TATIN. V. GUJRATHI

27/12 MHTH090008052018

Kalyan G.S.

दाखल दिनांक 20 DEC 2017

न्यायाधिकारी,
कुटुंब न्यायालय, कल्याण

156(3)

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अर्ज क्रमांक :- 754/18
अर्ज दाखल तारीख :- 5/4/18
दस्तऐवज आलेली तारीख :-
मजकूर तयार तारीख :- - 5 APR 2018
मजकूर पूर्ण तारीख :-
मजकूर लिहिणार श्री. गुजराथी

एकूण पान :- 7
दर प्रति पान :-
एकूण नक्कल फी :-

सहाय्यक अधिक्षक
कुटुंब न्यायालय, कल्याण

- 5 APR 2018

दाखल दिनांक 20 DEC 2017

सहाय्यक अधिक्षक,
दिवाणी न्यायालय, कल्याण

RCC 968/2017

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS FIRST COURT
KALYAN AT KALYAN

OTHER MISC. APPLICATION No. 614 /2017

Shri Ritesh Virendra Mishra,
Age 35 years, Occ. Business,
Partner of M/s Assets Reality,
a partnership firm having its office at
L 002, Sanghvi Estate CHS Ltd., "L" wing,
RTO Road, Opp. Cinemax, Kalyan [w]

Applicant

V/s

[1] Pankaj Jatashankar Trivedi
Adult, Occ. Business,

[2] Mrs. Nirupama Pankaj Trivedi
Adult, occ. Business,
E – 1 / 406, Punyoday Park,
Adharwadi Jail Road, Near Don Bosco School,
Kalyan [w] Dist. Thane.

Opponent

Head Dlw. for complaint.
Enquiry is based on documents.
No investigation at the hands of police machinery. Hence keeps for enquiry the complaint as per Rule 200 of Cr.P.C.
02.01.18

Complaint u/s 406, 418 420, r/w 34 of the Indian Penal Code for directions u/s 156 [3] of the Code of Criminal Procedure, 1908.

MAY IT PLEASE YOUR HONOUR

It is most respectfully submitted on behalf of the Applicant as under : -

1. The Applicant states that the Opponent with two other Partners, were partners of the firm M/s Assets Reality, carrying on business of building construction and other related activities. To facilitate the various transactions, the bank account was opened with ICIC bank, Murbad Road Branch, Kalyan [w].

2. The Applicant submits that considering the various department with which necessary registration were to be made, the responsibility of the dealing with Service Tax department under Central Board of Excise and Customs [NOW

CGST] was given to the Opponent No. 1. The Applicant states that the Opponent No. 1 had been authorized by the firm to deal with the service tax department and his mobile number 9892914730 was registered with the department for communication purpose. The said number was operating as Closed user Group [CUG] in the name of M/s Asset Reality. The Applicant states that since the mobile number of the Opponent No. 1 was registered with the department all the SMS alerts from the government department were received on his mobile number and the Opponent was duty bound to inform the other partners about necessary alerts received from the department on his mobile number. The Applicant submits that the Applicant has since then disconnected the said number from M/s Asset Reality Closed User Group. The Applicant submits that the Opponent was free to reactivate the said number on his personal name but the Opponent No.1 has not done so till this time and this also shows the ill intentions on the part of the Opponent No. 1. The Applicant submits that previously the said number was in the personal name of the Opponent No. 1 under prepaid plans.

3. The Applicant states that vide deed of retirement dated 16th March, 2017 the Accused have retired from the partnership business and the Accused also took his share in the business by way of two row houses and four flats in the building "The Chalets Avenue" which is promoted by the firm of the Applicant. The Applicant states that as per request the Applicant also executed and registered the power of attorney in favor of the Opponent to deal with the said two row houses and four flats.

4. The Applicant states that at the time of retirement, the accounts were made up and accordingly the valuation of share of the Opponent [including any capital account balance] was temporarily made. The Applicant states that prior to the retirement of the Opponent from the firm of the Applicant, the Opponent had withdrawn numerous amounts from the partnership account on various counts by cash. The Applicant states that these amounts are withdrawn by way of self cheques drawn by the Opponent No. 1 and that on enquiry with the bankers it is found that the said amount was withdrawn by the Opponent without any reasons and / or authority from the firm.

