(2011) 10 DEL CK 0068

In the Delhi High Court

Case No : Criminal M.C. 2255 of 2003

Anita Mehra and Others — APPELLANT

Vs

State — RESPONDENT

Date of Decision : 13-10-2011

Acts Referred:

Canara Bank Regulations — Regulation 10, 10(1)(11), 10(1)(3), 5(4)
Criminal Procedure Code, 1973 (CrPC) — Section 173(3), 482
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2011) 10 DEL CK 0068

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : Geeta Luthra, with Mr. Harish Malik and Petitioner in person in Criminal M.C. 2255/2003 and Mr. Satish Tamta and Ms. Ruchi Kapur, in Criminal Rev. P. 299 of 2003 and Mr. Ajay Burman and Mr. Vinod Charan, in Criminal Rev. P. 304 of 2003, for the Appellant; Harsh Prabhakar, Advocate Complainant in person, for the Respondent

Judgement

Pradeep Nandrajog, J.—Shorn of unnecessary details, the facts leading to filing of the present petition(s) are that the marriage of Anita Mehra, the Petitioner in Crl.M.C. Order 2255/2003, and Satish Mehra, the Respondent No. 2 in Crl.Revision Petition No. 304/2003, was solemnized in the year 1980 as per Hindu rites and ceremonies. However the relations turned sour between them on or around October 1992 and since then the two are engaged in a series of litigations. Instant petitions are a fall out of one such acrimonious legal battle fought between the two.

2. On 06.01.1994 Satish Mehra lodged a complaint with Additional Deputy Commissioner of Police New Delhi, alleging that he and his wife Anita Mehra had jointly invested about `20,00,000/- in 5 Foreign Currency Non-Resident Fixed Deposits (hereinafter referred to as the ''FCNR FD''). That his father-in-law S.K. Khosla, the Petitioner in Crl.Revision No. 299/2003, forged his signatures on the receipts and got renewed the said FCNR FDs in the sole name of Anita Mehra i.e.

the daughter of S.K. Khosla who then encashed the said FDs and embezzled the amount deposited. The details of the FDs on which Satish Mehra''s signatures were allegedly forged were disclosed as follows:

(i) FCNR FDs Nos. 9/92 and 22/91 with Canara Bank; (ii) FCNR FDs Nos. 103402 and 103403 with Punjab and Sindh Bank and (iii) FCNR FD No. 0756223 with Vyasa Bank.

3. On receipt of the complaint aforesaid the police investigated the matter and claimed that the investigation revealed that:(i) S.K. Khosla had made endorsement on the reverse of the receipt pertaining to FCNR FD Nos. 22/91 writing that the said FDR be renewed in the sole name of Anita Mehra; (ii) on 23.11.1992 and 12.03.1992 Canara Bank renewed FCNR FDs No. 22/91 and 9/92 respectively on the basis of the letters dated 09.10.1992 written by Anita Mehra to the Bank requesting for said renewal and pursuant to the said renewal Anita Mehra encashed FD No. 22/91; (iii) before FD No. 9/02 could be encashed by Anita Mehra the Bank cancelled the renewal of the said FD in the sole name of Anita Mehra and re-renewed the same in the joint names of Anita Mehra and Satish Mehra; (iv) on 09.11.1992 Punjab and Sindh Bank renewed FDs Nos. 103402 and 103403 in the sole name of Anita Mehra on the basis of an endorsement made by S.K. Khosla on the reverse of the receipt of the said FDs that the said FDs be renewed in the sole name of Anita Mehra; (v) Punjab and Sindh Bank claimed to have renewed the FDs Nos. 103402 and 103403 in the sole name of Anita Mehra on the basis of a letter dated 09.10.1992 written by Anita Mehra to the Bank requesting for said renewal but the said letter seems to be a manipulated document as it was received by the Bank on 09.11.1993 which was much after the renewal of the said FDs; and (vi) on 22.03.1993 Vyasa Bank renewed FCNR FD No. 0756223 on the basis of a Reinvestment Form dated 22.03.1993 signed by both Satish Mehra and Anita Mehra however Satish Mehra claimed that he had made no such request to Vyasa Bank and that he had misplaced a blank reinvestment form of Vyasa Bank which contained his signatures.

