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*Before Rajive Bhalla, J.*

RAJINDER PARTAP GARG,—*Petitioner*

*versus*

H.S. RANDHAWA,—*Respondent*

CRIMINAL REVISION NO. 303 OF 2005

10th October, 2006

*Indian Penal Code, 1860—S. 420—Petitioner failing to induct respondent as a partner in business—Dishonest allurement—Large sums of money paid by respondent to petitioner on false inducement/promise—Trial Court framing charges u/s 420 IPC after recording pre-charge evidence—Challenge thereto—Specific & categoric allegations that respondent was dishonestly induced into parting with money—At the stage of framing charges a Court does not embark upon an appraisal of material on record to critically analyze its worth or credibility—Order of trial Court framing charges passed after an appraisal of complaint & evidence does not suffer from any error of jurisdiction or law—Petition dismissed.*

*Held*, that a perusal of the facts of the present case reveal specific and categoric allegations which fulfil the ingredients of an offence of cheating. The complainant has specifically pleaded in the complaint and deposed in support thereof that he was dishonestly induced by the petitioner into parting with money, the dishonest allurement being a share in the profits and a promise to eventually induct the complainant into the partnership business. The respondent, believing the aforesaid inducement to be true began entrusting large sums of money to the petitioner. Though, some of the money was returned and interest was also paid, Rs. 15 lacs was not returned. In my considered opinion, after an appraisal of the facts it cannot be held at this stage that no offence punishable under Section 420 of the IPC is made out. In view of the facts pleaded in the complaint and those disclosed in the evidence, the learned trial Court rightly framed charges against the petitioner.

(Para 16)

*Further held*, that where facts of the case disclose a civil dispute, it would be imperative for a High Court to quash such proceedings. The situation in the present case is entirely different. The complaint and the evidence adduced on record disclose facts that

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could lead to both civil and/or criminal consequence. Therefore contention of the petitioner that the facts of the present case disclose a simple dispute cannot be accepted. The impugned order does not suffer from any error of jurisdiction or of law that would require interference in the exercise of jurisdiction under Section 401 of the Cr. P.C.

(Para 16 & 18)

Sanjiv Bansal, Advocate, *for the petitioner.*

S.K. Vohra, Advocate with Rupinder Kaur Sodhi, Advocate,  
*for the respondent.*

### JUDGEMENT

**RAJIVE BHALLA, J.**

(1) Prayer in this petition is, for quashing the order dated 25th January, 2005, whereby the Judicial Magistrate 1st Class, Chandigarh, has framed charges, against the petitioner, under Section 420 of the Indian Penal Code.

(2) The respondent filed a private complaint alleging the commission of an offence under Section 419/420 of the IPC. The petitioner, was arrayed as the sole accused. *Vide* order dated 23rd March, 2001, the Judicial Magistrate, 1st Class, Chandigarh dismissed the complaint. A revision preferred by the respondent was accepted by the Additional Sessions Judge, Chandigarh and,—*vide* order dated 27th November, 2001 and the complaint remitted to the Magistrate, for further enquiry. *Vide* order dated 9th April, 2002, the Magistrate, summoned the petitioner. The petitioner, filed an application praying for recalling of the summoning order. The application was partly allowed and partly dismissed,—*vide* order dated 8th July, 2003. A revision petition, filed against the aforementioned order was dismissed, by the Additional Sessions Judge, Chandigarh,—*vide* order dated 17th July, 2004.

(3) Thereafter, the respondent proceeded to lead pre-charge evidence. Upon conclusion of pre-charge evidence and after hearing argument addressed by both parties, the learned trial Court,—*vide* order dated 25th January, 2005, framed charges, against the petitioner, under Section 420 of the IPC, challenge whereof, is subject matter of the present petition.

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(4) Counsel for the petitioner contends that the impugned order does not disclose an application of mind, suffer from factual errors and has primarily been passed by placing reliance upon certain observations made by the Additional Sessions Judge, Chandigarh, in his order, remitting the complaint for fresh enquiry.

(5) It is contended that even as per the allegations levelled in the complaint, the money transactions took place from 8th April, 1985 to 14th April, 1994, whereas the complaint was filed on 10th May, 2000. The learned trial Court lost sight, of the fact that cognizance of the complaint was barred by limitation.

