
(1969) 08 SC CK 0004

In the Supreme Court Of India

Case No : Criminal Appeal No's. 150 and 151 of 1967

Bishan Chand Madan and Chambel Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 28-08-1969

Acts Referred:

Penal Code, 1860 (IPC) — Section 477A

Citation : (1969) 2 UJ 583

Hon'ble Judges : Sikri, J;MISS, J;G. K. Mitter, J

Bench : Full Bench

Final Decision : dismissed

Judgement

P. Jaganmohan Reddy, J.—These appeals come up before us by special leave.

2. The 1 class Magistrate, Amritsar convicted 4 accused, namely, Bishan Chand Madan, Joginder Singh, Chaman Lal and Chambel Singh of offences u/s 409 and Section 477A both read with Section 120B and also u/s 408 I.P.C. Each of these accused was sentenced to one year's R.I. and a fine of Rs. 2,000/- in default further one year's R.I. each u/s 409 and Section 477A, but no sentence was awarded u/s 408 I P-C. The Additional Sessions Judge, Amritsar, in appeal, acquitted Joginder Singh but confirmed the conviction and sentences against each of the other accused. The petition of the complainant bank for enhancement of the sentences and payment of compensation was however dismissed. The High Court of Punjab and Haryana while dismissing the revision petition filed by the accused directed that out of the fine realised a sum of Rs. 7,781,99 be paid to the complaint bank as compensation.

3. The prosecution alleged the Madan was the Manager of the New Bank of India branch at Amritsar. Joginder Singh was the accountant and Chaman Lal was the Supervisor. Chambel Singh was a constituent of the bank where he had three accounts which he had opened in 1959. One of these accounts was a Savings Account and the second a Current Account which were in his personal name and

were being operated by him. The third account was in the name of Punjab Sand Supply Company which was also operated by Chambel Singh and which was closed in 1950. It is alleged that on February 2, 1961, Chambel Singh issued two cheques, Exh. P. C. and Exh. P.D. for the amount of Rs. 40,000/- Rs. 10,000/- respectively which were debited to loan account No 1131 which account at the time when he issued the cheques had not been opened. These cheques, it is said, were drawn by Chambel Singh for and on behalf of Sohan Singh Chambail Singh. Similarly, he had drawn a third cheque Exh. P.E, for Rs. 3,752.18. The first and the 3rd cheques were self cheques and the second was in favour of Dhawan Tailors and Drapers. On the next day, namely, on 3-8-1961, Chambil Singh drew another cheque, Exh. PF payable to self or before for Rs. 6,247.82 and on the 4th Feb. yet another cheque was drawn by him which is Exh. P.G. for Rs. 30,000/- All these cheques were drawn by Chambel Singh and the body of the cheques was written by Chaman Lal. We will presently state who in fact received the money in respect of there cheques, but suffice it to say that Chambel Singh was a business man and a literate person who did not write out any of the cheques. On the other hand, the fact that all these cheques were written by Chaman Lal has some significance. It is also significant to notice that the Punjab Ceramic Supply co. in whose name an account was opened was owned by Balwant Singh, brother-in law of Cham-be Singh, and the son in law of accused Madan, one Vijay Kumar, who was working for the said company, operated that account.

4. On February 9, M.R. Kohli, Managing Director of the New Bank of India, Delhi became suspicious when he saw from the statements of account of the Amritsar Branch that advances of five lacs were made to the firm of Dham and Company. He, therefore, directed Tuli, Secretary, to go to Amritsar and investigate the matter personally. While checking the statements, it was discovered that there was a debt of Rs. 80,000/- out-standing in the account of M/s. Sohon Singh Chambel Singh. Tuli asked the ledger-keeper Sant Ram about the status of the firm and the property it owned and was informed that he opened the account in the name of Sohan Singh Chambil Singh on being asked by the Manager to do so but had no account opening forms or any other papers concerning this account. Joginder Singh and Chaman Lal also informed him that they were not in a position to say anything about this account because everything was known to the Manager Madan. At that time Madan was away at Jammu, so he had to wait till the 12th, inspite of it being a Sunday, Tuli got the bank opened and summoned Madan, Chaman Lal and Joginder Singh. He enquired from them about this account but was not satisfied by the information they gave relating to the existence of the firm, its business standing and its assets. They, however, told him that there was DO worry about advances made. Not being satisfied, he caused further investigation and discovered that on cheque book had been issued to the firm of Sohan Singh Chambel Singh, that the account had been operated by means of cheques that had been issued to one Khushal who had returned them after closing the account and that there was nothing to show that these

returned cheques had been reissued to the firm of Sohan Singh Chambel Singh.

