(1983) 04 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 2845-M of 1982

Dev Kumar Sikand APPELLANT

Vs

Megh Raj and others RESPONDENT

Date of Decision : 07-04-1983

Acts Referred:

Citation : (1983) AICLR 333

Hon'ble Judges : S.S.Dewan, J

Advocate : Amarjit Markan, T.S. Doabia, Puran Chand, J.C. Arora, Advocates for appearing Parties

Judgement

S.S. Dewan, J.

1. This petition purports to have been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short the Code), with the allegations which are as under :

Megh Raj complainantrespondent No. 1 and the accusedrespondents Nos. 2 to 4 were partners of M/s Shiv Shakti Rice Mills, Sangrur Road, Dhuri. Acting on behalf of the firm, the complainant tendered a sum of Rs. 1,00,000/ to the State Bank of India, Sangrur, through its Manager Dev Kumar Sikand (now petitioner) for transfer by a Bank Draft to M/s. Gopal Agencies at Nabha. A commission of Rs. 40 was charged and the requisite Draft dated 12.11.1979 was issued. On the representation of the accusedrespondents Nos. 2 to 4 to the effect that the Bank Draft had been lost, the petitioner being Manager of the State Bank of India, Sangrur, issued a duplicate Draft on 13.12.1979. This duplicate Draft was surrender to the State Bank of India Sangrur, on the same day and the amount was adjusted towards the cashcredit account of the firm. It is said that more than a fortnight before this happened, the firm in fact had been dissolved on 26.11.1979. The payee M/s. Gopal Agencies presented the original Draft to the State Bank of India, Nabha Branch on 1.11.1980. The respondent No. 5, Manger of the Bank at Nabha declined to honour the Draft and returned the same with remarks `Draft reported lost. Duplicate issued and paid by cancellation by our

Sangrur Branch''. Megh Raj complainant then filed a complaint under Sections 409/418/109 and 102B, Indian Penal Code, against the accused. The trial Magistrate after going into the evidence adduced on behalf of the complainant found that there was no sufficient ground for proceeding against any of the accused for any of the offences alleged against them and accordingly dismissed the complaint. The revision filed by Megh Raj was dismissed by the learned Additional Sessions Judge, Patiala, on 23rd October, 1981. By means of the present petition, the order passed by the Additional Sessions Judge is sought to be quashed by invoking the provisions of the Code.

2. The learned counsel for the petitioner has contended that while dismissing the revision filed by the complainant, the learned Additional Sessions Judge has made by following observations in para No. 7 of his judgment :

"That the complainant tendered Rs. one lac to the bank at Sangrur for transfer of this amount to the payee at Nabha. He had entered into a bilateral contract with the said bank. The obligation of the bank was to pay this amount to the holder of the draft Nabha. A duplicate could be issued only at the instance of the holder of draft, in this case, the payee alone vide Section 45A of the Negotiable Instruments Act. If a person dishonestly disposes of the property in violation of any direction of law prescribing the mode in which such trust to be discharge, he commits criminal breach of trust as defined under Section 405, IPC. The fact that Megh Raj had acted on behalf of his firm when he had tendered the amount to the bank for transfer to Nabha is not material, because that was an arrangement between him and the partner and the bank could not act on the distasteof its partner contrary to the stipulations of the contract, entered into between Megh Raj and the bank. Nor the adjustment of the amount of the draft towards the credit amount of the defunct firm, payment in due course within the meaning of Section 10 of Negotiable Instruments Act."

3. It is contended on behalf of the petitioner that the aforesaid observations have been made by the learned Additional Sessions Judge without hearing the petitioner and that the trial Magistrate had rightly dismissed the complaint holding that no offence as alleged was made out against the accused. There is merit in his submission. When an order which is to the prejudice of the accused is likely to be made, it is obligatory upon the Court under Section 401(2) of the Code to give an opportunity to the accused of being heard either personally or by a Pleader in his own defence. It is an admitted fact that the petitioner was not heard by the learned Additional Sessions Judge before making the aforesaid observations. The only part attributed to the petitioner is that on the representation made by the respondents No. 2 to 4 that the Bank Draft had been lost, he issued a duplicate draft on 13121979. This duplicate draft was surrendeered to the State Bank f India at Sangrur and the amount was adjusted towards the cashcredit account of the firm. From this act of the petitioner, it cannot be said by any stretch of imagination that the petitioner had misappropriated any amount for his personal use. The petitioner was competent

to transfer the amount from one account to another in the exercise of the right known as Banker''s lien. See Firm Jaikishan Dass Jinda Ram and others v. Central Bank of India through Manager, AIR, 1960 Punjab 1.

4. The learned Additional Sessions Judge had made that aforesaid observations in his judgment without hearing the petitioner. I, therefore, quash the impugned order dated 23rd of October, 1981, and restore that of the trial Court''s order dated 4th July, 1981. The observation made by me in this order will not effect the civil suit pending between the parties.

