

(2017) 04 DEL CK 0135

In the Delhi High Court

Case No : 1559 of 2008

INDERJIT SINGH

APPELLANT

Vs

PUNJAB NATIONAL BANK

RESPONDENT

Date of Decision : 27-04-2017

Acts Referred:

Indian Penal Code, 1860, Section 420,
Section 468, Section 471 -
Cheating and dishonestly inducing delivery of property - Forgery for purpose of
cheating - Using as genuin

Citation : (2017) 04 DEL CK 0135

Hon'ble Judges : V. Kameswar Rao

Bench : SINGLE BENCH

Advocate : Ashok Bhalla, Jagat Arora

Judgement

1. The present petition has been filed by the petitioner, with the following prayers: I. Issue a writ of certiorari or any other appropriate writ, order or direction in the nature of certiorari quashing/set aside the Order dated 14.10.2006 of Respondent Bank with directions to the Respondent Bank to release full pay and allowances of the petitioner with all consequential benefits which would have been admissible to petitioner, had he been not placed under suspension and his withheld terminal dues along with interest @ 15% p.a.

II. Issue a writ of mandamus or any other appropriate writ, order or direction commanding directions to the respondent bank to pay interest @ 15% p.a. to the petitioner on his PF amount released so far for delayed period from the date of his retirement on 31.1.1999 till actual payment in the year 2004.

III. Issue any other writ, order or direction and/or such further or other orders or directions as this Hon''ble Court may deem fit and proper in the facts and circumstances of present case".

2. It is the case of the petitioner that he was appointed as Clerk-cum- Cashier in Punjab National Bank, Jor Bagh Branch, New Delhi. At the relevant time, he was

posted in Kirti Nagar Branch, New Delhi. On August 8, 1986, an FIR bearing No. 185/86 was registered pursuant to which, the petitioner was arrested and put under suspension on August 14, 1986. It is matter of record that the letter of suspension was modified on September 28, 1986. The FIR was related to Sections 420/ 468/471 IPC. The allegations primarily were that one Mr. Ashok Kumar was employed with the complainant Darshan Lal and he used to collect cheques from DTC and deposit the same in the account of the complainant. Accused Ashok Kumar obtained some cheques from DTC and opened a false account in the name of Darshan Lal in the branch office of the respondent bank at Kirti Nagar, where the petitioner was working and deposited the cheques and encashed the amount and misappropriated the same. The role of the petitioner was that he introduced the accused Ashok Kumar as Darshan Lal and signed the account opening form. The petitioner superannuated on January 31, 1999. The criminal case was finally decided by the Court of Metropolitan Magistrate, Delhi on January 13, 2004, wherein the petitioner was acquitted by giving him, benefit of doubt. Based on the judgment of the Criminal Court, the respondent bank has passed an order dated October 14, 2006, denying the benefit of full wages and other benefits to the petitioner for the period he remained under suspension from August 14, 1986 till he attained the age of superannuation on January 31, 1999. It is this order, which is under challenge before this Court in the present petition.

3. It is the submission of Mr. Ashok Bhalla, learned counsel appearing for the petitioner that the word "benefit of doubt" in the writ petition is a misnomer inasmuch as the petitioner was honourably acquitted as there was no evidence found against the petitioner of any misdemeanour. According to him, the finding of benefit of doubt would only arise when on the basis of evidence, two views were possible and after analysis of the evidence, the Court gives the benefit of doubt in view of the two views possible. It is not a case where the evidence, which has come on record, depicts two views. It was only one view that there was no iota of evidence to show the petitioner was having any dishonest intention to cheat the complainant, which was the subject-matter of charge against the petitioner. He would state that there is a finding of the Criminal Court that from the evidence on record, it is not even established that the petitioner was aware at the time of introducing the accused Ashok Kumar that he was Ashok and not Darshan Lal. He has drawn my attention to the judgment of the Criminal Court dated January 13, 2004 in that regard, more specifically para 10 wherein the Criminal Court has given its finding qua the petitioner. According to him, Chapter 19 of the Bipartite Settlement dated October 19, 1966 deals with disciplinary action and procedure thereof. He states that in terms of para 19.3(c), which is reproduced as under, which provision has been invoked by the respondent Bank, they could not have treated the period of suspension as period not spent on duty and deny the benefits of full back wages and other benefits for the period under suspension. "19.3(c) If he be acquitted, it shall be open to the management to proceed against him under the provisions set out below in

Clauses 19.11 and 19.12 infra relating to discharges. However, in the event of the management deciding after enquiry not to continue him in service, he shall be liable only for termination of service with three months' pay and allowances in lieu of notice. And he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full pay and allowances minus such subsistence allowance as he has drawn and to all other privileges for the period of suspension provided that if he be acquitted by being given the benefit of doubt he may be paid such portion of such pay and allowances as the management may deem proper, and the period of his absence shall not be treated as a period spent on duty unless the management so direct."

