THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on :24 .04.2007

+ **CRL. REV. P 584/2005**

MS ARCHANA KUMARI ... Petitioner

- versus -

STATE (GOVT OF NCT OF DELHI) ... Respondent

Advocates who appeared in this case:
For the Petitioner : Mr S.D. Kinra
For the Respondent/State : Mr V.K. Malik

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in Digest? Yes

BADAR DURREZ AHMED, J

1. The petitioner is aggrieved by the order on charge dated 08.07.2005 and the charge itself framed on 12.07.2005.

2. The charge framed by the learned Metropolitan Magistrate on 12.07.2005 in respect of the petitioner and co-accused Pankaj Sikka reads as under:

> "That both of you in furtherance of your common intention on or about April 1997, you Archna being Clerk and you accused Pankaj Sikka being in charge of Office of M/s Una Himancha finance and Investment Company Ltd and in such capacity entrusted with the property namely the cheque book of CC account No.5525 maintained by the complainant with Canara Bank, Uttam

> Nagar in furtherance of your common intention committed criminal breach of trust with respect to the cheque bearing no.492337 dated 7.4.1997 amounting to Rs.45,000/- and that you have thereby committed an offence punishable u/s 408/34 IPC within the cognizance of this court.
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> And I hereby direct that both of you be tried for the said offence by this court."

3. The facts necessary for disposal of this petition are that an FIR No.550/97 was registered with Police Station Vikas Puri. The said FIR was registered on the basis of a written complaint dated 30.04.1997 made by Shri Kuldeep Sharma, Managing Director of Una Himancha Finance and Investment Company Ltd (hereinafter referred to as "the said Company"). In the said complaint it was stated that the complainant was the Managing Director of the said company and one of its offices was being run at premises No. WZ-2108, A-1, Block, Uttam Nagar, New Delhi. It was further stated that co-accused Pankaj Sikka was in charge of the office and he was working as a Manager. Apart from the said Mr Pankaj Sikka, the present petitioner (Ms Archana) and one Ms Neetu Arora were employed as clerks in the said office. A chowkidar-cum-peon of the name of Kishan Singh was also employed in the said office. It is alleged in the complaint that :-

> "The Director of the company used to visit the office occasionally once in a week, though whole record, cheque books, seal and other documents remains in the custody of the manager Sh. Pankaj Sikka, Ms Archana is the Sr Clerk in the office but the other clerk Ms Neetu is newly appointed and is not familiar with the functioning of the office."

4. It was further stated in the complaint that the said company had a current account at Canara Bank, Uttam Nagar Branch, New Delhi and that the said Mr Pankaj Sikka and Senior Clerk Ms Archana (the petitioner) used to deposit the cheques in the bank and used to encash the cheques from the bank "after obtaining the signatures of the complainant, who is the Managing Director and from the one other Director". It was further alleged that the said persons were very well aware and familiar with the signature of the Director and the cheque books remained in their custody. The basis of the FIR is that on 21.4.1997, an account statement was taken from the said bank for the period dated 1st April to 19th April, 1997 and when the complainant examined the same, he found that the cheque bearing No.492337 amounting to Rs.45,000/- dated 07.04.1997 had been debited from the account of the company and paid to one Mr Ram Kumar. Since the complainant had some doubt, he checked the account register at the office and found that the said cheque was missing from the cheque book and there was also no corresponding entry of the cheque in the cheque issue register. It was also alleged that this register was maintained in the writing of Ms Archana Kumari and Sh Pankaj Sikka. Ultimately, the complainant alleged that even the bank officials of Canara Bank were involved in the said withdrawal of Rs.45,000/- from the said company's account. The complainant also expressed his doubt on the basis of the record that Pankaj Sikka and Ms Archana (the petitioner) may also be conspirators in this fraud and, therefore, requested that the criminal case be registered under the relevant

Sections of Indian Penal Code and the amount of Rs.45,000/- be recovered from the culprits.