4. In such circumstances, on 21.02.1994, the police registered an FIR bearing No. 110/1994 for offences under Sections 420, 468 and 471 Indian Penal Code against S.K. Khosla and some officials of Canara, Punjab & Sindh Bank and Vyasa Bank respectively.

5. In August 1994 the case was sent to an Additional Public Prosecutor, Delhi Police for his opinion and it was opined by him that a perusal of Canara Bank Regulations relating to Term Deposits shows that the act of the Bank in renewing the FD''s in question in the sole name of Anita Mehra was legal and thus a cancellation report be filed. Accordingly, the police filed a cancellation report to which Satish Mehra filed an opposition.

6. After considering the cancellation report filed, vide order dated 22.06.1996 the learned Magistrate directed the police to conduct further investigation.

7. Thereafter, the Investigating Officer sent the receipts pertaining to FDs Nos. 22/91, 103402 and 103403, the letters dated 09.10.1992 received by Canara and Punjab & Sindh Bank, requesting for renewal of the FD''s in question in the sole name of Anita Mehra, reinvestment form dated 22.03.1993 submitted to Vyasa Bank for renewal of FD No. 0756223 and the admitted signatures and handwriting of Anita Mehra, S.K. Khosla and Satish Mehra to the Central Forensic Science Laboratory. Vide CFSL report dated 26.02.1997 it was opined that the endorsements made on the reverse of the receipts of FDs Nos. 22/91, 103402 and 103403 that the said FDs be renewed in the sole name of Anita Mehra are in the handwriting of S.K. Khosla; letters dated 09.10.1992 received in Canara and Punjab & Sindh Bank requesting for renewal of the FD''s in question in the sole name of Anita Mehra contain the signatures of Anita Mehra; the endorsement made in the reinvestment form 22.03.1993 that FD No. 0756223 be renewed in the sole name of Anita Mehra is in the handwriting of S.K. Khosla and that the reinvestment form dated 22.03.1993 contains the signatures of Anita Mehra.

8. On 20.08.1997 the police filed a charge sheet in which only S.K. Khosla was named as the accused and the names of Anita Mehra and one A.P. Singhna, the Manager of Punjab & Sindh Bank, were entered in column 2 of the charge sheet and no officer of Canara Bank or Vyasa Bank were named as accused.

9. Vide order dated 06.05.1998 the learned Magistrate summoned G.K. Bhatt, Chief Manager, Canara Bank, R.K. Arora, Manager, Canara Bank, the Petitioners in Crl. Rev. Petition No. 304/2003, A.P.S. Sighana, Manager, Punjab & Sindh Bank, S.K. Khosla and Anita Mehra to face trial for the offences punishable under Sections 420, 468, 471 and 120-B Indian Penal Code. The relevant portion of the said order reads as under:

5. I have perused the report of the SHO u/s 173(3) Code of Criminal Procedure as well as the documents on record. There is an application form for Foreign Currency non-residents account of Vyasa Bank on record. Which bears the signature of both the complainant Satish Mehra as well as Anita Mehra. Vyasa Bank in pursuance of the said documents bearing signature of both the parties has converted the joint FCNRs in the name of Satish and Anita Mehra. Though in the body of this form there is hand writing of accused S.K. Khosla but at the time of converting the FCNRs Vysya Bank could not have detected the said fault as the application form was bearing the signature of both the complainant Satish Mehra and Anita Mehra.

