

Ganesh Factory, Rajpura *v.* Commissioner of Income Tax. Patiala  
(G. C. Mital, J.)

---

covered by section 40(b) and does not come within the ambit of section 40A. Therefore, we are of the opinion that such a matter is not covered by section 40 A and would be covered only under section 40. Since salary has been paid by the assessee firm to its partners, the same has to be disallowed by virtue of sub-section (b) of section 40 of the Act and the Tribunal and the officers below were right in disallowing the entire salary paid to the partners of the firm.

(9) The Tribunal in its order made the observations that by virtue of section 40A, the Income Tax Officer may restrict or modify a claim of payment of salary to a partner depending upon the extent and nature of his services but in spite of such modified payment, the same has to be disallowed keeping in view the provisions of section 40(b) of the Act. In this respect there was some misunderstanding with the Tribunal. If section 40 A applies, then section 40 would stand excluded but if section 40A does not apply and the matter is covered by section 40, then the matter of payment of salary to a partner of the firm, has to be decided under section 40 alone. Otherwise, the Tribunal was right in coming to the conclusion that section 40 (b) and section 40 A of the Act operate in different fields.

(10) Accordingly, both the questions are answered in favour of the revenue as indicated above. However, there will be no order as to costs.

---

P.C.G.

Before : G. C. Mital and S. S. Sodhi, JJ.

RAM KUMAR,—Petitioner.

*versus*

STATE OF PUNJAB,—Respondent.

Criminal Misc. No. 7251-M of 1988

July 31, 1989.

*Indian Penal Code (XLV of 1860)—Ss. 420, 408, 109—Petitioner approaching members of general public to become members of Club and to make contribution—Money to be repaid turn by turn on the*

*basis of bid—Refusal to repay such amount—Whether amounts to breach of contract—Framing of charge—Legality of.*

*Held*, that for the purposes of framing charge, the only requirement is to see whether there is material from which *prima facie* case is made out. In this case, the trial Court was right in framing the charge.

(Para 7).

*Held*, that we are of the opinion that the learned Judge was not right in coming to the conclusion that it would be a case of civil liability, even if the complainant was able to prove before the Magistrate that he was dishonestly induced to deliver the huge amount to the accused, which he would have not done in case he had known the dishonest intention. Accordingly, the observations, which appear to be in the nature of *obiter dicta* are hereby over-ruled as not laying down the correct law.

(Para 6).

Dharamvir v. State of Punjab 1986(2) Recent Criminal Reports, 559.  
(Over-ruled).

*Petition under Section 482 Cr. P. C. Praying that petition be accepted and impugned order Annexure P-1 and P-2 be quashed in the interest of justice.*

*It is further prayed that the further proceedings pending in the Trial Court be stayed during the pendency of the petition.*

A. S. Kalra, Advocate, for the petitioner.

S. K. Syal, D.A.G. Punjab, for the Respondent.

#### ORDER

(1) Four separate challans were put up against Ramesh Chander and others under Sections 420, 408 and 109 Indian Penal Code at the instance of Ramesh Kumar and another. The case of Ramesh Kumar complainant was that on two different occasions the accused had dishonestly induced him to give Rs. 62,000 and Rs. 12,000 and he was cheated on the basis of the conspiracy. Similar was the case of the other complainant in regard to the amounts of Rs. 54,800 and Rs. 30,000.

(2) The learned Magistrate framed four separate charges against the accused on 2nd March, 1988. Only Ramesh Chander accused

Ram Kumar v. State of Punjab (G. C. Mital, J.)

---

filed revisions against the framing of charge in all the four cases but remained un-successful before the learned Additional Sessions Judge, as his revisions were dismissed on 13th July, 1988. Ramesh Chander has now come to this Court under Section 482 of the Code of Criminal Procedure (for short 'the Code'), for the quashing of the charge framed in four different cases. He has filed Crl. Misc. Nos. 7251-M of 1988, 7253-M, 7255-M and 7257-M of 1988. Since they arise out of the same FIR and common question is involved therein, they are being disposed of by this common judgment.

(3) At the motion stage, the learned counsel for the petitioner had relied on a decision of a Single Judge in *Dharamvir v. State of Punjab* (1), for the proposition that if money is collected under the Double Money Saving Scheme, and the persons who collected the amount, refused to refund the same to the depositors, it would amount to breach of contract and no criminal liability for cheating would arise. The learned Judge admitted the petition for hearing by a Division Bench. This is how, these cases have been placed before us.

(4) Now advertng to the facts of the case, the petitioners had started a committee known as 'Contribution Collection Club', and they approached people to become members and all the members were to make contributions and they were to be paid turn by turn on the basis of bid. The balance, if any, was to be distributed amongst the members as profit. When the turn of Ramesh Kumar and the other complainant came, they went to collect the amounts due to them, and the petitioner and others, who were incharge of the fund, refused to give them the payment. The question arises whether in law it could be held that Section 420 of the Indian Penal Code would be attracted or not. If attracted, the trial Magistrate will go into the matter, and if not, the charge can be quashed.

(5) Referring to *Dharamvir's case* (supra), the same is distinguishable on facts. There, none of the persons from whom the money had been collected had made any complaint and the FIR was recorded on the basis of some secret information. The learned Judge recorded the following observations in this behalf :—

“There is no allegation in the First Information Report that any one had either approached the petitioner for the refund of the money deposited by him or that the petitioners had refused to pay the same.”

---

(1) 1986 (2) Recent Criminal Reports, 559.

On this basis, the learned Judge, concluded that the First Information Report deserved to be quashed.

(6) It appears, that another argument was sought to be raised that even if there is refusal to refund the money to the depositors, it would amount to breach of contract, for which only civil liability will arise. Firstly, this point did not directly arise in the case, and, therefore, the observations are *obiter dicta*. In case, it is considered that the point did directly arise in the case, we are of the opinion that the learned Judge was not right in coming to the conclusion, that it would be a case of civil liability, even if the complainant was able to prove before the Magistrate that he was dishonestly induced to deliver the huge amount to the accused, which he would have not done in case he had known the dishonest intention. Accordingly, the observations, which appear to be in the nature of *obiter dicta* are hereby overruled as not laying down the correct law.

(7) For the purposes of framing charge, the only requirement is to see whether there is material from which *prima facie* case is made out. In this case, on the material on record, the trial Magistrate was right in framing the charge. We do not find any ground for interference.

(8) For the reasons recorded above, all the four petitions are dismissed.

---

S.C.K.

*Before : I. S. Tiwana and Amarjeet Chaudhary, JJ.*

PANIPAT CO-OPERATIVE SUGAR MILLS LTD.,—*Petitioner.*

*versus*

HARYANA STATE BOARD FOR THE PREVENTION AND CONTROL OF WATER POLLUTION AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 2122 of 1989*

August 25, 1989.

*Water (Prevention and Control of Pollution) Cess Act, 1977—Schedule I, Entry 15—Manufacture of sugar/molasses from sugarcane—Such industry—Whether a “vegetable products industry”—‘Vegetable products’—Meaning of.*