(6) It is further argued that the case as set out in the complaint and as discernible from the evidence adduced, is a simple claim for money and therefore a civil dispute. The allegations in the complaint that money was advanced by false inducement is misconceived and factually incorrect. The complaint and the evidence adduced do not disclose the ingredients of an offence under Section 420 of the IPC. No circumstances have been pleaded or brought on record, during the pre-charge evidence, that would lead to an inference of dishonest or fraudulent intention, at the time the petitioner allegedly received money. Mere allegations in the complaint, that the respondent was cheated by a dishonest allurements of an offer of a partnership, in the business and the failure of the petitioner, to induct the respondent as a partner, are insufficient to raise an inference, of commission of an offence under Section 420 of the IPC.

(7) It is further argued that the petitioner has paid money due to the respondent, with interest and in case any balance remains to be paid, the dispute being purely civil in nature the learned trial court, erred in framing charges.

(8) Thus, in essence, counsel for the petitioner contends that as the complaint and the evidence adduced disclose a civil dispute, and do not disclose, the commission of any offence, the learned Magistrate erred in framing charges against the petitioner. Reliance, is placed upon judgments of the Hon'ble Supreme Court, reported as **Anil Mahajan versus Bhor Industries Ltd. and another (1)** and **Medchel Chemicals & Pharma (P) Ltd. versus Biological E. Ltd. and others (2)**.

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(1) (2005) 10 S.C.C. 228

(2) (2000) 3 S.C.C. 269

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(9) Counsel for the respondent, on the other hand, contends a perusal of the complaint, the facts pleaded therein and the evidence, adduced by the petitioner reveal a systematic plan to divest the respondent of his money. The allurements offered were a share in the profits and an eventual induction as a partner in the business. It is contended that as the promise never materialised an offence stood committed. The respondent has been able to establish by detailed pleadings and by consistent evidence that large sums of money were received by the petitioner, from the respondent over a period of time. The respondent was dishonestly induced to part with sums of money on a false promise that he would be inducted into the partnership business. Another dishonest allurements offered was a share in the profits. A major part of the money was never returned and the respondent was not inducted into the partnership, nor was he paid a share of the profits, thus, leading to an inference of a dishonest intention at the inception of the transaction, namely ; the time when the petitioner induced the respondent to part with his money.

(10) It is further argued that though, failure to return money is one of the facts, averred in a complaint, this fact cannot be read in isolation to hold that the complaint discloses a civil dispute. This fact coupled with the petitioners dishonest inducement, at the inception of the transaction, led the respondent, to believe that if he entrusted his money to the petitioner, he would induct the respondent, as a partner and/or pay a share of profits, is sufficient to infer the commission of an offence of cheating as defined under Section 415 of the IPC and punishable under Section 420 thereof.

(11) It is further contended that during the period from 1985 to the year 2000, the petitioner cheated the respondent of large sums of money, as detailed in the complaint and the respondent(s) deposition and, therefore, the petitioner is not justified in asserting that the dispute is civil in nature or that no offence is made out.

(12) I have heard learned counsel for the parties and perused the paper book.

(13) As noticed herein above, challenge in the present proceedings is to the order framing charges. Where a private complaint is filed and the procedure adopted by a Magistrate is, one of a warrant case, charges are framed under Section 246 of the Cr. P.C. The

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aforementioned provision empowers a Magistrate, to frame charges against an accused, upon conclusion of the pre-charge evidence or at any previous stage of the case, provided, he forms an opinion that there exist sufficient ground to presume that the accused has committed an offence, for which he could be adequately punished by the Magistrate. It is settled law that a charge is a precise formulation of the specific acquisitions levelled against an accused. An order framing charges is a *prima facie* expression of opinion that the accused has committed an offence, for which he should be tried. At the stage of framing charges, Magistrate embarks upon an appraisal of the material on record for a limited purpose, namely; to evaluate the material on record, so as to form a *prima facie* opinion that the accused, can be tried for an offence he appears to have committed. A Court, at the stage of framing charges does not evaluate evidence, to determine its correctness, credibility or worth, its legality or validity. It merely sifts and weighs evidence for a limited purpose namely whether there is sufficient evidence on record to warrant framing charges. Even a strong suspicion may be sufficient to frame charges.

(14) After a perusal of the complaint and the evidence on record, the learned trial Court,—*vide* the impugned order dated 25th January, 2005 framed charges against the petitioner under Section 420 of the IPC. The first contention raised, namely; that cognizance of the complaint was barred by limitation cannot be accepted. The petitioner has been charged for the commission of an offence under Section 420 of the IPC. Section 468 of the Code of Criminal Procedure, which prescribes the period of limitation, whereafter cognizance is barred, does not apply to cognizance of an offence allegedly committed under section 420 of the Indian Penal Code. Thus, the aforementioned contention, based as it is upon an erroneous assumption of law is rejected.

