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(1986) 12 MAD CK 0003

In the Madras High Court

Case No : Cr.M.P. 345 of 1985

K.P. Menon, Chairman, Catholic Syrian Bank Ltd, Trichur and another — APPELLANT

Vs

N. Punithavathi Manian — RESPONDENT

Date of Decision : 12-12-1986

Acts Referred:

Citation : (1986) 12 MAD CK 0003

Hon'ble Judges : Ramalingam, J

Bench : Single Bench

Advocate : Sampathkumar, for the Appellant; K.M. Santhanagopalan, for the Respondent

Final Decision : Allowed

Judgement

Ramalingam, J.—This petition has been filed by the two accused, viz, K.P. Menon, Chairman, Catholic Syrian Bank Ltd, Trichur and B.K.

Natarajan, Manager, Catholic Syrian Bank Ltd, Vellore to quash the process issued to them in C.C. 420 of 1984 on the file of the J.F.C.M. No

1, Vellore, North Arcot Dt, which was taken cognizance for offences under Ss.409 and 477-A read with S.34, I.P.C. on a complaint given by N.

Punithavathi Manian, the respondent herein wife of Balasubramaniam, in the following circumstances:

The respondent Punithavathi Manian is a partner of Sathya Narayana Chit Funds, Vellore. Her husband is also a partner in the same firm, apart

from being a partner along with others in Lakhsmi Narayana Chit Funds and Lakhsmi Narayana Chit Corporation. Sathya Narayana Chit Funds,

in which the respondent and her husband are partners along with others, has been enjoying certain credit facilities from the Catholic Syrian Bank, Vellore Branch, hereinafter referred to as the ''Bank'' and they owe money to the Bank. The respondent in her personal capacity deposited the

following amounts

S. Deposit Amount Maturiy

No. No. deposited.value

1. 48/83 Rs. 5000 Rs.

5975

2. 11/84 30000 35850

3. 12/84 15000 17975

4. 13/84 20000 23900

70000 83700

2. The respondent had an account with the Bank of Baroda, Vellore branch also. On 5.6.1984, the respondent wrote through Bank of Baroda, for

premature encashment of the aforesaid deposits with the Bank (Catholic Syrian Bank) with regard to deposit Nos. 48/83, 11/84 and 12/84. There

was no request from the respondent for premature encashment of the deposit Ho. 13/84. By letter dated 7.6.1984, the Bank of Baroda wrote to

the respondent that, in pursuance of the respondent''s request, they approached the Bank for premature encashment of her three deposits and they

were informed that the Bank has referred the matter to their Head Office and they were asked to wait for a reply from the head office. According

to the respondent, the information furnished by the Bank to the Bank of Baroda is contrary to the endorsement found in the respondent''s accounts

with reference to the deposits (family welfare deposits) wherein the Bank has endorsed that all the accounts have been closed on 27.4.1984. The

further case of the respondent is that she has not advised the Bank for any premature payments of her deposits, on 27.4.1984. The entries made

by the Bank with reference to her deposits being closed on 27.4.1984 amount to falsification of her accounts, since"" premature closure of her

deposits was not intimated to her, nor to Bank of Baroda. Later on, the respondent received from the Bank of Baroda, a letter informing her that

the Bank has exercised its lien over the deposits bearing Nos. 48/83 11/84 and 12/84, for a total sum of Rs. 65,000 and have adjusted the

amounts with the account of Messrs. Sathyanarayana Chit Funds, wherein the

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respondent is a partner. According to the respondent,