4. According to him, there is a total non application of mind by the respondent Bank, which resulted in the petitioner losing the benefit of full back wages and other benefits for almost 13 years. He states, the effect thereof is that the petitioner has been imposed, a sort of a penalty of stoppage of pay. He would rely upon the following judgments in support of his contention:- (i) Bom Bahadur Thapa Vs. United Commercial Bank, 96 (2002) DLT 801;

(ii) Bhag Singh Vs. Punjab and Sind Bank and Others, Civil Writ Petition No. 15519/2003; Reported in Punjab Law Reporter (CXLI) 2005-3 Page 861.

(iii) George N. S. Vs. Comm. of Police, 2011 VII AD (Delhi) 416;

5. On the other hand, Mr. Jagat Arora, learned counsel for the Bank would justify the impugned order of the Bank dated October 14, 2006. According to him, the petitioner being an employee of the Bank, could not have without ascertaining that the accused Ashok Kumar was actually Darshan Lal had introduced him for opening the account and this aspect is sufficient for the respondent Bank to deny the petitioner, the benefit of full back wages and other benefits for the period of suspension. He has also read the judgment of the Criminal Court to highlight his point. He would rely upon the judgments of the Supreme Court in the cases reported as The Management of Reserve Bank of India, New Delhi Vs. Bhopal Singh Panchal AIR 1994 SC 552 and Krishnakant Raghunath Bibhavnekar v. State of Maharashtra and others AIR 1997 SC 1434 in support of his contention.

6. Having heard the learned counsel for the parties, suffice to state, in para 9, the Criminal Court has held as under:- "9. A careful perusal of these Sections would show that before a person can be convicted under these Sections, it has to be proved by the prosecution that he was having a dishonest intention at the time of commission of offence. In other words, mens rea is an essential ingredient of all these Sections and unless it can be proved that the person was having dishonest or fraudulent intention to cheat another person, he cannot be convicted under these Sections."

7. That apart, in para 10, on which Mr. Bhalla has placed his reliance, the Criminal Court has held as under:- "10. The case against accused Inderjeet Singh is that he introduced accused Ashok Kumar as Darshan Lal and helped in opening false account in the bank for which accused Ashok misappropriated the

cheques of complainant. From the perusal of entire evidence on record, it becomes crystal clear that there is not an iota of evidence to show that accused Inderjeet Singh was having any dishonest intention to cheat the complainant. Nothing has come on record to show that accused Inderjeet had dishonestly induced the complainant to deliver any property to him or that he knew that it was likely to cause wrongly loss to the complainant. In fact, from the evidence on record it is not even established that whether accused Inderjeet was aware at the time of introducing the accused Ashok Kumar that he was Ashok and not Darshan Lal. Further, there is nothing on record to show that accused ever used the said bank account or the account opening form to cheat any person. Hence, I am of the considered opinion that no offence is made out against accused Inderjeet u/s 420/468/471 IPC as the prosecution has failed to prove any dishonest or fraudulent intention on his part at the time of introducing the accused Ashok Kumar. The prosecution has also not been successful in establishing that accused Inderjeet had caused wrongly loss to the complainant or that he used the account opening form in any manner whatsoever. Thus, the benefit of doubt goes to the accused."

8. The following was the conclusion of the Criminal Court in para 15, which reads as under:- "15. In view of the aforesaid discussion, I am of the considered opinion that prosecution has established its case against accused Ashok Kumar and accordingly I hold him guilty for the offence u/s 408/468/471 IPC. However, prosecution had not been able to show the dishonest intention on the part of the accused Inderjeet and benefit of doubt is accordingly given to the accused and he is acquitted of the offence u/s 420/640/471 IPC."

