

IN THE COURT OF IV ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE, BANGALORE.

CC No. 7766/2014

CW : 1 PW:1

Name : Avijit Dewanjee
Father's name : Late.Mihirkanti Dewanjee
Age : 55 years
Occupation : Business
Residence : Mahalakshmilayout, Bangalore
Duly sworn on : 11.04.2018.

EXAMINATION IN CHIEF BY SR. APP:

I am a authorized dealer Hero Moto Corp. Ltd formerly Hero Honda Motors Ltd situated at No.2/6, Dr.Rajkumar Road, Rajajinagar, Bangalore-10. My companies name is Max Motors. Accused no.1 was appointed as a cashier in the year 1994. Her work was to collect cash and cheque and D.D, issue receipt to the customers and send the money to bank. And she was also given the responsibility of daily petty cash expenses. She used to allocate vehicles for invoicing and registration thereafter. In the absence or if my chief accountant or general manager were busy, she was allowed to do that because she was aware that all the money for the particular vehicle was collected in full. She has to send all the money everyday to the bank, cheque to the bank and tally her

cash book at the end of everyday and submit to the accounts department.

Accused no.2 was appointed right at the beginning in the year 1992 when we started our business. He joined me as an accounts person and he was recommended by my old chartered accountant. I took him as in-charge of accounts. Upto this incident he was working in our company.

In the year 2010-11 we were finding cash crunch in the business. I requested my auditors to audit properly and see why we were having cash crunch. During the month of May 2011, the cash collected was not sent to bank, cheque deposited but no receipt was issued, hence I issued 4-5 letters from May to August to the accused no.1 asking for explanation with regard to the cash not deposited, cash book not tallying, cheques not accounted for. She was not able to give us any explanation and she was kept on postponing it. During that time even accused no.2 was asked to help her and try to sort out this and rectify. But somehow I never got any proper response. Finally to keep her watch we installed CC TV camera. On the 7.09.2011 after the office closed I had a clue that some 3 customers had paid money 2-3 days before to the cashier i.e., accused no.1 and she had not entered in the system. So, after everyday left, with the presence of some of the staff including accused no.2 we searched the cash counter and the cash box,

we did not find the money. Next morning on 08.09.2011 I came to the office early and I was observing on the CC Tv, the activity in the cash area. I found accused no.1 taking out money from her bag and putting in the cash box. Then by that time I called her to come to my cabin, she had issued 2 receipts of the older case and put the money to the cash box. She came to my cabin in the presence of some of our office staff including accused no.2 who was then chief accounts and general manager and questioned her to explain, she started crying and she ran out of my cabin. While asking for explanation I had given a written request which she accepted and signed. Then she started crying and she threw everything and she went out to the cash area, picked up her bag and ran out of the office. After we tried to contact her, she said she will come and settle the issue and then she switched off her mobile. We waited for few days and on 30.09.2011 we filed a complaint. Witness identified the complaint and same is marked as Ex.P.1 and signature of the witness is marked as Ex.P.1(a).

Further chief examination is deferred.

(Typed to my dictation in the open Court)

ROI & AC

IV ACMM

WITNESS RECALLED AND DULY SWORN ON 09.04.2019
FURTHER EXAMINATION IN CHIEF BY SR. APP:

In the previous date of hearing I deposed that I lodged the complaint on 13.09.2011 but by over sight it is typed as 30.09.2011. I know the contents of Ex.P.1. After filing complaint the police came to the spot and drawn the mahazar on 15.09.2011 in presence of panchas and me. Witness identified the spot mahazar and the same is marked as Ex.P.2 and the signature of the witness is marked as Ex.P.2(a). After filing complaint we asked our auditor to conduct internal audit of the accounts for the assessment years 2009-10 and 2010-11. Subsequently revised return submitted to IT department and copy was also furnished to the police along with the audit report and covering letter. As per the first audit in the year 2009-10 we found the misappropriation amount of Rs.1,31,52,770/- and for the year 2010-11 was Rs.30 Lakhs. According to revised report the amount misappropriated was Rs.2,24,36,701/-. The same reports was submitted to the investigation office along with covering letter and also the Income Tax Department. Witness identified the balance sheet along with audit report (3CB) for the year 2009-10 and the same is marked as Ex.P.3 (34 sheets) and the signature of the witness is marked as Ex.P.3(a) and witness identified the balance sheet along with audit report (3CB) for the year 2010-11 and the same is marked as Ex.P.4 (22 sheets) and the signature of the witness is marked as Ex.P4(a). Ex.P.3 and 4