5. The police investigated the matter and filed the report under Section 173 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code) against both the accused i.e., Pankaj Sikka and Archana alleging commission of offences under Section 420/468/471 IPC. The complainant raised a grievance that the matter had not been investigated by the police with regard to the role of the bank officials and he moved an application under Section 173(8) of the Code for further investigation which was allowed by the learned Metropolitan Magistrate by an order dated 01.09.2003. Further investigation was carried out and a supplementary report under Section 173 of the Code was filed. According to the said supplementary report, the involvement of the bank officials could not be established. It was also stated in the supplementary report that the identity of Ram Kumar in whose favour the cheque had been drawn could not be established due to lapse of time. It is also pertinent to note that the cheque in question had been sent to the FSL with the specimen hand-writing of the complainant and the accused persons for the opinion of the hand-writing expert regarding the hand writing appearing on the cheque at points Q1 to Q4. The specimen writings / signatures of the accused persons as well as the complainant were taken. Those which related to Pankaj Sikka were marked as S1 to S25. Those which related to Ms Archana (the petitioner) were marked as S-26 to S52 and those which related to the

complainant were marked as S53 to S56. The FSL, in its opinion, indicated that :-

> "The person who wrote the red enclosed signatures stamps and marked S53 to S56 did not write the red enclosed signatures similarly stamped and marked Q1 to Q3....."

This clearly shows that the signature on the cheque was not that of the complainant. With regard to the comparison made with the hand writing of the accused, the report indicated as under:

> "It has not been possible to fix the authorship of Q1 to Q4 in comparison with S1 to S25 and S26 to S52."

This makes it clear that the questioned hand writing on the cheques did not belong to either of the accused.

6. Considering all the facts and circumstances of the case, the learned Metropolitan Magistrate came to the conclusion that the complainant had placed on record the acknowledgment whereby Pankaj Sikka returned the cheque books and other registers to the complainant and that this, prima facie, supported the allegation of the complainant that the accused used to have the custody of the cheque books and the other documents. The learned Metropolitan Magistrate thereupon concluded that there are documents on record to, prima facie, show that the accused were in custody of the registers and the cheque books. The learned Metropolitan Magistrate also concluded that, prima facie, the accused were responsible for the encashment of the cheque in question as they failed to take necessary steps for stopping the

payment of the cheque which should have been done in the normal course. Accordingly, in the opinion of the learned Metropolitan Magistrate the ingredients of Section 408/34 IPC were, prima facie, made out and accordingly, the charge was framed against the accused as mentioned above.

7. The learned counsel for the petitioner submitted that mere suspicion alone would not be sufficient for framing of a charge. The materials placed before the court must lead to grave suspicion against the accused and only then the court would be justified in framing a charge and proceeding with the trial. For this proposition he placed reliance on the decision of the Supreme Court in the case of ***Union of India v Prafulla Kumar Samal and Others* : *AIR 1978 SCC 366.*** It was contented by the learned counsel for the petitioner that the essential ingredients for an offence under Section 408 IPC are :- (a) the accused must be a clerk; (b) in such capacity, the accused must be entrusted with certain properties or have domain over that property which was not his / her own ; (c) the accused must commit criminal breach of trust in respect of such property. While the first ingredient is not denied as the petitioner was employed as a clerk, with regard to the second ingredient, it was submitted by the learned counsel for the petitioner that the material on record does not show any entrustment of property to the petitioner in any manner and at any stage. The materials also do not disclose that the petitioner had domain over any property at any time. Even in the complaint it is clearly and categorically stated that " *whole record, cheque books, seal and other documents remains in the*

custody of the manager Sh. Pankaj Sikka.....". It was further contented by the learned counsel for the petitioner that even the letter dated 30.08.1997 addressed by the complainant to the co-accused Pankaj Sikka clearly demonstrates that it was Shri Pankaj Sikka who had custody over all the books, accounts, cheque books of the company. This is evident from the following statement appearing in the said letter addressed to Shri Pankaj Sikka :- *".....You were having custody of all books, accounts, cheque books of the company....."*

8. The learned counsel also referred to the impugned judgment dated 08.07.2005 wherein it is stated that the complainant had also placed on record the acknowledgment whereby the accused Pankaj Sikka returned the cheque books and other registers to the complainant. On the basis of these circumstances, the learned counsel for the petitioner submitted that even the documents filed alongwith the challan / charge sheet do not disclose any entrustment of property to the petitioner nor do they disclose that the petitioner had domain over any such property.

