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

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Reserved on: 15.05.2023

Pronounced on: 29.05.2023

+ **CRL.M.C. 1876/2020 & CRL.M.A. 13393/2020**

RAKESH SHARMA

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.... Petitioner

Through: Mr. Rakesh Kakar and Ms. Varsha,
Advocates

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Manoj Pant, APP for the State
with SI Pradeep, P.S. Lajpat Nagar.
Mr. Parth Chaturvedi, Advocate for
R-2

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. By way of present petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), the petitioner seeks setting aside of order dated 22.02.2020 passed by learned Additional Sessions Judge-04, South East, Saket Court, New Delhi in Criminal Revision No. 593/ 2019, and quashing of FIR bearing no. 56/2008 registered at Police Station Lajpat Nagar, New Delhi under Sections 406/420 of Indian Penal Code, 1860 (IPC).



2. Briefly stated, the facts of the present case are that respondent no. 2 had lodged a complaint with the police whereby he had stated that he had good relations with the accused persons including the present petitioner and by misusing the same, the petitioner and his brother in May, 2000, had induced the complainant to invest money in their business on the pretext that it would give good returns to the complainant. Upon their insistence, the complainant had invested Rs.1,00,000/-. It was stated that in order to gain trust of the complainant, the accused persons had given him Rs.2,000/- each on two occasions. Thereafter, the complainant had again given Rs.1,56,000/- to the petitioner by taking the same from his friend Satvir in October, 2000. It was further alleged that the accused persons had approached the complainant seeking Rs.2,00,000/- for starting the business of sale and purchase of vehicles. They had also given the complainant Rs.10,000/- twice as return on his investment. Accordingly, the complainant had parted away with Rs.2,16,000/- in favour of the accused. Again in 2004, as alleged, the complainant had given Rs.6,50,000/- to the accused persons, by obtaining the same from his friend Satvir and one Anita Kukreja, which the accused had obtained from him on pretext of purchasing 1-2 cars in his name. However, no such vehicles were purchased in the name of complainant. The complainant had later got to know that the accused persons had purchased two buses in the name of one of their relatives who was a resident of Pathankot and they had asked the complainant to further pay Rs.6,50,000/- for becoming an equal partner in the same. Consequently, the complainant had arranged Rs.6,50,000/- on his own and from his friends and had handed over the same to the accused persons. Thereafter, in January, 2006, the petitioner



had again demanded Rs.1,32,000/- as a friendly loan from the complainant for a period of two months. It was alleged that in the end of January, 2006, when the friends of the complainant had started demanding their money back from the complainant, the complainant had asked the accused persons to return his money and the petitioner had handed over two cheques worth Rs.2,50,000/- each dated 20.02.2006 and 28.02.2006 to him. However, upon presentation, these cheques were returned unpaid and it had come to the knowledge of the complainant that the cheques so presented did not belong to the petitioner, and rather belonged to one Sh. Rohit Chopra. On these allegations, the present FIR was registered under Sections 406/420 IPC. Upon completion of investigation, charge sheet was filed under Sections 406/467/471/506 IPC.

3. Vide order dated 28.09.2019, the learned Metropolitan Magistrate-01, South East, Saket Court, New Delhi framed charges against the petitioner under Sections 406/467/471/506 of IPC.

4. However, upon challenging the aforesaid order by way of a revision petition, the learned ASJ *vide* impugned order dated 22.02.2020 partially allowed the same by setting the charges framed under Sections 467/471/506 IPC, but retained the charge under Section 406 IPC. The relevant portion of the order reads as under:

“25. The page in the diary does not bear the name of the revisionist as well as date of signing the same. The handwriting has matched with the admitted handwriting and signature. The evidentiary value of the page showing to the receipt of Rs. 25 lakh will be seen at the appropriate stage. The effect of discrepancy in the amount will be seen at the appropriate stage. To my mind, the entire material on the record shows that there is strong suspicion that revisionist has committed the offence u/s



406 IPC and accordingly charge under the said section has been rightly framed.

26. Keeping in view the entire facts and circumstances, I find an infirmity in the impugned order dated 29.08.2019 vide which charge u/s 467/471/506 IPC was also framed against the revisionist. There is no material on record to frame the charge for the said offence and accordingly revisionist is charged from the offence u/s 467/471/506 IPC.