9. No doubt, the Criminal Court has used the word "benefit of doubt" but a reading of the complete judgment of the Criminal Court, it is clear that there was no evidence against the petitioner to connect him to the offence. In para 10, the observation of the Criminal Court "From the perusal of entire evidence on record it becomes; crystal clear that there is not an iota of evidence to show that accused Inderjeet Singh was having any dishonest intention to cheat the complainant. XXXX XXXX XXXX

In fact, from the evidence on record it is not even established that whether accused Inderjeet was aware at the time of introducing the accused Ashok Kumar that he was Ashok and not Darshan Lal" are conclusive.

10. The reliance placed by Mr. Bhalla on the judgment of the Division Bench of this Court in Bom Bahadur Thapa (supra), wherein a question arose whether the judgment of the Trial Court dated February 22, 2000 should be construed as a case of clean acquittal or a acquittal as a consequence of benefit of doubt. This Court in para 5 held as under:- "5. A perusal of the order would show the nature of evidence adduced by the prosecution. The same is as under:

"9. PW-1 Gulab Rai Asstt. Manager, UCO Bank was examined but deferred. He was not produced for cross-examination. In consequence thereby his deposition

cannot be looked into and relied upon. PW-2 is Suresh Kumar Mittal, Asstt. Manager, UCO Bank did not utter anything incriminating against the accused regarding the theft or recovery of article vide seizure memo mark A. Thus, his deposition is also of hardly any relevance to establish the prosecution case.

10. PW-3 was examined by the Prosecution. His examination was deferred since case property was not produced by Mal Khana; he was thereafter not examined. Thus, his deposition also cannot be looked into or relied upon."

11. This Division Bench also referred to the judgment of the Supreme Court in the case reported as AIR 1984 SC 1622 Sharad Birdhichand Sarda v. State of Maharashtra, wherein in paras 162 and 163, this Court has held as under:- "162. We then pass on to another important point which seems to have been completely missed by the High Court. It is well settled that where on the evidence two possibilities are available or open, one which goes in favor of the prosecution and the other which benefits an accused, the accused is undoubtedly entitled to the benefit of doubt. In Kali Ram v. State of Himachal Pradesh, this Court made the following observations:

"Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused should be adopted. The principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence."

163. We now come to the mode and manner of proof of cases of murder by administration of poison. In Ramgopal's case (supra) this Court held thus (at p. 659):

"Three questions arise in such cases, namely (firstly), did the deceased die of the poison in question? (secondly), had the accused the poison in question in his possession? and (thirdly), had the accused an opportunity administer the poison in question to the deceased? It is only when the motive is there and these facts are all proved that the Court may be able to draw the inference, that the poison was administered by the accused to the deceased resulting in his death."

12. The Division Bench in paras 7 and 8 has held that the petitioner should be treated as having got a clean acquittal from the Criminal Court, which I reproduce as under:- "7. In view of this judgment where the expression benefit of doubt has been analysed, the case of the petitioner is squarely covered by the ratio of the said judgment.

8. The consequence of the aforesaid is that the petitioner should be treated as having got a clean acquittal from the criminal court and all consequences of the same insofar as terms of services are concerned shall follow."

13. Similarly, the Division Bench of this Court in George N.S. (supra), in para 12 held as under:- "12. The acquittal on account of prosecution failing to prove its

case beyond reasonable doubt or on account of lack of evidence or no evidence cannot be termed as acquittal on technical ground. Such grounds i.e. technical ground, would be, to illustrate a few, limitation which has now been prescribed by recent amendment in Cr.P.C or trial without obtaining sanction as required under Section 197 Cr.P.C in cases where it is required and the trial being held without obtaining such sanction. If the legislature intended that acquittal on account of benefit of doubt or prosecution failing to prove a case beyond reasonable doubt etc. were not to be a bar in the departmental proceedings, it would have so specifically provided as Exception in Rule 12. The legislature could not be oblivious of the situation as mentioned above, particularly when we know that most of the acquittals are based on the failure of the prosecution to prove the case beyond reasonable doubt or on account of benefit of doubt. The legislative wisdom only refers to acquittal on technical grounds as one of the exceptions for holding departmental proceedings. By any means we cannot hold that failure of the prosecution to lead evidence per se, would amount to acquittal on technical ground. The acquittal resulting on account of prosecution not leading evidence or leading insufficient evidence would definitely stand on different footing than acquittal resulting on technical ground. In the former case, the acquittal would be clean acquittal and even the words like "benefit of doubt" or "failing to prove beyond reasonable doubt" would be superfluous. The petitioner was acquitted by learned MM because there was no evidence led by the prosecution for many years and even the case property was also not produced for any justifiable reason. Such acquittal could not be said to be on a technical ground since the charges were not proved and the decision was arrived at on the basis of no evidence on record. A Division Bench of Punjab and Haryana High Court in Bhag Singh vs. Punjab and Sind Bank 2006(1) SCT 175 held that where the acquittal is for want of any evidence to prove the criminal charge, mere mention of "benefit of doubt" by a criminal court is superfluous and baseless and such an acquittal is an "honourable acquittal". Another Division Bench of Punjab and Haryana High Court in Shashikumari vs. Uttari Haryana Bijli Vitran Nigam 2005 (1) ATJ 154 has taken the same view. The instant case, however, appears to be on a better footing. Thus, we have no hesitation in arriving at a conclusion that exception (a) to the prohibition was not attracted in the present case."

