the offence and having implored itself with the afore referred abounding pronouncements, this Court finds no illegality or perversity in the impugned orders, which may call for any intervention. As such, the present petition sans merit and is hereby dismissed.

26. The observations made hereinabove are only for the purpose of adjudication of the present petition and shall not be construed as an expression of opinion on the merits of the case.

21.04.2023 **(AMAN CHAUDHARY)**
gsv **JUDGE**

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