5. The defence of the accused was that all the lapses that were pointed out in the investigation were at best irregularities and that, at any rate, there is no question of misappropriation or falsification of accounts because the amounts which were drawn were genuine and the transactions showed that the amounts were also paid into the bank. The transactions could not, therefore, be said to be fraudulent.

6. It appears to us that there is ample evidence to sustain the conviction of the accused u/s 409 read with Section 120B and Section 408 I.P.C and there is no valid ground for disturbing the concurrent findings of all the three courts. It may be stated that in the account of Sohan Singh Chambel Singh there is a total withdrawal of Rs. 90,000/- of which Rs. 70,000/- were paid through the National Bank of Lahore, Amritsar Branch to the account of Punjab Ceramic Supply Co. and the amount of Rs. 10,000/- which was paid to Dhawan Tailors and Drapers was paid back the next day. The enquiry revealed that the Punjab Ceramic Supply Co. was owned, as we have said earlier, by one Balvant Singh, brother-in-law of Chambel Singh and its account was operated by Vijay Kumar, the son-in-law of the Manager Madan who in fact draw the amounts. As we have also earlier pointed out, these cheques were written by Chaman Lal and passed by Joginder Singh and Madan. It is in evidence of Sant Ram, Ledger Keeper of the Bank that on February 2, 1961 two cheques exhs. PC and PD of the value of Rs. 40,000/- and Rs. 10,000/- respectively were received by him for clearance through the bank peon, but as he found that there was no account in the name of Sohan Singh Chambel Singh he went to Joginder Singh and informed him. Joginder Singh referred him to Chaman Lal who in turn referred him to Madan the Manager. Sant Ram pointed form but Madan directed him to open the account and pass the cheques for payment. But on the witnesses protesting against the procedure he was assured by Madan that the forms would be obtained from the party on the following day. However, when Sant Ram against said that this could not be done, Madan himself made endorsement PC/b and PD/b directing payment, to be made and signed them. Sant Ram thereafter opened an account in the ledger and sent the same with the cheques to Joginder Singh who duly initialled the relevant entries and returned the ledger for payment. Two other cheques, as we have earlier said, were passed on the same day but these cheques were passed by Joginder Singh who signed them at Exh. PE/a and PE/b. The fourth cheque Exh. PF for Rs. 6, 247-81 was presented on February 3, 1961 and cash payment was made to one Kartar Singh who had endorsed at the back of it. This cheque was passed by Chaman Lal as would appear from his signature at Ex. PF/s. A cheque drawn on February 4, Exh. PG was presented to the bank for clearance and this was cleared under the signature of Joginder Singh who ordered payment under his signature at Exh. PG/a on the basis of which Chaman Lal passed it for payment, Exh. PG/b. All these endorsements and signatures of Madan, Joginder Singh and Chaman Lal were knew their writings and signatures. The witness further stated that the cheques that were issued by Chambel Singh

were not out of the cheque book issued to Chambel Singh but out of the cheque book which had been returned by one Khushal Chand P. W. 7 and there is nothing to show that these cheques were issued to Chambel Singh. Narinder Kumar P. W. 4 and Vinod Kumar P.W. 5 who are the clerks of the bank and Khushal Chand P.W. 7 corroborated Sant Ram's testimony. Bawa Rajinder Singh P.W. 9 who was the Manager of the Bank of Lahore at Amritsar office in 1958 to 1961 said that he received Exh.PC. amounting to Rs.40,000/- Exh. PD. amounting to Rs. 30,000/- respectively during his tenure. That the amount of the cheque Exh. Pd was credited to the account of M/s. Dhawan Tailores and Drapers and the remaining two cheques were credited to the account of Punjab Ceramic Co. cheque Exh. PK for the amount of Rs. 40,000/- and issued in favour of Amritsar Construction Co. was debited to the account of Punjab Cermaic Co. Another cheque for Rs. 30,000/-issued in favour of N.V. Jatinder Kumar was debited to the account of M/s. Punjab Cermic Company. The cheque for Rs. 10,000/- was debited in the account of Dhawan Tailors and was issued in the favour of Sohan Singh Chambel Singh. In this manner an amount of Rs. 70,000/- was withdrawn by Madan's son-in law Vijay Kumar through cheque Exhs.PK and PL which were in the handwriting of Mahan himself. It is also established that the amount of Cheque Exh. PF dated 3.2. 1961 for Rs. 6,465/- in his savings account. Again on that very day he gave a cheque for Rs. 5,144 31 n p to the Improvement Trust towards the amount due from him which was duly paid. No explanation was offered either by Madan or Chaman Lal who was only drawing a salary of Rs. 180/- per months as to the circumstances appearing against them.