6. But on the other hand manager/chief manager Canara Bank have exceeded their jurisdiction by not abiding by the guidelines of the bank and have renewed the FCNRs which was in the joint name to single name of Anita Mehra. The Canara Bank has stated in their reply to the notice of the IO that since the account was opened ''either or survival'' hence on the basis of letter issued by Anita Mehra they had converted the said joint account in a single name. I have perused the reply to the notice and as well as the guidelines appended on the judicial file. The guidelines clearly lays down that in respect of joint account of

authorizing any one of the depositor the deposit are to be renewed in same conditions of repayment and interest payment i.e. the bank could not changed the joint FCNRs No. 22/91 without seeking any authority from the complainant. However, in respect of another FCNR No. 9/92 though the bank had converted the same from the joint account in the name of Anita Mehra alone but since she could not submit the sanction from complainant Satish Mehra the account was converted bank into joint account which clearly shows that the bank was aware of the guidelines.''.

(Emphasis Supplied)

10. Aggrieved by the order dated 06.05.1998 passed by the learned Magistrate summoning him for the offences punishable under Sections 420, 468, 471 and 120-B Indian Penal Code, S.K. Khosla filed a petition (Crl. M.C. No. 3364/1999) u/s 482 Code of Criminal Procedure. before this Court, which petition was dismissed by this Court vide order dated 23.12.2002. The relevant portion of the said order reads as under:

The Petitioner is the father-in-law of the complainant. Cognizance has been taken by the Magistrate against him for the offence punishable under Sections 420/468/471 Indian Penal Code on account of his having unauthorizedly made an endorsement on the FCNRs of his daughter''s husband by converting the joint FCNRs which were to be operated by either or survivor to the single name of his daughter Anita Mehra. There are allegations that this was done in connivance with the bank authorities. On the other hand the bank authorities allege that whatever they issued it was in accordance with the rules, while on the other hand they have also taken the stand that the moment the factum of converting the joint FCNR in the name of the complainant''s wife at the behest of the Petitioner unauthorizedly came to their knowledge they rectified the error and reconverted it into joint FCNR.

The learned Magistrate by detailed order has observed that it is the daughter of the Petitioner who is the beneficiary from the said act of the Petitioner. The FCNRs were being got renewed by the Petitioner on behalf of the complainant as well as his wife. The only material which persuaded the Magistrate to take cognizance under Sections 468/471/120B Indian Penal Code against the Petitioner was that the Petitioner SK Khosla has made an endorsement on the FCNR without any charge that the same may be converted in the name of his daughter and conspired with the bank....

Thus, the only allegation that can stick to the Petitioner is that he made an endorsement on the back of the FCNR without any authority that the same be converted from joint name to single name of his daughter. Neither did he fabricate nor did he forge signatures of either the complainant or that of his daughter. The question, whether there was a conspiracy by the Petitioner and the bank to get the FCNR converted from joint account to single account without the Petitioner being authorized to do so, is yet to be accorded careful consideration by the learned Magistrate at the stage of consideration for charges to be framed against the Petitioner, if any. However the main plank of the contention of the learned Petitioner counsel for the Petitioner was that even if it is assumed that the Petitioner has unauthorizedly made an endorsement on the back of the FCNRs for getting them converted from joint account to single account of his daughter still he cannot be held accused of either cheating the complainant or forging the documents or signatures of the complainant for withdrawing the money that belonged to his daughter. It appears that this aspect of the matter has not been taken into consideration by the learned Magistrate in his order dated 6th May, 1998.

...So far as the instant petition for quashing the FIR is concerned it is at premature stage as all the contentions which the Learned Counsel for the Petitioner is now raising and the defences he has resorted to are to be taken into consideration by the learned Magistrate while hearing the arguments for consideration of charge. However the observations made by this Court with regard to the allegations of forging or fabricating the signatures will be kept in mind by the learned Magistrate while considering the question of framing of charges. The petition is hereby dismissed with the direction to the learned Magistrate to consider the question of charge expeditiously and decide the same within two months. The Petitioner will have the liberty to move afresh in case he feels aggrieved of.

