
(1972) 10 DEL CK 0014

In the Delhi High Court

Case No : Criminal Revision Appeal No. 63 of 1969

Bikram Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-10-1972

Acts Referred:

Citation : (1974) CriLJ 418 : (1973) ILR Delhi 485 : (1973) RLR 32

Hon'ble Judges : V.D. Misra, J; M.R.A Ansari, J

Bench : Division Bench

Advocate : G.S. Vohra and D.R. Sethi, JJ, for the Appellant;

Judgement

V.D. Misra, J.

(1) Whether the petitioner, who was the Managing Director of Elite Financiers (P) Ltd., can he said to have dominion over the moneys paid to the Company by members of the Chit Fund series issued by the Company in terms of Section 405, Indian Penal Code ?" is the question to be decided in these four revisions.

(2) In all the revisions the facts are similar. I will, Therefore discuss the complaint of R.L. Malhotra in Criminal Revision No. 63 of 1969. Elite Financiers (P) Ltd., were issuing various chits of different denominations. R.L. Malhotra became a subscriber of a chit of Rs. 1.250 in Series Iii Class "C" issued by the Company. His ticket number was "50". He was regularly paying the Installments on the prescribed date of each month. On the maturity of chit he was entitled to receive the payment of Rs. 1,250 in September, 1965. The Company, however, did not make any payment on one pretext or the other, but ultimately the complainant succeeded in getting a post-dated cheque of Rs. 1,187.50 P. in the month of December, 1965. The cheque was payable on 12-2-1966. When presented it was dishonoured. The complainant's efforts to contact the Directors of the Company did not succeed. Having come to know that a case has been registered against the Company and its directors he sent his complaint to the Superintendent of Police, Crime Branch, on 23-5-1966. The complainant had

been issued a pass book by the Company which is Exhibit P.I, and shows that the complainant had paid all his dues.

(3) After completing the investigation the police filed a Challan against the petitioner and the trial Magistrate framed a charge u/s 406, Indian Penal Code, against him. It is in the following words:-

" THAT you in the year 1965 at Delhi being the Director of M/s. Elite Financiers (P) Ltd., Kishan Ganj, Delhi, being entrusted by Hari Krishan Khosla, R. L. Malhotra and Raj Rani Bali the amount of Rs. 2,150. Rs. 1,187.50 P., and Rs. 1,089.25 P., respectively, dishonestly misappropriated the said amount in violation of the direction prescribing the mode in which such trust is to be discharged, and thereby committed an offence punishable u/s 406, Indian Penal Code . within my cognizance."

(4) When this matter came up before me sitting as a Single Judge I noticed that there was a conflict in the decisions of this Court and so I decided to refer it to a larger Bench and that is how the case was posted before us.

(5) Mr. G. S. Vohra, learned counsel for the petitioner, contends that admittedly none of the complainants had at any time handed over any amount to the petitioner. He was merely the Managing Director and as such he cannot be said to have been entrusted with any amount or with any dominion over the amounts deposited by the complainants with the Company in terms of Section 405, Indian Penal Code.

(6) In order to appreciate the contention of the petitioner it is necessary to refer to the working of the chits. The Company was issuing various series of chits of different denominations. For example, a chit for Rs. 1,250 could be for a period of 50 months requiring the member to pay Rs. 25 per mensem. There would of course have to be 50 members. The practice seems to be that every subscriber to the chit is required to pay the first Installment in full, i.e. Rs. 25. Thereafter, auction is to be held. The Company is entitled to deduct its commission from the collected amount and the subscriber willing to allow the maximum discount is to be declared the person entitled to receive the amount minus the discount. This discount is to be shared equally by all the subscribers and is called profit or dividend. Each subscriber will be required to pay the amount of the next Installment less his share of the profit of the first auction. A subscriber was entitled to get the money in the auction, which was held every month, only once during the term of the chit. Pass-book like Exhibit P. 1 was issued to each subscriber in which all entries were made. Thus, the subscriber who does not receive the amount during the currency of the chit will be entitled to the full amount when the chit matures. After payment to each successful bidder the Company will not be left with any money belonging to the subscribers except their dividends. The amount charged by the Company is for services rendered and admittedly is deducted by them as their charges and cannot be said to be given to them in trust.

(7) In the instant case the complainant had duly paid all the Installments including the last Installment as is evident from Exhibit P. 1. Other subscribers to that chit can at this stage be presumed to have paid their last Installment because there was no other apparent reason for the Company to issue a cheque to the complainant. The question thus arises as to what has happened to the money collected by the Company from the subscribers in the last Installment.

(8) Section 405 of the Indian Penal Code is in the following terms :

"405.Criminal breach of trust-Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust."