14. The facts of the case in hand are on much better footing, inasmuch as it is not the finding of the Criminal Court that the prosecution has not produced any witnesses or witnesses have not appeared for evidence. Rather, nine witnesses were examined by the prosecution and all the necessary documents were placed on record. It is on the analysis of the evidence on record, the Criminal Court has come to a finding in para 10, which I have already noted above.

15. That apart, the reliance placed by Mr. Bhalla on the judgment of the Punjab & Haryana High Court in the case of Bhag Singh (supra) is concerned, the High Court was concerned with facts wherein the petitioner, while working as a Clerk with the respondent-Bank i.e Punjab and Sind Bank, was arrested in a criminal case. He was placed under suspension. After trial, the petitioner was acquitted by

judgment dated June 03, 1998. On acquittal, the petitioner approached the authorities for reinstatement. He was reinstated. However, on the same date, he was served with the charge sheet on the same allegations. The petitioner participated in the department proceedings. The Enquiry Officer found Charge Nos. 1, 4 and 5 not proved. The Disciplinary Authority after examining the inquiry report, imposed a penalty of censure. The appeal against the censure was also dismissed. Thereafter, the petitioner submitted a representation for full pay and allowances during the period he was illegally kept out of service. His claim was that he is entitled to pay and allowances for the period of suspension from December 13, 1988 to September 27, 1999. The said representation was rejected. In the reply before the High Court, the respondents sought to justify the denial of back wages by relying upon Clause 19.3(c) of the Bipartite Settlement. In other words, the respondents denied the benefit of full back wages to the petitioner in the said case on the ground that he was acquitted giving benefit of doubt. The Punjab & Haryana High Court, in para 9, held as under:- "9. In both the cases, inspite of the clear observations that there was no evidence against the petitioner, the trial court observes that the accused are given benefit of doubt and acquitted of the charges framed against them. Relying on the aforesaid observation, the respondents have denied the benefit of full pay and allowances to the petitioner. In our opinion, the mere use of the expression "benefit of doubt" or "not proved beyond reasonable doubt" by the trial Court or the appellate court, cannot be permitted to convert an acquittal on the ground of no evidence, to something less than that. The concepts of "Honourable Acquittal", "fully exonerated" or "acquitted of blame" are all unknown to the Criminal Procedure Code, 1973. Therefore, the term "benefit of doubt" cannot detract from the impact of the acquittal. A similar view has been expressed by this Court in the case of Jagmohan Lal v. State of Punjab through Secy, to Punjab Govt. Irrigation and Ors., A.I.R. (54) 1967 Punjab and Haryana 422 as follows:-

"J.N. Kaushal, J,

(3) In my opinion, the relevant Rule is 7.5. The heading under which this rule has been framed is "Suspension During Pendency of Criminal Proceedings etc." The rule reads like this:-

"7.5 A servant of Government against whom proceedings have been taken either for his arrest for debt or on a criminal charge or who is detained under any law providing for preventive detention should be considered as under suspension for any periods during which he is detained in custody or is undergoing imprisonment and not allowed to draw any pay and allowances (other than any subsistence allowance that may be granted in accordance with the principles laid down in Rule 7.2) for such periods until the final termination of the proceedings taken against him or until he is released from detention and allowed to rejoin duty, as the case may be. An adjustment of his allowances for such period should thereafter be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame or (if the

proceedings taken against him were for his arrest for debt), of its being proved that the officer's liability arose from circumstances beyond his control or the detention being held by the competent authority to be unjustified."