Satyanarayana Chit Funds and Lakshminarayana Chit Corporations have closed their accounts On 27.1.1984 and Lakshminarayana Chit Funds

closed their account on 21.5.1934. The closure of the above three accounts have been completed and such closure has been accepted by the

aforesaid three firms. By 21.5.1984, none of the firms mentioned above had any liability tot he Bank. By letter dated 31.5.1984, these three firms

instructed the Bank not to deal with their accounts except on authorisation in writing signed by ail the partners. Contrary to the aforesaid, according

to the respondent, credit entries have been falsely made in the accounts of Satyanarayana Chit Funds on 9.6.1984. On the very same date, the

account of the respondent was reopened and once again it was closed. These acts on the part of the Bank are nothing but a deliberate falsification

of accounts and Wrongful gain for the Bank. It is under these circumstances, the respondent gave the complaint which has been taken on file as

C.C.420 of 1984 on the file of J.F.C.M.1, Vellore. It is to quash the process issued to the petitioners that this petition has been filed.

3. The case of the petitioners is that the deposits of the respondents were adjusted by exercising the Bank''s right of lien, when the respondent

expressed her desire to dose the deposit and get premature payment; The Bank after adjusting the dues of the firms in which the respondent is a

partner, paid the balance to her and she is jointly and severally liable in respect of dues of the firm in which she is a partner. The further case of the

petitioners is that the deposits made by a person in a Bank cannot be deemed to be an entrustment of money with the Bank and that S.409 I.P.C.

has no application to a Bank if any employee of the Bank commits criminal breach of trust. The allegations made in the complaint and the statement

of the respondent recorded in support of her complaint do not make out any case against the petitioners, much less offences under Ss. 409 or

477-A, I.P.C.

4. The question that arises for consideration is whether the allegations contained in the complaint attract the provisions of Ss.409 and 477, I.P.C,

so as to exercise the power vested in this Court under S, 482. Crl. P.C.

5. Learned Counsel for petitioners urged the following points:

(1). The relationship between the respondent and petitioners is that of a debtor

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and a creditor.

(2) The complaint made by the respondent as well as the statement recorded from, the respondent in support of the complaint even if taken at their

face, value make out absolutely no case against the petitioners and that the complaint does not disclose the essential ingredients of offences

punishable under Ss. 409 and 477-A, I.P.C. and as such the matter is purely of a civil nature and the petitioners should not be harassed to appear

before court till all the witnesses are examined for the purpose of framing a charge, and then argue the case before the trial court, that the matters

are of civil nature and the Magistrate has no jurisdiction to proceed with the enquiry.

6. In support of his contention, he cited the following decisions

1. Attorney General of Canada and another v. Attorney General of the Province of Quebec and another AIR 1947 P.C. 44 : 60 L.W. 640 2.

Nadir Ali Barqa Zaidi and Others Vs. The State of U.P., . Keshariehand Jaisuklal v. Shillong Banking Corporation 1965 SCJ II 174.

Learned Counsel relied on Charley and Smart''s ''Leading cases in the Law of Banking, 1977 Edn. page 1, wherein some observations in the

judgment in Foley v. Hill(4) are extracted. This decision holds that the relationship between banker and customer is that of a debtor and creditor.

He also relied on Sheldon''s ''Practice of Law and Banking, 10th Edn. at page 186, which deals with the relationship of Banker and Customer. The

leading case on that point is the one reported in Attorney General of Canada and another v. Attorney General of the Province of Quebec and

another AIR 1947 P.C. 44 : 60 L.W. 640 wherein their Lordships of the Privy Council have observed, that money deposited with the Bank is not

trust money which the trustee must preserve and not use, but it is lent for use and the Banker is not a trustee but a debtor to the depositor and that

the difference between property and possession of deposits does not come in question, the only obligation under which a Bank lies is to repay a

like sum in the like currency. In Foley v, Hill 1848 2 HL Cases 18, Lord Cattenham, L.C. in the course of his judgment, observed as follows:

