IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS JUDGE
WEST DISTRICT : TIS HAZARI COURTS : DELHI

Criminal Revision No. 243/2025
CNR No. DLWT01-006890-2025

Sh. Devareddy Sarath Kumar
S/o Sh. Devareddy Mohan Reddy
R/o 16/13/49, 4th Line, Pinakini Street
Harnadhapuram, Nellore
Nellore Rural, Nellore – 524003. . . . . Revisionist

Versus

State of NCT of Delhi
Through SHO
Tilak Nagar Police Station
Delhi. . . . . Respondent

Date of institution	:	15.07.2025
Arguments heard on	:	30.10.2025
Date of order	:	10.11.2025

ORDER

1. The present revision petition has been filed under Section 438 Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter 'BNSS') for setting aside the order on charge dated 16.04.2024 and the formal charge framed on 15.04.2025, under Section 420/34 of IPC by the Ld. JMFC-07 (West), THC, Delhi in criminal case No. 69396/2016 titled *State* v. *Devareddy Sarath Kumar & Ors.* against the revisionist.

2. Notice of the petition was accepted by the Ld. Addl. PP for the State / respondent. No reply was filed.

3. The background facts leading to filing of this petition are that the complainant Rohit Pahuja, Director / AR of M/s. Boston Beverages Pvt. Ltd. filed a complaint under Section 200 Cr.P.C. and an application under Section 156(3) Cr.P.C. before the Ld. MM against the accused persons which included the revisionist being CC No. 53/1/14 titled *Rohit Pahuja* v. *Kingston Beverage and Ors.* In this complaint case vide order dated 08.09.2014, the Ld. MM-05 West allowed the application under Section 156(3) Cr.P.C and passed directions for registration of FIR and investigation of the case. Consequently, FIR No. 1077/2014 dated 17.09.2014 was registered with Police Station Tilak Nagar under Sections 420/467/120B/34 IPC. The chargesheet was filed. Vide the impugned order dated 16.04.2024, the charge was ordered to be framed. The formal charge was framed on 15.04.2025.

4. As per the prosecution version, the accused persons Sadhu Ramesh Babu, Devareddy Sarath Kumar (the revisionist), and G. Sudhakar Rao are the three (out of the four) partners of M/s. Kingston Beverages and the fourth accused Ramesh Dhawan is the employee of M/s. Kingston Beverages.

The accused persons approached the complainant and represented themselves as the marketing agents of various beer and alcoholic drinks. They induced the complainant's company to believe that if it accepts to become the C&F agent of M/s Lilason Industries Ltd. it would earn good profit. The complainant was assured of a commission of Rs. 35/- per case of 24 cans of beers on selling minimum of 60,000/- cases of Khajurao Beer in the financial year 2012-13 thereby assuring a minimum return of Rs. 21 lakhs. However, to earn the minimum assured return, the complainant was told to pay Rs.50 lakhs towards interest free security which was refundable at the time of termination of the agreement and settlement of accounts.

4.1 Based upon the inducement of the accused persons, the complainant entered into a C&F agreement dated 12.05.2012 as per which the complainant was appointed as C&F agent for M/s. Lilasons Industries Ltd. and was responsible for handling of the godown and other responsibilities mentioned in the agreement. The complainant paid a sum of Rs. 50 lakhs to the accused persons. Thereafter, another agreement dated 11.09.2012 was entered into between the complainant company and the accused persons, as per which the complainant company was appointed as C&F agent of M/s Blue Water

AlcoBev in respect of two other products namely TOSS vodka blended with tonic water and CZZLE with whiskey and sparkling soda 250 ml cans, for Haryana state. The complainant was further induced into making a payment to Rs. 10 lakhs as interest fee security deposit, which was paid. Only 2600 cases were sent to the complainant to be sold in Haryana against the minimum guarantee of 60,000 cases. The business of selling TOSS vodka and CZZLE whiskey did not even commence.

4.2 Despite reminders, the accused persons did not comply with the terms of the C&F agreement. When the complainant visited them in Hyderabad, they assured him that they will make the payment in the near future. Vide MOU dated 13.03.2014 executed between M/s Kingston Beverages represented by its partners including the revisionist and M/s. Boston Beverages Pvt. Ltd. the accused persons acknowledged their liability to pay Rs. 81 lakhs to the complainant and in discharge of this liability, certain postdated cheques were issued along with the promise that the remaining balance of Rs. 21 lakhs shall be paid through RTGS/NFT before 30.09.2014. However, the cheques were dishonored and the complainant further discovered that the accused firm was not the marketing agent of the brands, which they had claimed themselves to be, during the negotiations. It is the case of the complainant that the accused persons had an intention to cheat from the inception, since they falsely represented themselves to be the agent of brands, which they were not.