7. From the evidence certain facts have been established beyond doubt and could not be disputed. They are that the cheques Ex. PC and Exh. PD came into existence before the opening of the account; that the account was opened under the orders of the Manager Madan without complying with the formalities or obtaining account opening forms for partnership firm, that a debit account was opened without calling for security or without the previous permission of the head office, that the cheques Exhs. PC and PG for a sum of Rs. 70,000/- were credited in the account of Punjab Cermaic Supply Co. which is owned by Balwant Singh, brother-in law of Chambel Singh and whose account was operated by Vijay Kumar, son-in law of Madan; that on February 2, 1961 Rs. 40,000/-were credited by means of two cheques Exh.PK and PL drawn on the National Bank of Lahore, that Rs. 40,000/- were credited to the account of New Amritsar Construction Co. and that Rs. 30,000/-were credited to the account of M/s. N.V. Jatinder Kumar. These cheques Exhs PK and PI were filled in by Madan and drawn by Vijay Kumar Grover, his son-in-law that subsequently after the discovery of the fraud Rs. 25,000/- were deposited in the account of Sohan Singh Cbambel Singh under instructions from Balwant Singh but the amount did not belong to Chambel Singh; that Jogin-der Singh's brother Jagit Singh deposited Rs. 8,000/- in the account of Sohan Singh Chambail Singh on 25-2-1961. On February 28, 1961 Chaman Lal himself deposited Rs. 4,000/- on February 25, 1961, Ram Lal Maternal uncle of Chaman Lal deposited Rs. 7,600/-

and on March 13, 1961, Rs. 2,000/- were deposited by Chaman Lal by filling in a slip himself. Joginders Singh's wife Surjit Kaur had deposited Rs. 10,000/- lastly it was found that there was no firm by the name of Sohan Singh Chambail Singh. It is also curious that on the insistence of Chaman Lal. Madan wrote a letter on February 18, 1961 addressed to Chambel Singh as follows :

"It is just to acknowledge to assure you that accepting the two accounts, one savings in your name and the other in the name of Punjab Sand Supply Company, in which you are a partner, there is no other account with one branch of the New Bank of India Ltd., Amritsar, in which you were or are interested directly or indirectly, all the transactions in any other account with which your name is associated in our banks branch, whether of deposits or of withdrawals were done by us without your knowledge or consent. We alone are responsible for the ultimate balance that may be found due on them. In fact, the bank's blank cheque book, on our asking and other documents was got signed and endorsed by us for purposes not in any way concerning yourself, as result of your friendship with us, this letter is handed over to you to allay your fears. We shall not further utilise any of your blank cheques."

8. Though it has been established that this letter is in the handwriting of Madan, it seems to have been extracted under a threat by Chawan Lal that he would become approver. We also do not find that it has been put to the accused in his examination u/s 343 Cr. P. C. and we think that it was rightly or relied upon by the Magistrate. Even discarding this evidence the facts which are beyond controversy clearly show that the whole scheme was the result of a conspiracy between the three accused to benefit themselves or to cause wrongful loss to the bank by cheating it.

9. It is contended by the learned advocate for the appellant that the charge of falsification of the account u/s 477A is however not established because the accounts properly reflected the transactions that had taken place in accordance with the banking practice and rules. Section 477A is as follows :

Section 477A "Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belong to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

10. The Section, it will be seen, requires falsification of accounts with intent to defraud by destroying, altering, mutilating or falsifying any book, paper, writing or valuable security or account, or abets the same. Learned counsel for the

respondent was unable to show in what way the accounts were falsified or altered. The very first ingredient of the offence not having been established, the conviction u/s 477A cannot be sustained.

While dismissing the appeals and confirming conviction u/s 409 read with section 120B and u/s 428 I. P. C. the conviction and sentence u/s 477A are set aside. The appeals are allowed to that extent. The accused will be entitled to the refund of any fine if paid in respect of their conviction and sentence under this charge.