(15) The next contention, that a perusal of a complaint and the evidence on record does not disclose the commission of any offence, under Section 415 of the IPC, punishable under Section 420 of the IPC, does not merit acceptance. At the stage of framing charges and as noticed herein above, a Court does not embark upon an appraisal of the material on record to critically analyse its worth, or credibility. The learned trial Court, after an appraisal of the complaint and the evidence, arrived at a conclusion that the material on record, was

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sufficient, to frame charges. The aforementioned finding, in my considered opinion, does not suffer from any error of jurisdiction or law, as would require interference, in the exercise of revisional jurisdiction. It is true that a complainant, while seeking to prosecute an accused, for an offence under Section 420 of the IPC, must *prima facie* allege and establish, by cogent and reliable evidence, that he was dishonestly induced into parting with property, in the present case money, by a dishonest and deceitful intention, that preceded the payment of money. There does not exist, whether in law or in fact, any principle that would lead to an automatic inference for or against an accused, harbouring a dishonest intention. Intention, being intangible, is generally an inference, drawn from the facts and circumstances of a particular case.

(16) A perusal of the facts, of the present case reveal specific and categoric allegations which, in my opinion, fulfil the ingredients of an offence of cheating. The complainant has specifically pleaded, in the complaint and deposed in support thereof that he was dishonestly induced by the petitioner, into parting with money, the dishonest allurements being a share in the profits and a promise to eventually induct the complainant into the partnership business. The respondent, believing the aforementioned inducement to be true began entrusting large sums of money to the petitioner. Though, some of the money was returned and interest was also paid, Rs. 15 lacs was not returned. In my considered opinion, after an appraisal of the facts it cannot be held, at this stage, that no offence, punishable under Section 420 of the IPC is made out. In view of the facts pleaded in the complaint and those disclosed in the evidence, the learned trial court rightly framed charges against the petitioner. The judgements, relied upon by counsel for the petitioner to contend that as the complaint discloses a civil dispute, charges could not be framed, are of no help to the petitioner as the facts of the present case do not disclose a mere civil dispute. A given set of facts, may lead to both civil and/or criminal or one of these consequences. Where facts of the case, disclose a civil dispute, it would be imperative for a High Court, to quash such proceedings. The situation in the present case is entirely different. The complaint and the evidence adduced on record, disclose, facts, that could lead, to both civil and/or criminal consequences. Therefore, contention raised by counsel for the petitioner that the facts of the present case disclose a simple civil dispute, cannot be accepted.

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(17) Another contention raised that the learned trial Court, while framing charges has relied upon the order, passed by the Additional Sessions Judge, Chandigarh, whereby the complaint was remitted, to the trial Court for further enquiry and, therefore, discloses a failure to apply independent mind, does not merit acceptance. The learned trial Court merely referred to the aforementioned order, as an instance to suggest that the material on record was sufficient to frame charges against the petitioner.

(18) It is thus apparent that the impugned order, does not suffer from any error of jurisdiction, or of law that would require interference in the exercise of jurisdiction under Section 401 of the Cr.P.C. In view of what has been stated above, the present petition is dismissed. It is, however, made clear that any observations made in this order touching upon the merits of the controversy shall not be construed to be an expression of opinion thereon.

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**R.N.R.**

*Before S. S. Nijjar, A.C.J & S. S. Saron, JJ*

MOHINDER SINGH,—*Petitioner*

*versus*

STATE OF HARYANA & ANOTHER,—*Respondents*

*C.W.P. No. 6099 of 2005*

12th October, 2006

*Constitution of India, 1950—Art. 226—Punjab Civil Services (E.B.) Rules, 1930—(as applicable to State of Haryana)—Rl.3—Punjab Civil Service (E.B.) Haryana Amendment Rules, 2002—Rl.9—Notification dated 13th May, 2005 issued by State of Haryana—Selection of petitioners to H.C.S. (E.B.)—Appointment orders not issued on account of enforcement of Model Code of Conduct as elections announced by the Election Commission—Challenge thereto—During the pendency of petitions, Govt. reducing cadre strength by issuing a notification—Rl.3(2) of 1930 Rules provides that the Govt. shall at the interval of every 3 years re-examine the strength and composition of the cadre and may make such alterations therein as it deems fit—Whether cadre strength could not have been re-determined prior to 3*