5. The impugned order on charge is dated 16.04.2014. The said order was not challenged and attained finality. The formal charges framed as ordered, vide the said order were framed on 15.04.2025. However, no application for condonation of delay has been filed with the present revision petition. It was argued by the Ld. counsel for the revisionist that no application for condonation of delay was required as the revision petition is not time barred going by the date on which the formal charges were framed. This argument cannot be accepted. The revision petition is time barred as it the order on charge which is actually under challenge, subsequent to which the formal charges were only framed on 15.04.2025. The revision petition being time barred is not maintainable.

6. Even on merits, I find the revisionist has no case. Vide the impugned order on charge, based on the material before the Court, the Ld. MM has held that a *prima facie* case under Section 420/34 IPC was made out against the revisionist and other accused persons. The revisionist has challenged the order and the charge on the following grounds:

6.1 The impugned order on charge is based on an incorrect understanding of law. It has been held by the Ld. MM that the revisionist signed the MOU dated 13.03.2014. However, a cursory perusal of the MOU shows that it was signed by Rakesh Dhawan, Sadhu Ramesh Babu and the complainant. The Ld. MM imputed knowledge to the revisionist, about the chain of transactions between Rakesh Dhawan, Sadhu Ramesh Babu and the complainant as well as between Rakesh Dhawan, Sadhu Ramesh Babu, M/s Lilasons Industries Ltd. and M/s Blue Water AlcoBev based on the incorrect facts.

6.2 No material or scientific tests were placed before the Ld. MM to prove the signatures of any of the accused or any of the documents contained in the charge sheet. Even if it is believed that the said MOU was entered into between some partners of the firm M/s. Boston Beverages Pvt. Ltd., the same cannot be used to charge the revisionist by making him vicariously liable as there is no material to show that he was aware of the transactions. The Ld. MM incorrectly interpreted the decision of the Hon'ble Supreme Court in Sham Sunder v. State of Haryana, (1989) 4 SCC 630, which clearly holds that in order to fasten vicarious liability in a partnership firm, the investigation must reveal that the concerned accused was in-charge of the day-to-day affairs of the firm. Also since the firm was not arrayed as an accused in the charge sheet, the revisionist could not have been made an accused. Reliance has been placed on the judgments of the Hon'ble Supreme Court in Sunil Bharti Mittal v. CBI (2015) 4 SCC 609; Maksud Saiyed v. State of Gujarat (2008) 5 SCC 668; Sushil Sethi & Anr. v. State of Arunachal Pradesh (2020) 3 SCC 240.

6.3 The Power of Attorney signed by Rakesh Dhawan and Sadhu Ramesh Babu with M/s. Lilasons Industries Ltd. and M/s. Blue Water AlcoBev does not *prima facie* establish that the revisionist was aware of the business dealings with either of these companies. Also, there was nothing to show that the revisionist was aware of Rakesh Dhawan and Sadhu Ramesh Babu's business association with M/s. Lilasons Industries Ltd. or M/s. Blue Water AlcoBev.

6.4 There was no intent to defraud to make out the offence of cheating since the revisionist had never met the complainant in any capacity. Nothing has been placed on record to show that the revisionist operated the bank accounts. Reliance has been placed upon the judgment in R. Kalyanai v. Janak C. Mehta (2009) 1 SCC 516.

6.5 Failure to keep up the promise subsequently, cannot be presumed as cheating as there was no dishonest intention. Reliance is placed on the judgment in Thermax Ltd. v. K.M. Johny, (2011) 13 SCC 412. Even if it is believed that the revisionist entered into business dealings with the complainant on behalf of M/s. Kingston Beverages, the mere breach of contract cannot give rise to criminal prosecution for cheating unless dishonest intention is shown right from the beginning of the transaction. Reliance is placed on the judgments in Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168 and Samir Sahay alias Sameer Sahay v. State of Uttar Pradesh (2018) 14 SCC 233.

6.6 In the charge sheet no material has been brought forward to show that the complainant made any efforts to commence business operations with M/s. Boston Beverages Pvt. Ltd. such as applying for licence etc. The Trial Court failed to appreciate that the complainant's company M/s. Boston Beverages Pvt. Ltd., which was incorporated mere days before entering the alleged C&F agreement with Rakesh Dhawan and Sadhu Ramesh Babu, was also struck off from the Registrar of Companies by the Ministry of Corporate Affairs on 30.06.2017 for not commencing operations, within the first year of its incorporation. The complainant has withheld crucial material from the investigating agency and the Ld. MM, which was duly pointed out by the revisionist. Thus, he has not come to the Court with clean hands. Reliance is placed on the judgment in Kishore Samrite v. State of U.P., (2013) 2 SCC 398. It has accordingly been prayed that the charge framed be set aside, the the impugned order dated 14.04.2024 also be set aside and the revisionist be discharged.