5. The Applicant states that one of the count of withdrawal was payment of the service taxes to the Service Tax department under Central Board of Excise and Customs for the year April, 2015 – March 2016 and April, 2016 – May, 2017. The amount withdrawn was Rs.8,00,000/- on 27th June, 2016 and Rs.8,00,000/- on 28th June, 2016 and Rs.8,00,000/- on 29th June 2016. The Applicant further states that on 17th September, 2016 the Opponent had withdrawn Rs.3,00,000/- in cash to be paid towards VAT tax. The Applicant submits that the aforesaid

amounts were withdrawn in cash so as to prepare Demand Draft from the Nationalised Bank. The Applicant submits that the Opponents in connivance with each other misappropriated the said amounts and never prepared the demand draft to be submitted with the respective government departments and did not deposit the cash with the department and / or the firm. The Applicant states that all these withdrawals were made with self cheques. The Applicant states that in the same way the Opponent has also withdrawn other amounts. The Applicant has obtained specific letter from the ICICI bank that the aforesaid amounts have been withdrawn by self cheques by the Opponent No.1.

6. The Applicant states that even though the Opponent had withdrawn the amount on the count of paying the service taxes and VAT of the partnership firm the Opponent did not deposit the same with the concerned department and hence the department has started to take actions against the firm for non payment of the service taxes for the year 2015 – 2016 and 2016 – 2017 for amount collected from respective clients. The Applicant states that in the near future heavy penalty will be levied by the department for non payment of the service tax and VAT on time. The Applicant submits that since the Opponent No. 1 did not deposit the tax amount, the VAT number was deactivated and hence the Applicant deposited the VAT amount and applied for reactivation of the VAT on 14th June, 2017 [now SGST] with the concerned department and the VAT number is activated vide 5th August, 2017 but the final order regarding tax and penalty thereon is yet to be passed. The activation letter is received by the Applicant from the concerned department.

7. The Applicant states that this fact came to the knowledge of the Applicant when he approached service tax / VAT [now CGST / SGST] department for the payment of the remaining liability from June 2016 till September 2017 and the Applicant came to know that know that not a single paisa was deposited by the Opponent towards the service tax / VAT liability and hence the Applicant immediately made contact with the Opponents when Opponents showed their inability to return the said amount and also threatened the Applicant that he will not cooperate the Applicant in changing the registered mobile number with the service tax department. The Applicant states that eventually the Applicant had to take appropriate steps to change the registered mobile number with the Service Tax department under Central Board of Excise and Customs [Now CGST] which is under process. The Applicant submits that the Applicant has come to know that the registered mobile number will not be changed unless and until all the liabilities are cleared by the firm of the Applicant. The Applicant states that the firm also had to deal with the tax department in respect of the non payment of the service tax and VAT for the year 2015 – 2016 and 2016 – 2017.

8. The Applicant states that total amount withdrawn by the Opponent and not accounted for in crores. The Applicant submits that with the aforementioned facts, the Applicant had issued notice to the Opponent calling upon the Opponent to refund the said amount but the even though the Opponent has received the notice, the Opponent has neither replied nor complied the said notice and hence it is crystal clear that the Opponents have misappropriated the said amount for their self gain and to cause wrongful loss to the firm.

9. The Applicant states that the Opponent No. 2 has remained silent and being partner of the firm she is also accountable for the same as the Opponent No. 1 is her husband and all these facts are in her knowledge since the amount has been misappropriated with her full knowledge. The Opponents are hand in glove with each other. The Applicant submits that the Opponent was duty bound to deposit the amount with the Service Tax department under Central Board of Excise and Customs [now CGST]. The Applicant submits that the intention of the Opponents to misappropriate the amount was very much from the beginning as the Opponent insisted on withdrawing the amount in cash to prepare the demand drafts to be got prepared from the nationalised bank and thereby Applicant withdrew the said amount from the bank account in cash.. The Applicant submits that the Opponent in connivance with each other has not deposited the said amount with the Service Tax department under Central Board of Excise and Customs and thereby made wrongful gain for themselves. The Applicant submits that in violation of the directions for depositing the said amount with the Service Tax department under Central Board of Excise and Customs [Now CGST], committed criminal breach of trust imposed upon them by the partnership firm. The Applicant submits that each time the Applicant insisted upon the Opponent to show the receipts for the amount deposited with the Service Tax department under Central Board of Excise and Customs [Now CGST] the Opponent avoided to provide the receipts and told since the amount has been deposited no notices have been issued by the department. The Applicant believed upon the words of the Opponents as the relations were then cordial but the Applicant later on realized that the Opponent had criminal intention in withdrawing the amount in cash and thereby with such intention in mind dishonestly withdrew the amount under signature of the Opponent No. 1. The Applicant submits that such criminal intent has caused serious harm to the reputation of the Applicant and his firm and thereby the Opponents have cheated the Applicant and his firm of their money which is illegally withdrawn by the Opponents. The Applicant submits that the Opponent was bound to deposit the money with the Service Tax department under Central Board of Excise and Customs [Now CGST] and thereby to protect the interest of the Applicant and his firm, in which the Opponent was partner at that time, cheated the Applicant by misappropriating the money for their own wrongful gain. The Applicant submits that as per the