Money, when paid into Bank, ceases altogether to be the money of the principal; it is then the money of the Banker, who is bound to return an

equivalent by paying a similar sum to that deposited with him when he is asked

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for it. The money paid into; the bankers is money known by the

principal to be placed there, for the purpose of being under the control of the banker, it is, then the banker''s money he is know to deal with it as

his own, he makes what profit of it he can which profit he retains to himself, paying back only the principal according to be custom of bankers in

some places, or the principal and a small rule of interest, according to the custom of bankers in other places. The money placed in the custody of a

banker is, to all intents and purposes the money of the banker, to do with it as he pleases; he is guilty of no breach of trust in employing it; he is not

answerable to the principal if he puts it into jeopardy, if he engages in a hazardous speculation; he is not bound to keep it, or deal without, as the

property of his principal but he is of course answerable for the amount, because he has contracted, having received that money, to repay to the

principal, when demanded a sum equivalent to that paid into his hands.

That has been subject of discussion in various cases...That being established to be the relative situations of Banker and customer, the banker is not

an agent, or factor but he is a debtor.

Lord Brougham said

This trade of a banker is to receive money, and used as if it were his own, he becoming debtor to the person who has lent or deposited with him

the money to use as his own....

7. That was accepted as the correct law, laying down the principle with reference to the relationship between a banker and a customer, by our

Supreme Court in Kesharichand Jaisuklal v. Shillong Banking Corporation 1965 SCJ II 174. The banker when he receives money from a

customer does not hold the money in a fiduciary capacity. What really happens is that money is not deposited with, when moneys were received

by the Banker either under a savings account or current account or fixed deposit account, but lent to the Banker. All that the Banker

acknowledges to do is to discharge the debt by paying over an equal amount when called upon to pay or at the time of maturity. Applying the

above said prancing pie to the facts of this case, a perusal of the complaint made by the respondent as well as the statement recorded from the

respondent in support of the petition, even if taken at their face value, make, out absolutely no case against the petitioners and the complaint does

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not disclose the essential ingredients of the offences punishable under Ss.409 and 477-A, I.P.C., and as such the matter is purely of a civil nature.

My reasons are as follows.

8. The petitioners have not denied the receipt of the amount from the respondent, under the family welfare deposit accounts nor have they denied

the entries made by them in the accounts of the respondent.

9. The petitioners have informed the respondent''s bank, viz. Bank of Baroda in the following terms:

We wish to inform you that the holder of the Family Welfare Deposits Account Nos. 060070/12/84, 060089/11/84, 060055/48/83 for an

aggregate amount of Rs. 50000 is a partner in Messrs. Sathianarayana Chit Funds, which is an account bolder in our Bank owes us more than the

amounts covered by the receipts. As per advice of our Head Office, we are writing to inform you that we are exercising our lien over the receipts

and for adjustment of the dues as aforesaid, in this....

Therefore, it cannot be said that the accounts have been altered with a view to misappropriate the money belonging to the respondent and it is

being alleged that the Bank is withholding the money in exercise of the lien over the deposits made by respondent for adjusting the amounts due by

Messrs. Satyanarayana Chit Funds in which the respondent is a partner. Hence, the question that arises for consideration on the facts presented is

whether the petitioner''s Bank has got a lien over the deposits made by the respondent so as to withhold the payment due to the respondent, in

connection with the dues of the firm, in which the respondent is a partner. This question as posed involves determination of a dispute purely of a

civil nature.

10. The following authorities cited by the Learned Counsel for the respondent will not apply to the facts of this case--(i) Dalmia v. Delhi

Administration 1962 2 Cri.L.J.806 (ii) Shivnarayan Laxminarayan Joshi and Others Vs. State of Maharashtra, (iii) Firm Jaikishen Dass Jinda Ram

and Others Vs. Central Bank of India, ; (iv) Brahmayya and Co v. Thangavelu AIR 1956 Mad. 570; (v) Kapur v. State of Punjab 1961 1 S.C.J

59; (vi) Madhu Limaye Vs. The State of Maharashtra, .

11. In the circumstances, I find the process issued by the J.F.C.M. No. 1 Vellore, North Arcot District to the petitioners accused in C.C. 420 of

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1984 is liable to be quashed. In the result the petition is allowed.

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