

(2014) 07 P&H CK 0581
In the Punjab And Haryana At Chandigarh
Case No : Crl. Misc. No. M-4914-2013

Jagdish Lal Malhotra

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482
Penal Code, 1860 (IPC) — Section 120B, 406, 419, 420, 467

Citation : (2014) 07 P&H CK 0581

Hon'ble Judges : Surinder Gupta, J

Bench : Single Bench

Advocate : Dinesh Arora, Advocate for the Appellant; G.S. Chahal, Addl. A.G. and Surinder Pal, Advocate for the Respondent

Final Decision : Allowed

Judgement

Surinder Gupta, J.—The petitioner was posted as Branch Manager of Oriental Bank of Commerce, Madina, District Rohtak. One Sandeep son of Chander Bhan of village Behalba (non-petitioner) raised loan from the bank of the petitioner on the documents relating to land of respondent No. 2 situated at village Sisar Khas, Tehsil Meham District Rohtak.

2. As per allegations, in the FIR got recorded by respondent No. 2, he came to know of the loan on his land on 2.1.2012 when he obtained copy of the fard jamabandi from the Patwari for Kissan Card. He immediately contacted the bank and was informed that one Sandeep son of Chander Bhan of village Behalba had taken the loan. The respondent No. 2 was showed the record and the mortgage deed submitted to the bank which depicted the photograph and signature of some other person in place of respondent No. 2 and it was the case of impersonation and fraud with respondent No. 2. Thereafter the complainant filed a civil suit. The accused cleared the bank loan and clearance certificate was issued in favour of respondent No. 2. The complainant moved a complaint dated

7.5.2012 on the basis of which FIR was registered against the following persons:-

1. Sandeep son of Shri Chander Bhan R/o. village Behiba Tehsil Meham District Rohtak.
2. Jagdish Lal Malhotra Branch Manager, OBC Madina, District Rohtak.
3. Raj Singh Tehsildar Meham.
4. Halka Patwari village Sisar Khas Tehsil Meham.
5. Azad Lambardar son of Hardwa R/o. village Sisar Khas Tehsil Meham, District Rohtak.
6. Vinod son of Om Parkash R/o. Village Sisar Khas, Tehsil Meham, District Rohtak.

3. In this petition u/s 482 Cr.P.C. the petitioner has sought quashing of the aforesaid FIR. The petitioner has alleged that agricultural loan applied in this case was sanctioned by the petitioner on the recommendation of the concerned officer i.e. Agricultural Officer of the bank. The Branch Manager has least participation in the matter of sanction of agricultural loan as all the verification and recommendations are made by the Agricultural Officer. The scrutiny of documents produced by the customers was also conducted by the Agricultural Officer who after his satisfaction sent the same to the lawyer to get legal opinion. After legal opinion, the matter again came to the Agricultural Officer for final submission of the report. The Agricultural Officer after checking and verifying the documents again and on his satisfaction direct the customer to open saving account in the bank. He then made pre-sanction visit to the property to be mortgaged, verified the documents, filled the form after taking information from the customer. After completing all these formalities and satisfying himself with regard to genuineness of the property to be mortgaged, recommendations were made by the Agricultural Officer for sanction of loan. The above procedure clearly shows that the Branch Manager has least role to play in sanctioning of the agricultural loan.

4. In the present case, the customer had forged and fabricated the documents which were verified by the Agricultural Officer and after such verification and legal search report, he had made the recommendations. The panel counsel had also verified the chain of title which was complete. Neither the Branch Manager nor the panel counsel had the personal knowledge that the person who had applied for the loan had in fact impersonated as other person. The customer had also submitted his identity proof i.e. voter card etc. The petitioner sanctioned the loan while performing his official duty with utter sincerity. The mortgage deed was sent for registration. At the time of registration of the mortgage deed the said customer was identified by two persons, one of whom was the Lambardar of the village. The mortgage deed was registered on 28.7.2010 at Sr. No. 1082 (Annexure P-5 and P-5/1). Thereafter the endorsement of the mortgage was entered in the jamabandi for the year 2006-07. A letter was written to Tehsildar

Annexure P-6 on which Patwari had made the report about the value of the property of the person taking loan. Even the department of the petitioner had not found any irregularity committed by the petitioner or initiated any departmental action against him. The petitioner had retired from his service on 31.8.2012 after attaining the age of superannuation, vide order Annexure P-9. The petitioner in no manner is connected with the fraud or a beneficiary of it. The factum of fraud surfaced when respondent No. 2 came to the branch.

5. The respondents have contested and rebutted the plea taken by the petitioner in their separate reply. It has been averred that the petitioner being the incharge of the bank is liable for the fraud played with respondent No. 2. He was required to visit the site/property against which the loan was obtained and to verify all the documents submitted to him. The fraud could not have been committed without his consent.