(Emphasis Supplied)

11. Vide order(s) dated 21.12.2002 and 08.01.2003 the learned Magistrate framed charges against G.K. Bhatt and R.K. Arora, Chief Manager and Manager of Canara Bank respectively u/s 420 Indian Penal Code read with Section 120-B Indian Penal Code for having entered into a conspiracy with Anita Mehra and S.K. Khosla to cheat Satish Mehra and cheating Satish Mehra by renewing FDs No. 22/91 and 9/92 in the sole name of Anita Mehra in pursuance of the said conspiracy. As regards S.K. Khosla and Anita Mehra, charges were framed against them for having committed offences punishable u/s 420 Indian Penal Code read with Section 120-B Indian Penal Code for having entered into a conspiracy with other accused persons to cheat Satish Mehra and having cheated Satish Mehra by getting renewed FDs Nos. 22/91, 9/92, 103402, 103403 and 0756223 in pursuance of the said conspiracy. Additionally, charges were framed against S.K. Khosla and Anita Mehra for offences punishable under Sections 467, 468 and 471 Indian Penal Code read with Section 120-B Indian Penal Code for having entered into a conspiracy for forging documents and using said documents in pursuance of the said conspiracy. (Be it noted here that no charge was framed against A.P.S. Singhna for the reason he was evading the trial and proclamation proceedings were pending against him.)

12. Aggrieved by the order(s) dated 21.12.2002 and 08.01.2003 passed by the learned Magistrate, Petitioners S.K. Khosla, Anita Mehra, G.K. Bhatt and R.K. Arora have filed the present petitions u/s 482 of the Code of Criminal Procedure

1973 praying that the orders be quashed.

13. During hearing of the petitions, Learned Counsel for Petitioners R.K. Arora and G.K. Bhatt submitted that while framing charges against R.K. Arora and G.K. Bhatt the learned Magistrate committed an illegality in not according due importance to Regulation 5.4 Regulations framed by RBI relating to Term Deposits. According to counsel, the act of the officials of Canara Bank of renewing the FDs in question in the sole name of Anita Mehra on having received letters from Anita Mehra requesting for said renewal was perfectly legal in view of Regulation 5.4. Besides, reiterating the submissions advanced by Learned Counsel for the officials of Canara Bank, Learned Counsel appearing for Petitioners S.K. Khosla and Anita Mehra submitted that the allegations leveled against Petitioners S.K. Khosla and Anita Mehra do not make out any offence of forgery of documents against them, thus the learned Magistrate committed an illegality in framing charges under Sections 467, 468 and 471 Indian Penal Code against them.

14. Per contra, Learned Counsel for the State, supported the impugned orders passed by the learned Magistrate summoning the accused and then framing charges against them. Counsel argued that the act of the officials of Canara Bank of renewing the FDs in question in the sole name of Anita Mehra was in complete violation of Regulations 10.1.3 and 10.1.11 framed by the Reserve Bank of India pertaining to term deposits.

15. The case set up by the prosecution against Petitioners G.K. Bhatt and R.K. Arora is that the officials of Canara Bank illegally renewed the FDs in question which were in the joint names of Satish Mehra and Anita Mehra in the sole name of Anita Mehra merely on the request made by Anita Mehra for the said renewal. Whereas the Petitioners place reliance upon Regulation 5.4 relating to term deposits to justify the act the prosecution relies upon Regulation 10.1.3 and 10.1.11.

16. The Regulations may thus be noted.

5.4 -In the case of deposits with ''either or survivor'' repayment conditions, term of deposit become payable to any of the depositors or to the survivor, only on the date of maturity.

10. RENEWAL of DEPOSITS

10.1 GENERAL guidelines:

10.1.1 The request for renewal of the deposit could be obtained on the reverse of FDR.

10.1.2 In respect of joint accounts, a provision has been made on page 1 of NF. 108 authorizing any one of the depositors or any one or more of the surviving depositors to renew the deposits on the same conditions of repayment and interest payment. If these clause is ff

10.1.3 Where the clauses are not opted, the request for renewal should be obtained signed by all the depositors.

10.1.11 While renewing overdue deposits, no change in the names of the depositors as appearing on the original deposit receipt, should be permitted.

(Emphasis Supplied)

17. The reliance placed by the Petitioners upon Regulation 5.4 is wholly fallacious. Regulation 5.4 deals with the payment of amount of the fixed deposit on the maturity of the deposit. It prescribes that in case of joint fixed deposits the Bank can pay the amount of deposit to any of the depositors or to the surviving depositor on the maturity of the deposit. Regulation 5.4 does not in any manner deal with the renewal of the fixed deposits.