were sent to I.O along with covering letter. The said covering letter is marked as Ex.P.5. In Ex.P.5, I have mentioned that accused no.1 was working with us for the last 17 years as a cashier and she is covered under EPF and we do not have any appointment letter because at that time we did not had that system. In Ex.P.5, I have also mentioned that accused no.1 was full time cashier and her job was to collect payment by way of cash and cheque, issue receipts and remit the collection to the bank, the petty cash expenses for the day was also handled by accused no.1 as a cashier. In the absence of accused no.1, accused no.2 who was the accounts incharge and general manager would take care of the cash collection and remittance.

Further chief examination is deferred.

(Typed to my dictation in the open Court)

ROI & AC

IV ACMM

WITNESS RECALLED AND DULY SWORN ON 20.09.2019
FURTHER EXAMINATION IN CHIEF BY SR. APP:

Accused no.2 had prepared cash flow and cheque flow statements month wise April 2009 to May 2009 which we have submitted to the I.O along with covering letter. The same are marked as Ex.P.6 to 19 and covering letter is marked as Ex.P.20 and signature is marked as Ex.P.20(a). Similarly cash flow statement prepared by accused no.2 is submitted to I.O along with covering letter. cash flow statement is marked as Ex.P.21 to 34 and covering letter is marked as Ex.P.35 and signature is marked as Ex.P.35(a). All the statement have been signed and acknowledged by accused no.2. Signature of the accused no.2 is identified by the witness and is marked as Ex.P.21(a) to Ex.P.34(a). It shows the difference of amount every month which was misappropriated. In Ex.P.21 to 34 the amount of difference and cumulative to every month is shown for which accused no.1 was asked to explain.

We have submitted CD recording of money being put back to the cash box by accused no.1. The said CD is marked as Ex.P.36. During the investigation, the I.O possibly found collusion between accused no.1 and 2 and hence accused no.2 was also charge sheeted. Accused no.1 wanted to compromise the matter but accused no.2 did not agree. During our audit in the office when we confronted accused no.2 as he was the accounts incharge and general manager to explain the

misappropriation and he was suppose to come and shows the accounts and give explanation. 2-3 time he got admitted to Mallya hospital and did not come for work.

The accused used to receive the cash from the customers and put it in to the account of the firm issuing receipts and thereafter removing it by not accounting the cheques for the exact amount of cash without raising receipts for the cheques and tallying the day book. The accused have also collected the cash against the receipts of the firm and not deposited to the bank and committed mischief. The accused has received money on temporary receipts and not generated computerized receipts and misused the funds. In some cases they have themselves allotted the motor cycles to be invoiced and registered in the name of the customers by receiving the value by way of cash without accounting it to the firm. In some cases the booking register shows total amount collected for invoicing, but in reality it is short accounted as they have misappropriated the difference of the amount. When we found all this, we send show cause notice, but without giving any explanation, accused no.1 left the office. For 2009-10 the financial year our auditor was Nagabhushan Rao CW7 and for financial year 2010-11 our auditor was Sundarraaj and Associates CW8. They have conducted the audit and filed audit report to the income tax department which was also

submitted to the I.O and the same is already marked as Ex.P.3 and 4.

We did not have any appointment letter issued to accused no.1 and 2 but has proof of employment of accused no.1 and 2. Both of them are registered under EPF and for which the contribution has been made by the company. The accused no.1 has also served a notice that we did not allow her to work in the company. Refusal employment notice was sent to me by accused no.1.

The accused no.1 and 2 have colluded and being employees of our company have misappropriated the funds to the tune of Rs.2,24,36,701/- of the company by misusing the trust committed criminal breach of trust and also cheated the company.

Cross examination: Advocate for accused prays time for cross examination, hence deferred.

(Typed to my dictation in the open Court)

ROI & AC

IV ACMM