partnership deed each of the partner has to be loyal to the other partners and has to disclose any gain made by him during the course of the partnership. But the Opponent in utter disregard to the partnership ethics has committed cheating by misappropriating the money for his own use.

10. The Applicant submits that with the aforesaid allegations the Applicant had been to the Khadakpada Police Station but the officers of the police refused to acknowledge the same saying that it is private dispute and therefore the Applicant is having no other alternative but to the approach the Hon'ble Court with this complaint

11. The Applicant submits that the necessary documents have been annexed to the present complaint and the Applicant crave leave of the Hon'ble Court to file such other documents as and when made available.

12. The Applicant submits that all the offences have been committed within the jurisdiction of the Hon'ble Court. The ICICI bank from which the amount has been dishonestly withdrawn is located at Murbad Road, Kalyan [w], the office of the Applicant is also at Khadakpada, Kalyan and hence this Hon'ble Court has jurisdiction to try, entertain and dispose of the present complaint. The offences have been committed withinthe jurisdiction of the Khadakpada Police Station and therefore this Hon'ble Court has jurisdiction to give direction for investigation u/s 156 [3] of the Code of Criminal Procedure to the Khadakpada Police Station.

13. The Applicant submits that the offences alleged against the Opponent are punishable with imprisonment for more than three years and hence the complaint filed today is within limitation.

14. It is therefore prayed that the Hon'ble Court may be pleased to direct the Khadakpada Police Station, to investigate the offences alleged against the Opponent u/s 156 [3] of the Code of Criminal procedure, 1973.

15. Affidavit of the Applicant is filed herewith.

Applicant

Advocate for the Applicant

Filed in the court
on 20/12/17

Order below Exh.1 in O.M.A. No.614/2017

Perused the complaint. Heard Learned advocate for the complainant at length. This is a private complaint by complainant against accused. Complaint reveals that the complainant and accused were partners of M/s. Assets Reality Firm. To facilitate the various transactions, bank account was opened with ICICI Bank, Murbad Road Branch, Kalyan. On 16/3/2017 vide Deed of Retirement the accused are retired from the partnership business and also took their share in the business. Prior to the retirement of the accused from the firm withdrawn numerous amounts from the partnership account without any reason and authority of the firm. The accused withdrawn Rs.8,00,000/- on 27/6/2016, 28/6/2016 and on 29/6/2016 and an amount of Rs.3,00,000/- on 27/9/2016 for preparing demand draft from Nationalized Bank for paying VAT Tax. However, the accused, without preparing demand draft of the said amount from nationalized bank, misappropriated the said amount and cheated the applicant. The total amount withdrawn by the accused and not accounted for in crores. Accused No. 2 being wife of accused No. 1 and one of the partner of the firm remained silent though knowing that the said amount has been misappropriated. The accused cheated the complainant. The complainant has made out prima case to issue process against accused Nos. 1 and 2 only. Accordingly, I pass following order.

ORDER

1] Issue process against the accused Nos 1 and 2 only for the offence punishable under Section 406 and 420 read with 34 of the Indian Penal Code.

2] The case be registered as Regular Criminal Case.

28.02.18

(Vijay P. Kedar)
Judicial Magistrate, First Class,
1st Court, Kalyan.

Kalyan.
Date : 28/02/2018.

सत्य-प्रत
5/4/18
सहाय्यक अधिक्षक
दिवाणी न्यायालय, कल्याण.

छायांकित व
नजलात करणार

5 APR 2018

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