7. No reply has been filed on behalf of the respondent. Trial Court record was summoned and perused.

8. I have also heard the arguments addressed by Ms.Surabhi Vaya, Ld. counsel for the revisionist and Mr. Atul Kumar Shrivastava, Ld. Addl. PP for the State / respondent.

9. It would be relevant to refer to the principles enunciated with respect to framing of charge by the Hon’ble Supreme Court. In ***Union of India* v. *Prafful Kumar Samal & Ors.*** MANU/SC/0414/1978, it was held that:

> *"(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.*
>
> *(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.*

> *(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 Judge cannot act merely as a Post office or a mouth-piece 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."*

10. It has been argued that in order to fasten vicarious liability in a partnership firm, the investigation must reveal that the concerned accused was in-charge of the day-to-day affairs of the firm. In *Sham Sunder* (*supra*) it has been held that the partner can be held liable for a crime where he was responsible for carrying on the business and was during the relevant time incharge of the business and in the absence of such a proof, no partner can be convicted. As per the compliant of the complainant, the accused persons including the revisionist induced the complainant into believing that they are authorized by M/s Lilasons Industries Ltd. to appoint C&F agents on their behalf and they showed certain documents, whereby they claimed to have received marketing rights of top beer and other alcoholic brands. Because of this clear allegation in the complaint it cannot be held at this stage of framing charge, that the complainant had no role to play or that he never had any interaction with the revisionist. The judgment cited in support of this argument does not assist the case of the revisionist.

11. It has been observed by the Ld MM in the impugned order that the MOU dated 13.03.2014, establishes the knowledge and involvement of the revisionist. In this MOU, the first party is M/s Kingston Beverages represented by its partners including the revisionist and is signed as per the complainant by the partners of M/s Kingston Beverages. Where the revisionist is claiming that the document was not signed on his behalf, the same is a matter of trial. The MOU also clearly mentions that M/s Kingston Beverages represented by its partners including the revisionist entered into an agreement in 2012 with M/s Boston Beverages Pvt. Ltd. for the purpose of business. Also, as per the complainant, he was approached by the partners including the revisionist with the business proposal. The C&F agreement mentions that the complainant company is being appointed as C&F agent for M/s. Lilasons Industries Ltd. As per the version of the latter in its reply dated 14.10.2014 given to the notice under Section 91 Cr.P.C, M/s Kingston Beverages, did not have any authority to appoint any C&F agent on behalf of M/s Lilason Industries Ltd. As per the complaint of the complainant, the accused persons including the revisionist had initially lured him to become C&F agent of M/s Lilasons Industries Ltd. and received Rs. 50 lakhs from him as refundable security amount. He has alleged that at that time the accused persons had shown several documents on behalf of M/s Lilasons Industries Ltd. claiming them to have the right to make C&F agents and just to have the confidence of the complainant they also sent some cases of beer cans to the godown of the of the complainant. They thereafter lured the complainant to become C&F agents of M/s Blue Water Alcobev Pvt. Ltd. for Haryana State for products TOSS vodka blended with tonic water and CZZLE with whiskey and sparkling soda 250 ml cans, for which they demanded Rs.10 lakhs. By repeating fraudulent and fake assurances, they succeeded in getting this amount also. Pertinently, the entire amount of Rs. 60 lakhs was given in the name of M/s Kingston Beverages.

12. An amount of Rs. 2 lakhs was also paid by the complainant as per the instructions of the accused persons in favour of Haryana Tourism Corporation Ltd. vide cheque from the account of M/s. Boston Beverages Pvt. Ltd. which was subsequently returned from the account of M/s Kingston

Beverages. The reply from M/s. Lilasons Industries Ltd. made it very clear that the accused persons not only made false and fraudulent representation to complainant Rohit Pahuja and cheated him but also had a dispute with M/s. Lilasons Industries Ltd. The bank account statement of M/s. Kingston Beverages showed that the amount of Rs.60 lakhs went into the said account. Reply was also received from M/s. Blue Water Alcobev Pvt. Ltd. vide letter dated 11.12.2015, wherein they stated that they had not given M/s Kingston Beverages any authority to appoint C&F agents on their behalf.