18. It is Regulation 10 which deals with the renewal of the fixed deposits. Regulation 10.1.3 prescribes that the request for renewal of joint fixed deposits should be signed by all of the depositors unless all the depositors have authorized one of the depositors to renew the fixed deposit. Regulation 10.1.11 prescribes that in case of renewal of overdue fixed deposits, no change in the names of the depositors as appearing on the original deposit receipt should be permitted.

19. In the instant case, the officials of Canara Bank had renewed the FDs in question on the request of only one of the depositor of the said FDs i.e. Anita Mehra thereby violating Regulation 10.1.3 which prescribed that the request for renewal of joint fixed deposits should be signed by all of the depositors unless all the depositors have authorized one of the depositors to renew the fixed deposit. It is not the case of the Petitioners that Satish Mehra had authorized Anita Mehra to renew the FDs in question. Not only did the officials of Canara Bank renew the said FDs at the request of only one of the depositors of the said FDs they went a step further and renewed the said FDs only in the sole name of Anita Mehra thereby violating Regulation 10.1.11 and needless to state Anita Mehra got discharged the FDs and took away all the money.

20. In said regards, another significant fact needs to be noted. On receiving the letter dated 09.10.1992 written by Anita Mehra to the Bank requesting for renewal of FDs Nos. 22/91 and 9/92 in her sole name the officials of Canara Bank renewed the said FDs in the sole name of Anita Mehra. However subsequently the officials of Canara Bank cancelled the said renewal in respect of FD No. 9/92 and re-renewed the said FD in the joint names of Satish Mehra and Anita Mehra. If the act of the Bank of renewing FDs Nos. 22/91 and 9/92 in the sole name of Anita Mehra was legal as claimed by the Petitioners in the present petition then where was the occasion for the officials of Canara Bank to cancel the said renewal in respect of FD No. 22/91 and re-renew the said FD in the joint names of Anita Mehra and Satish Mehra''

21. In view of above discussion, prima facie, the act of the officials of Canara

Bank of renewing the FD''s in question in the sole name of Anita Mehra is prima facie illegal and thus the learned Magistrate has rightly charged Petitioners G.K. Bhatt and R.K. Arora under Sections 420 Indian Penal Code read with Section 120-B Indian Penal Code.

22. As a necessary corollary to the aforesaid, it has to be held that the learned Magistrate has rightly framed charges against Anita Mehra u/s 420 Indian Penal Code read with Section 120-B Indian Penal Code for it has been alleged by the prosecution that FDs Nos. 22/91 and 9/92 were renewed by Canara Bank on the basis of letters written by Anita Mehra requesting for said renewal; letter were written by Anita Mehra to Punjab & Sindh Bank requesting for renewal of FDs Nos. 103402 and 103403 in her sole name though the Bank had renewed the said FDs in her sole name before the receipt of the said letters; Anita Mehra had a hand to play in the renewal of FD No. 0756223 for the reinvestment form dated 22.03.1993 submitted to Vyasa Bank for renewal of said FD contains her signatures and Anita Mehra got encashed the FDs Nos. 22/91, 103402, 103403 and 0756223 and collected the amount of the said FDs. Whether the aforesaid allegations of the prosecution are correct or not would be determined by the learned Magistrate at an appropriate stage.

23. Coming to Petitioner S.K. Khosla the learned Magistrate has framed charges against him u/s 420 Indian Penal Code read with Section 120-B Indian Penal Code in respect of all the 5 FDs involved in the matter. The learned Magistrate has rightly framed charges u/s 420 read with Section 120-B Indian Penal Code in respect of FDs Nos. 103402, 103403 and 0756223 for it has been alleged by the prosecution that FDs Nos. 103402 and 103403 were renewed by Punjab and Sindh Bank in the sole name of Anita Mehra on the basis of endorsements made by S.K. Khosla on the reverse of the receipt of the said FDs that the said FDs be renewed in the sole name of Anita Mehra and that endorsement contained in the reinvestment form dated 22.03.1993 that the FD No. 0756223 be renewed in the sole name of Anita Mehra was made by S.K. Khosla.