9. The learned counsel submitted that to constitute an offence of criminal breach of trust, there must be an entrustment and there must be misappropriation or conversion of the same to one's own use. The learned counsel submitted that since there was no entrustment of the property, the question of misappropriation or conversion to the petitioner's own use or use in violation of any legal direction did not at all arise. The learned counsel for the

petitioner also referred to the decision of a learned Single Judge of this Court in the case of ***Devi Prasad Sharma v State (Delhi Admn) : 2000 [1] JCC [Delhi] 131***. In the said decision, it is observed as under:

> "4. It is also well settled that at the stage of framing charge the Court is not expected to go deep into the probative value of the materials on record (Judgment Today 1996 (4) SC 615). But it has to be borne in mind that framing of charge in a criminal case is a serious matter. A charge cannot be framed as a matter of course. While examining the question of framing the charge the trial Court must consider the broad probabilities of the case and the total effect of the material collected by the prosecuting agency. Short reasons must be given by the trial Court so that on the reading of the order one can discern as to on what basis the trial Court came to the conclusion that a prima facie case was made out against the accused."

10. The learned counsel for the State submitted arguments in support of the impugned order. He submitted that at the stage of framing of charges, a detailed investigation into the material on record is not necessary. He submitted that, on the basis of the allegations contained in the complaint as well as the material produced by the prosecution if the same are taken at face value and an offence is made out, then the court is entitled to frame a charge. In this light, he submitted that the court has appropriately framed the charge under Section 408/37 IPC which does not call for any interference.

11. At the stage of framing of charge, a strong suspicion is sufficient to frame the charge and in that event it is not open to say that there is no sufficient ground for proceeding against the accused. This has been held by the

Supreme Court in the case of ***State of Bihar v Ramesh Singh*** ***: (1977) 4 SCC 39***. It was also held in that case that at the stage of framing of charge it is not obligatory for the judge to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. As strong suspicion itself would be sufficient and at that stage, the court is not required to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. In ***State of Delhi v Gyan Devi*** ***: (2000) 8 SCC 239***, the Supreme Court reiterated the view that at the time of framing of the charge the court is not required to examine and assess the materials placed on record by the prosecution in great detail. In ***State of M.P. v S.B. Johari*** ***: (2000) 2 SCC 57*** the Supreme Court on the other hand held that a charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted, cannot show that the accused committed the particular offence. That would be a case where there would be insufficient ground for proceeding with the trial. In ***State of Maharashtra v Priya Sharan Maharaj*** ***: (1997) 4 SCC 393*** the Supreme Court stated the position of law with regard to the question of framing of charges / discharge in the following manner :

> "8. The law on the subject is now well settled, as pointed out in *Niranjan Singh Punjabi v. Jitendra Bijjaya*[2] that at Sections 227 and 228 stage the Court is required to evaluate the material and documents on record with a

2 (1990) 4 SCC 76.

> view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction."
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> (underlining added)

12. It is clear that in ***State of Maharashtra v Priya Sharan Maharaj*** (supra) the Supreme Court was of the view that the court is required to evaluate the material and documents on record although not in great detail but for the limited purpose to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. Notably, the Supreme court also observed that the court cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. The key expression used by the Supreme court is that at the stage of framing of charge, the court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him. The court is not required to examine the material with the object of arriving at the conclusion that the same is not likely to lead to a conviction. It has to only

examine the material to find out if there is ground for presuming that the accused had committed the offence or that if there is not sufficient ground for proceeding against him.