27. I do not find any infirmity while framing the charge u/s 406 IPC against the revisionist...”

5. The present petition, thus, has been filed assailing the order dated 22.02.2020 passed by learned ASJ.

6. Learned counsel for the petitioner argues that the allegations against the petitioner are false and fabricated and the impugned order does not record any reason as to why the learned ASJ had retained the charge under Section 406 IPC while he had discharged the petitioner from other offences. It is stated that to constitute an offence under Section 406 IPC, it is important that there must be an ‘entrustment’ as per Section 405 IPC for which there is no evidence in the present case and, thus, ingredients for commission of an offence under Section 406 IPC are not made out. It is stated that a civil dispute has been given the colour of criminality and the complainant should have filed a suit for recovery against the petitioner. It is also stated that there is no document or material on record to corroborate the allegations levelled against the petitioner in the FIR and no such transaction as alleged by the petitioner had ever taken place. It is also argued that one diary page dated 01.11.2004 relied upon by the prosecution shows an amount which is much more than the amount stated in the FIR by the complainant. It is also stated that page of diary does not



show that the amount was paid to the petitioner and the same does not bear the name of the petitioner or date or place of execution, and there is no name even of the complainant on the said page. It is further stated that though the FIR is of the year 2008, the charges were framed by the learned MM only in the year 2019 because the case of the prosecution was weak and based upon a false and fabricated FIR.

7. Learned counsel for the complainant/respondent no. 2, on the other hand, argues that there is sufficient material against the petitioner for facing trial in the present case and there is no infirmity with the impugned order. It is stated that indeed the money was given to the petitioner by the complainant as also recorded in the diary which contains the note of these transactions. It is also stated that a sample of the petitioner's handwriting was collected and forwarded to the FSL for handwriting analysis and as per the report so received, the petitioner's handwriting had matched with the handwriting on the diary page that had been forwarded for comparison. It is also stated by the learned counsel that the delay in trial in the present case, and the fact that charges were framed 11 years post registration of FIR, is attributable to the petitioner only as he had not left any opportunity to delay the trial. It is stated that the petitioner initially kept on seeking adjournments or exemption before the learned Trial Court and after two years, pleaded that he was a mentally ill person due to which a medical board was also constituted, but the petitioner never appeared before the same and even adverse inference was taken against him by the Trial Court.

8. Learned APP for the State has also contended that charges have been rightly framed against the petitioner and, thus, the present petition be dismissed.



9. This Court has heard arguments addressed on behalf of both sides and has perused the material placed on record.

10. The gravamen of the allegations against the petitioner are that he had induced the complainant i.e. responded no. 2 to invest money in his business and upon his inducement, the complainant had parted away with sum of more than Rs.19 lakhs between the year 2000 to 2006. When the complainant had not got any profit from the same and when he had demanded his money back, the petitioner had issued two cheques of Rs.2,50,000/- each in favour of the complainant. However, on the presentation of the same, the cheques had got dishonoured and the same were found belonging to the account of one Sh. Rohit Chopra who had already lodged a complaint with regard to missing cheque book.

11. The learned ASJ, after observing that there was no question of any forgery having been committed by the present petitioner as he had not forged signature of Sh. Rohit Chopra, the owner of the cheque book, rather had put his own signatures on the said cheques, had held that no offence in relation to forgery was made out. However, the learned ASJ had held a view that Section 406 IPC was made against the petitioner out from the records of the case.