24. However the learned Magistrate has fallen into an error in framing charges u/s 420 Indian Penal Code read with Section 120-B Indian Penal Code in respect of FDs Nos. 22/91 and 9/92. The learned Magistrate failed to appreciate FD No. 9/92 was renewed by Canara Bank on the basis of a letter dated 09.10.1992 written by Anita Mehra to the Bank requesting for said renewal and S.K. Khosla has no role to play in the renewal of the said FD. Likewise learned Magistrate failed to appreciate that though the prosecution has alleged that S.K. Khosla had made an endorsement on the reverse of the receipt of FD No. 22/91 that the said FD be renewed in the sole name of Anita Mehra Canara Bank had renewed the said FD in the sole name of Anita Mehra on the basis of a letter written by Anita Mehra requesting for said renewal and not on the basis of the endorsement made by S.K. Khosla on the reverse of the receipt of the said FD. Such being the position, the charges framed by the learned Magistrate u/s 420 Indian Penal Code read with Section 120-B Indian Penal Code in respect of FDs Nos. 22/91

and 9/92 deserves to be quashed.

25. As already noted hereinabove, the learned Magistrate has also charged Petitioners Anita Mehra and S.K. Khosla for the offences punishable under Sections 467, 468 and 471 Indian Penal Code read with Section 120-B Indian Penal Code.

26. Sections 467, 468 and 471 Indian Penal Code deals with forgery of documents and valuable securities etc.

27. In the instant case, Satish Mehra had filed a complaint before the Additional Deputy Commissioner of Police alleging that S.K. Khosla had forged his signatures on the receipts of the FDs Nos. 22/91, 9/92, 103402, 103403 and 0756223. On the basis of said allegations contained in the aforesaid complaint made by Satish Mehra, the police registered the FIR No. 110/1994 under Sections 420, 468 and 471 Indian Penal Code against S.K. Khosla. However what emerged after the investigation conducted by the police in the matter was that S.K. Khosla and Anita Mehra had got renewed the FDs in question in the sole name of Anita Mehra by colluding with the officials of the Banks and making endorsements on the receipts of the FDs/writing letters to the Banks requesting for said renewal and not by forging the signatures of Satish Mehra on the receipt of the FDs in question or any other document. This significant aspect of the learned Magistrate seems to have swayed with the fact that the FIR under Sections 468 and 471 Indian Penal Code was registered against S.K. Khosla and has mechanically framed the charges under Sections 467, 468 and 471 Indian Penal Code read with Section 120-B Indian Penal Code against Anita Mehra and S.K. Khosla. In view thereof, the charges framed under Sections 467, 468 and 471 Indian Penal Code against Anita Mehra and S.K. Khosla deserves to be quashed.

28. The net result of the above discussion is that Crl.Rev.Petition No. 304/2003 filed by Petitioners R.K. Arora and G.K. Bhatt is dismissed. Crl.M.C. No. 299/2003 filed by Petitioner S.K. Khosla is partially allowed to the extent that the charge framed u/s 420 Indian Penal Code read with Section 120-B Indian Penal Code against Petitioner S.K. Khosla in respect of FDs Nos. 22/91 and 9/92 and the charges framed under Sections 467, 468 and 471 Indian Penal Code read with Section 120-B Indian Penal Code against Petitioner S.K. Khosla are quashed. It is clarified that the charge framed against Petitioner S.K. Khosla u/s 420 Indian Penal Code read with Section 120-B Indian Penal Code in respect of FDs Nos. 103402, 103403 and 0756223 shall stand. Crl.M.C. No. 2255/2003 filed by Petitioner Anita Mehra is partially allowed to the extent the charges framed under Sections 467, 468 and 471 Indian Penal Code read with Section 120-B Indian Penal Code against Petitioner Anita Mehra are quashed.

29. It is ordered accordingly.