13. The Trial Court record shows that when the chargesheet against the revisionist and two other accused was filed on 27.01.2016, under Sections 420/467/120B/34 IPC. Sadhu Ramesh Babu, G Sudhakar Rao, Rakesh Dhawan and the revisionist were named in column No.11. Sadhu Ramesh Babu was declared as proclaimed offender. Rakesh Dhawan was not arrested and was accordingly summoned to face trial vide order dated 19.05.2023. During investigation, the revisionist was absconding. While the revisionist was absconding he approached the Hon'ble High Court of Delhi vide Crl.MC 1594/2015 and Crl.M.A 5827-28/2015 for quashing of FIR No. 1077/2014 which was dismissed as not pressed vide order dated 21.04.2015.

14. As per the chargesheet, the revisionist also filed a bail application No. 2780/2015 before the Hon'ble High Court of Delhi, which was dismissed. Along with this application, he filed documents which indicated that M/s Kingston Beverages was authorized by M/s Blue Water Alcobev Pvt. Ltd. to execute and receive any document and records related only to the State Excise / Sales Tax Department of Haryana and Delhi. The chargesheet mentions that the account of M/s Kingston Beverages with State Bank of Hyderabad is an account which was being managed by the revisionist on behalf of M/s Kingston Beverages. The accused persons gave 6 postdated checks of Rs. 50 lakhs to the complainant Rohit Pahuja from this account just to gain his confidence against refundable security amount of Rs. 50,00,000/- given by him to them. Also the account of M/s Kingston Beverages with ICICI Bank was being operated by the revisionist on behalf of M/s Kingston Beverages. There was also a transaction of Rs. 1,00,000/- from this account to M/s. Boston Beverages Pvt. Ltd. As per the complainant, on the instructions of the accused persons, demand draft of Rs. 2 lakhs was given by him in favour of Haryana Tourism Corporation Limited besides a commission of Rs. 560/- prepared from the account of M/s. Boston Beverages Pvt. Ltd. He claimed this amount from the accused persons and they returned the said amount of Rs. 2,00,500/-

from this very account.

15. As per the material on record, a *prima facie* case is made out that a dishonest inducement was made to the complainant by the partners of M/s Kingston Beverages that M/s Boston Beverages Pvt. Ltd. was appointed as the C&F agent for M/s. Lilason Industries Ltd. where the accused persons had no authority, which in turn induced the complainant company to part with a payment of Rs.60 lakhs thereby causing a wrongful loss to the complainant company and wrongful gain to the accused persons, including the revisionist. Pertinently, the cheques were in the name of M/s Kingston Beverages and not in any individual name. At the stage of framing charge, the Court was not required to conduct a mini trial but only see if a *prima facie* case was made out. Considering the role attributed to the revisionist, the argument that since the firm has not been arrayed as an accused in the chargesheet and so the revisionist cannot be made an accused cannot be accepted. Going by the material on record it has been rightly held by the Ld. MM that a *prima facie* under Section 420/34 IPC case is made out against the revisionist.

16. It has been alternatively argued that a mere failure to keep up a promise subsequently, cannot be presumed as cheating. The material on record *prima facie* shows that there was a fraudulent or dishonest intention right from the beginning of the transaction since first, there was a false representation and thereafter on being falsely induced, the complainant paid up the amount and so there is no merit in the argument that there was no fraudulent or dishonest intention right at the beginning of transaction. The cited judgments as mentioned above do not assist the case of the revisionist as they are distinguishable on facts. Considering the role of the revisionist as stated by the complainant and mentioned in the chargesheet, the argument that no *prima facie* case is made out against him because he did no sign any of the aforesaid documents cannot be accepted. Whether the complainant's company M/s. Boston Beverages Pvt. Ltd. was struck off from the record of the Registrar of Companies in 2017, for not commencing business in the first year of incorporation, is not an issue which makes out a case of discharge *qua* the accused revisionist, at this stage. Considering his role, it cannot be accepted that no *prima facie* case under Section 420/34 IPC is made out against him.

17. The charge sheet brings out that the accused persons which includes the revisionist, *prima facie* had a fraudulent and dishonest intention right from the inception of the agreement.

In the light of the above observations with regard to the nature of allegations against the revisionist, a *prima facie* case of cheating is made out and reliance on the above mentioned judgments is of no assistance. There is no infirmity found in the order on charge dated 16.04.2024 or in the formal charges framed in terms thereof. In the light of the above observations, the revision petition is dismissed. Trial Court Record be sent back alongwith copy of this order. Revision file be consigned to Record Room.

Announced in Open Court
on 10th day of November, 2025

ADITI CHOUDHARY

Digitally signed by ADITI CHOUDHARY
Date: 2025.11.10 17:10:49 +0530

(Dr. Aditi Choudhary)
Principal District & Sessions Judge (West)
Tis Hazari Courts/Delhi