(9) This shows that it is not necessary that a person should be entrusted with the property before he can be said to misappropriate the same. Even where a person has not been entrusted with the property but comes to have a dominion over it can be guilty of misappropriation. In the instant case the subscribers had entrusted their moneys to the Company through its employees. This amount was to be used in accordance with the contract between the subscribers and the Company. A person having dominion over this amount which has been entrusted with the Company has to explain as to what has happened to the money since it was not paid to the complainant who was legally entitled to be paid. Thus, the duty of the prosecution is to prove that the moneys were in fact paid to the Company and that the accused had a dominion over the same.

(10) A Director of a Company may not have any dominion over the funds of the Company, but whether he has the dominion or not will depend on the facts of each case. However, as far as a Managing Director of the Company is concerned, he is under the Companies Act a Director who has been entrusted with substantial powers of management by virtue of an agreement with the Company or of a resolution passed by the Company in the general meeting or by its Board of Directors, or by virtue of its memorandum or articles of association, [Section 2(26) of the Companies Act, 1956]. According to the prosecution the petitioner is the Managing Director of the Company and thus has substantial powers of management. He thus has prima facie dominion over property of the Company including the amounts received from the subscribers.

(11) Now the decisions of this High Court may be noticed. The first is in Hari Nath Sharma v. The State, Criminal Revision No. 133 of 1968 decided on 24-7-1968. This decision was given on a reference made by an Additional Sessions Judge. The accused was one of the Directors of the Company and had been challaned under Sections 406 and 420, Indian Penal Code. The judgment shows that the question of a Director having the dominion over the funds of the

Company was not raised, nor was there anything to suggest that the petitioner-Director had any dominion.

(12) The second case is Amolak Ram Kapur and another v. The State, Criminal Revision No. 439 of 1967, decided by me on 16-1-1970. In this case also no question was raised about the dominion of the Director over the amounts entrusted to the Company by the subscribers. Section 405 of the Indian Penal Code was discussed on the basis that it must be shown that the amount in question was entrusted to the accused. The other aspect of Section 405 of the Indian Penal Code that a person having dominion over the property, though not entrusted with the same, could be guilty of criminal breach of trust, was lost sight of. To that extent it is not a good decision.

(13) The next case is Bhawani Shankar and another v. State, Criminal Revision No. 158 of 1969 decided by me on 16-4-1971. In this case the complainant had made allegations of having been cheated by being persuaded to subscribe to the chits. Allegations of misappropriations were also there. Moreover, the complaint was with respect to the failure of the Company to hold an auction on the due date since it had gone into liquidation. There was nothing to show that the subscribers had paid their Installments in respect of that auction. This case was decided by following the above mentioned two decisions and to the extent that it did not take note of the provisions of Section 405 of the Indian Penal Code making a person having dominion over the property liable for criminal breach of trust, is again not a good, decision There is still another case decided by me on 9-9-1970, Manmohan Singh Malhotra v. State, Criminal Revision No. 348 of 1970. This decision is based on a concession made by the learned counsel for the State who did not object to the recommendation made by an Additional Sessions Judge for quashing the charge u/s 420, Indian Penal Code. This has no bearing on the present case.

(14) The last decision of this Court is Krishan Lal and others vs. State, Criminal Revision No. 294 of 1971, decided on 15-11-1971 by P. S. Safeer. J. The decision shows that the pass-book of the subscriber placed on the record contained the rules and regulations under which the Subscribers had subscribed to the chit. The recommendation of the Additional Sessions Judge for discharge of the accused u/s 406 of the Indian Penal Code was not accepted because the terms and conditions printed in the pass-book had been ignored. The decision does not show whether the accused were Directors of the Company or were the persons who had in fact received amounts from the subscribers. On facts it was held :

" IT will be for the prosecution to produce evidence of the various persons who have come forward with similar complaints which may disclose as to who were the persons who actually received the various payments. It will be on evidence that the Court will have to find as to what was the function of the petitioners and whether any entrustment within the meaning of Section 405 of the Indian Penal Code is established or not."

(15) This decision does not seem to decide one way or the other about the liability of a Director or Managing Director of a Company, or whether he can be said to have dominion over the property coming in the hands of the Company.

(16) Mr. Vohra refers to Ramaswamy Nadar Vs. The State of Madras, . This has no relevance to the present case. It was a case of prize competitions and there was nothing to show that the prize money had to come either wholly or in part from out of the sum collected by way of entry fees. Similarly, the decision of Allahabad High Court in State Vs. Tirath Das, , is of no help since it was held that Section 405 Indian Penal Code, does not cover the case of a loan or of an advance of money when the borrower or the deposit intends to use or utilise that money, for the time being, till he is in possession of it, although he may have to return an equivalent amount later on to the person making the advance with or without interest, or compensation for the use thereof.

(17) The result of the above discussion is that the petitioner, as already discussed, had prima fade dominion over the moneys paid to the Company by the subscribers of each chit and the complainants were entitled to receive the amounts for which the Company did issue the cheques but which were dishonoured. Charges u/s 406, Indian Penal Code, were correctly framed. The revisions are, Therefore, dismissed.