6. I have heard learned counsel for the parties and perused the paper book with their assistance.

7. Learned counsel for the petitioner has argued that it is the case where the customer has defrauded the bank by forging documents while getting loan. All the proceedings were conducted by the bank in due course. The procedure required for advancing of the load was followed. The documents were verified, the opinion of the panel counsel (Annexure P/2) was taken. The person taking the loan had not only submitted forged documents but had also got prepared a forged voter identity card giving his identity as Sandeep son of Chander Bhan-respondent No. 2. The mortgage deed was got executed by the said Sandeep and at the time of registration, he was identified by two persons including one Lamberdar of village. The bank had also obtained the valuation and non-incumbrance certificate regarding the mortgage property which was issued by the Patwari. After completing all the required formalities and on the recommendation of the Agricultural Officer, the loan was sanctioned. It is not a case of fraud with respondent No. 2 but a case of fraud played with the bank. On filing of the civil suit by respondent No. 2, challenging the loan against his property, the loan amount was deposited and clearance certificate was issued. In no manner the liability of the petitioner in this case is attracted in the fraud which was in fact with the bank.

8. Learned State counsel as well as learned counsel for respondent No. 2 have argued that the loan was taken by the impostor impersonating himself as respondent No. 2 in connivance with bank officials including the petitioner. The petitioner in no manner can escape his liability as he was posted as Branch Manager at the relevant time.

9. It is a case in which a smart customer posing as Sandeep Kumar son of Chander Bhan of village Behalba played fraud with Oriental Bank of Commerce, Madina Branch while getting the loan of Rs. 6,50,000/-. He not only posed as respondent No. 2, produced his revenue documents in support of his claim but

had also produced a voter identity card forged in the name of Sandeep son of Chander Bhan having photographs of impostor.

10. The question which arises for consideration in this case is as to whether the petitioner was a party to the fraud or he himself was defrauded?

11. Firstly, the bank has Agricultural Officer who deals with the agricultural loan cases. As per guidelines issued by the Board of Directors of the Bank (Annexure P/7), the functions and duties of the Agricultural officer is to attend all duties connected with Agriculture Advances and he is mainly responsible for the following:-

1. Introduction of loan proposals to the Branch and processing thereof.
2. Identification of Borrowers, Pre and Post Appraisal visits.
3. Supervision and follow up of Agricultural loans.
4. Inspection of securities.
5. Recovery of instalments.
6. Follow up of SMA/NPA account of the above nature.
7. Implementation of micro Finance & Farmers Club specifically Oriental Bank Grameen Project (OBGP).

12. Revised Advance manual approved by Board of Directors on 18.11.2008 (Annexure P-8) incorporate instructions for sanctioning of loan which are as follows:-

The process note shall be prepared by loan officer/manager(loans)/agriculture officer at the branch who shall also record his views/recommendations and submit the same to the incumbent-in-charge for approval. Under no circumstances the credit limit be sanctioned before compiling the proposal. The loan officer/manager handling credit portfolio should be involved in processing the loan proposal. The process note prepared as above should clearly specify recommendation and detail terms and conditions of the sanction.

13. In this case the bank had taken the Legal Opinion-cum-Search Report in respect of the applicant for loan, who had impersonated as Sandeep son of Chander Bhan and their counsel had given the report Annexure P/2 that the property was free from all sort of incumbrances and was fit to create legal mortgage. He had given the opinion as follows:-

In view of above I am of the opinion that applicant is the owner of 1/4 share of the property mentioned below and his title to the property is free from all sorts of encumbrances and fit to create legal mortgage by way of execution of Registered mortgage deed in favour of the bank.

14. Application was also moved to the Tehsildar to know about the valuation of

property and for non-incumbrance certificate. On this application Annexure P/6, report was made by Patwari as follows:-

The applicant Sandeep s/o. Chander Bhan is permanent resident of Behlba. The land of the applicant is situated in Khewat No. 274 village Sisar Khas which is approximately 89-15 acre and market value of the same is verified as approximately Rs. 1200000/-.

15. The matter did not end here. A registered mortgage deed of the land of which the documents were produced by the impostor was got executed and the impostor was duly identified as a genuine person before the Sub Registrar by two witnesses namely Azad Lamberdar and Vinod.

16. All the above facts and documents clearly show that it was the bank which was cheated by the impostor. The moment respondent No. 2 came to know about the loan taken against his property, he came to the bank. He got all types of cooperation in the matter. He was shown the mortgage deed executed and other documents. As per the complainant he came to know about the loan on 2.1.2012 and filed civil suit on 7.5.2012. Immediately the bank swung into action and clearance certificate of the loan was issued in favour of respondent No. 2.

17. The scope of interference by the High Court u/s 482 Cr.P.C. has been discussed by the Hon'ble Supreme Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, which reads as follows:-

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers u/s 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

18. From the discussion of the fact, as above it is amply made out that the allegations as levelled in the FIR even if taken on the face value make out no prima facie case for offence punishable under Sections 419/420/406/467/468/471/506 and 120B IPC against the petitioner. The respondent has misused the process of the Court, just to wreak his personal vengeance. His grievance could be well understood, but at the same time he was aware that bank official have co-operated with him on coming to know of the fraud played by an impostor.

19. As a sequel of my above discussion, I find merit in the petition and the same is allowed. The FIR Annexure P-1 along with all consequential proceedings arising therefrom, qua the petitioner is quashed.