13. It would also be instructive to recall the principles which are necessary to be taken into account at the stage of framing of charges as held by an earlier decision of the Supreme court in the case of ***Union of India v Prafulla Kumar Samal : (1979) 3 SCC 4***. In the said decision, the Supreme Court held as under :

> 10. "Thus, on a consideration of the authorities mentioned above, the following principles emerge:
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> (1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.
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> (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.
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> (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

> (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

14. Considering all these decisions of the Supreme Court, it appears to me that the case against the petitioner is not one of grave or strong suspicion. The materials do not indicate any entrustment of the books, registers, cheque books etc to the petitioner. Even the complaint refers to the entrustment of all such documents to the co-accused (Pankaj Sikka). There is only one stray comment made in the complaint that the cheque books remained in "their" custody meaning thereby the custody of the accused Pankaj Sikka and the petitioner (Ms Archana). However, even the letter written to Pankaj Sikka by the complainant on 30.08.1997 clearly indicated that the documents and books were entirely entrusted to Mr Sikka and as mentioned in the impugned judgment itself there is an acknowledgment on record that the cheque books and other registers were returned by the accused Pankaj Sikka to the complainant. The petitioner nowhere figures in these transactions. Therefore, while there may be some suspicion which the complainant may have with regard to the complicity of the petitioner, on the basis of material on record, it cannot be said that a grave suspicion arises against the petitioner. It is well

settled that for establishing criminal breach of trust, there must be entrustment of property or the accused must have dominion over such property. This is made clear by the Supreme Court in the case of ***Ram Narayan Popli v. CBI* : *(2003) 3 SCC 641*** wherein the Supreme court observed that :

> "To constitute an offence of criminal breach of trust, there must be an entrustment, there must be misappropriation or conversion to one's own use, or use in violation of legal direction or of any legal contract : and the misappropriation or conversion or disposal must be with a dishonest intention. When a person allows others to misappropriate the money entrusted to him that amounts to a criminal appropriation of trust as defined by Section 405. The section relatable to property in a positive part and a negative part. The positive part deals with criminal misappropriation or conversion of the property and the negative part consists of dishonestly using or disposing of the property in violation of any direction and of law or any contract touching the discharge of trust."

In the same decision, the Supreme court also observed :-

> "The term `entrustment' is not necessarily a term of law. It may have different implications in different context. In its most general signification all it imports is the handing over possession for some purpose which may not imply the conferring of any proprietary right at all."

In a recent decision in the case of ***Indian Oil Corporation v. NEPC India Ltd.: (2006) 6 SCC 736,*** the Supreme Court has reiterated the principle that for establishing the offence of criminal misappropriation, there must, *inter alia*, be entrustment of property or dominion over property. It is only thereafter that the

question of dishonest misappropriation or conversion or use or disposal would arise.

15. Another factor which requires to be considered is that the documents on record do not indicate any link between the petitioner and Ram Kumar, the person who withdrew the sum of Rs.45,000/- There was also no recovery of the amount of Rs.45,000/- from the petitioner. Thus, on the basis of material produced by the prosecution, there is no link between the alleged misappropriation of the sum of Rs.45,000/- from the bank account of the said company and the petitioner. Even the signatures / hand writing of the petitioner have not been established on the questioned documents even as per the prosecution case.

16. Therefore, examining the material on record for the limited purpose of finding out as to whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence, I find that there are no grounds for presuming that the petitioner committed the offence. The suspicion that may be there is also of a very weak kind and not of the degree and strength or gravity that is necessary for enabling the court to frame a charge under Section 408/34 IPC against the petitioner.

17. In this view of the matter, the impugned order on charge and the charge itself against the petitioner is liable to be set aside. This revision petition is allowed. The impugned order dated 08.07.2005 and the charge framed against the petitioner are set aside. The petitioner stands discharged.

BADAR DURREZ AHMED
(JUDGE)

April 24, 2007
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