12. In relation to exercise of power under Section 397 or Section 482 of Cr.P.C. by the Courts while deciding a petition seeking discharge or quashing of charge framed by the Trial Court, which is being sought by the present petitioner, the Hon'ble Apex Court in ***Manendra Prasad Tiwari v. Amit Kumar Tiwari and Anr.*** 2022 SCC OnLine SC 1057 has reiterated the well-settled law with the following observations:



“21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. 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 CrPC or a revision Petition under Section 397 read with Section 401 of the CrPC 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.

22. The scope of interference and exercise of jurisdiction under Section 397 of CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. **At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage the final test of guilt is to be applied.** 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 Code of Criminal Procedure

23. Section 397 CrPC vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.”

(Emphasis supplied)

13. As per the case of complainant, the petitioner had initially obtained sums of money from the complainant for seeking investment in his business, and later had obtained further amounts on the pretext of purchasing cars in the name of complainant. Thereafter, he had also promised to purchase buses in partnership with the complainant for which the complainant had parted with lakhs of rupees. However, as alleged, the amount so given by the complainant to the petitioner was not utilised in the manner as promised by the petitioner and the petitioner had dishonestly misappropriated the same and had cheated the complainant.

14. Learned counsel for petitioner, however, argued that there are discrepancies in the statements of witnesses and the respondent no. 2 herein has somehow produced a diary which is totally unconnected with the alleged offence in question and therefore, could not have been relied upon for the purpose of summoning the accused. This Court, however, takes note of the fact that extract of the diary in question was sent to FSL or scientific analysis of the handwriting and the FSL report in this case is in favour of the complainant and supports his claim that the same was written by the person whose specimen handwriting was sent for



comparison. The relevant extract of FSL report dated 07.05.2010 is reproduced as under for reference:

“...

EXHIBITS

QUESTIONED -Red enclosed English writings and figures of amount marked Q1 to Q3 and English writings and figures of date marked Q1/I on page No.33 in a diary of dated 22, 23 & 24 January 2004.

STANDARDS -Red enclosed specimen writings and signatures marked S1 to S27 of Rakesh Sharma.

LABORATORY EXAMINATION

All the documents were carefully and thoroughly. examined with scientific instruments such as Stereo Microscope, Video Spectral Comparator-IV, Docucenter and VSC-2000/HR etc. under different lighting condition and I am of the opinion that:

The person who wrote red enclosed writings and signatures stamped and marked S1 to S27 also wrote the red enclosed writings and signatures similarly stamped and marked Q1 to Q3 and Q1/I for the following reasons:

There is no divergences observed between questioned and specimen signatures and the aforesaid similarities in the writing habit are significant and sufficient and cannot be attributed to accidental coincidence and when considered collectively they lead me to the above said opinion...”

15. This Court after going through the entire record thus unable to agree with the contention of learned counsel for petitioner that the issue in this case is entirely civil in nature and has been given a criminal color. The contentions raised before this Court are all triable issues and cannot be appreciated and dealt with by this Court by exercising its jurisdiction under Section 482 Cr.P.C.



16. In view of the aforesaid facts and circumstances, this Court does not find any infirmity in the impugned order dated 22.02.2020 by virtue of which charge under Section 406 IPC framed by the learned MM was sustained against the present petitioner.

17. Since the petitioner also seeks quashing of present FIR under Section 482 Cr.P.C., it will be relevant to note in this regard, the guidelines laid down by the Hon'ble Apex Court.

18. The scope of Section 482 Cr.P.C., in relation to quashing of FIR, was explained by the Hon'ble Apex Court in case of *State of Haryana v. Bhajan Lal* 1992 SCC (Cri) 426, in the manner as extracted herein-under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except



under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

19. The petitioner in the present case has not raised any contention or any ground which would *prime facie* show that the FIR in the present case



has resulted in any abuse of process of law or that the allegations levelled against the petitioner are inherently improbable or absurd or that they do not constitute commission of any offence. Considering the same and in view of the preceding discussion, there are no grounds to quash the FIR in question.

20. Thus, in light of the foregoing discussion, the present petition stands dismissed, along with pending applications if any.

21. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression on merits of the case.

22. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 29, 2023/kss