There is no doubt that the rule contemplates the payment of the full amount only in the event of the officer being acquitted of blame. The stand of the Government indicated in Annexure "D" was in these words-

".....According to Rule 7.5 *ibid* full amount has to be given only if the official is acquitted of the blame. The words of blame" are not redundant. As the petitioner was given benefit of doubt it cannot be said that he was acquitted of "blame". In the circumstances, the petitioner is not entitled to his full pay and allowances for the period of suspension."

The interpretation which has been put by the Government on the rule is incorrect. The blame which attached to the petitioner was that there was a criminal charge against him under which he was standing his trial. The moment he is acquitted of the charge, he is acquitted of the blame. In criminal law, the Courts are called upon to decide whether the prosecution has Succeeded in bringing home the guilt to the accused. The moment the court is not satisfied regarding the guilt of the accused, he is acquitted. Whether a person is acquitted after being given a benefit of doubt or for other reasons, the result is that his guilt is not proved. The Code of Criminal Procedure does not contemplate honourable acquittal. The only words known to the Code are "discharged" or "acquitted". The effect of a person being discharged or acquitted is the same in the eyes of law. Since, according to the accepted notions of imparting criminal justice, the Court has to be satisfied regarding the guilt of the accused beyond a reasonable doubt, it is generally held that there being a doubt in the mind of the court, the accused is acquitted..."

"It is futile to expect a finding of either honourable acquittal or complete innocence in a judgment of acquittal. The reason is obvious; the criminal Courts are not concerned to find the innocence of the accused. They are only concerned to find whether the prosecution has succeeded in proving beyond a reasonable doubt the guilt of the accused."

16. It is precisely for the above reasons that I have extracted the relevant part of the judgment of the Criminal Court in the present case. A perusal of the same would show, the use of expression "benefit of doubt" would not obliterate the discussion/finding of the Criminal Court, which clearly establish that there was no evidence against the petitioner to show that the petitioner was involved in any criminal act.

17. Insofar as the judgment in the case of *The Management of Reserve Bank of India, New Delhi* (*supra*) is concerned, the Supreme Court at page 558 of the judgment [alternative citation (1994) 1 SCC 541] held as under: "XXXX XXXX XXXX

The competent authority while deciding whether an employee who is suspended in such circumstances is entitled to his pay and allowances or not and to what extent, if any, and whether the period is to be treated as on duty or on leave, has to take into consideration the circumstances of each case. It is only if such employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such employee is entitled to full pay and allowances for the said period.

XXXX XXXX XXXX"

18. Insofar as the judgment in the case of Krishnakant Raghunath Bibhavnekar (supra) is concerned, the same is also of no help to Mr. Arora, as in para 4, the Supreme Court held as under:- "4. XXXX XXXX XXXX

We think it would be deleterious to the maintenance of the discipline if a person suspended on valid considerations is given full back wages as a matter of course, on his acquittal. Two courses are open to the disciplinary authority, viz., it may enquire into misconduct unless, the same conduct was subject of charge and on trial the acquittal was recorded on a positive finding that the accused did not commit the offence at all but acquittal is not on benefit of doubt given.

XXXX XXXX XXXX"

19. The aforesaid would show that it is for the Authorities to consider whether in the given facts, the officer is entitled to the back wages or not. In the case in hand, there was a clear misreading of the judgment of the Criminal Court by the respondent. The order dated October 14, 2016 is set aside. The petitioner shall be entitled to the full pay and allowances for the period of suspension i.e. August 14, 1996 to January 31, 1999, subject to adjustment of the subsistence allowance received by him with interest @ 9% per annum to be calculated effective from January 20, 2004, the date he made the first representation.

20. In so far as the prayer of the petitioner for interest against the delayed payment of PF amount from the date of retirement on January 31, 1999 till actual payment in the year 2004 is concerned, the petitioner is not entitled to the same as the petitioner having accepted the amount in the year 2004 itself has filed the petition in the year 2008. The challenge in the petition is primarily to the order dated October 14, 2006. It appears that the additional prayer for grant of interest on the PF amount has been made but that prayer relates back to the year 2004, four years prior to the filing of the petition. Such a prayer would be hit by delay and laches and the prayer in that regard is rejected.

21. The petition is disposed of on the above terms. No costs.