

(2009) 02 DEL CK 0071

In the Delhi High Court

Case No : Criminal M.C. 3678 of 2007 and Criminal M.A. No. 13448/07

Parminder Jeet Singh and Another

APPELLANT

Vs

Kuljit Singh

RESPONDENT

Date of Decision : 06-02-2009

Acts Referred:

Citation : (2009) 157 DLT 335 : (2010) 6 RCR(Criminal) 157

Hon'ble Judges : Aruna Suresh, J

Bench : Single Bench

Advocate : Arvind Kumar, Neelam Rathore and Party-in-Person, for the Appellant; Manish Tiwari and Party-in-Person, for the Respondent

Final Decision : Allowed

Judgement

Aruna Suresh, J.—In December 2000 Gurbachan Singh, since deceased who happened to be the husband of petitioner No. 2 and father of petitioner No. 1 made a request to the respondent for a friendly loan of Rs. 4 lacs as he was going through some bad phase and needed some money for his business. Respondent advanced loan of Rs. 4 lacs in two installments in December, 2000. Gurbachan Singh issued three post- dated cheques bearing No. 685442 dated 5.1.2004 for Rs. 1,00,000/-, 685443 dated 5.1.2004 for Rs. 1,00,000/- and 685444 dated 15.1.2004 for Rs. 2,00,000/- drawn on Federal Bank Limited, Civil Line, Agra, in favour of respondent as an assurance for repayment of the loan. Gurbachan Singh expired on 15.1.2001. After his death respondent approached the petitioners in January, 2004 and asked them to repay the friendly loan of Rs. 4 lacs. The cheques were not presented for encashment on the request of the petitioners as they were not having sufficient funds. Thereafter respondent continued to request the petitioners to repay the friendly loan amount. But the petitioners did not repay the loan amount taken by Gurbachan Singh and also allegedly by petitioner No. 2. A legal notice dated 26.12.2006 was served upon the petitioners and a reminder was sent on 8.2.2007. Since petitioners failed to pay the loan amount, respondent filed a complaint under Sections 406/420

Indian Penal Code (hereinafter referred to as IPC) against the petitioners.

2. Learned trial court vide its order dated 16.10.2007 took cognizance of offence u/s 406 IPC and summoned both the petitioners. Aggrieved by the said order of the trial court, present petition u/s 482 Cr.P.C. has been filed seeking quashing of the complaint as well as the impugned summoning order of the MM.

3. Mr. Arvind Kumar, learned Counsel for the petitioners, has submitted that cause of action for filing the complaint arose in December 2000 whereas the complaint was filed in June 2007 and was hopelessly barred by period of limitation at the time when it was presented and also that complaint does not disclose any cause of action, is frivolous, vexatious and oppressive. It is further argued that the loan, if any, advanced to Gurbachan Singh ensued civil liability and no offence within the meaning of Section 406 IPC is shown to have been committed by the petitioners. It is also argued by the learned Counsel for the petitioners that no particulars of the alleged cash payment of Rs. 4 lacs in two installments have been provided in the complaint and that the respondent allegedly secured the loan amount by taking alleged post-dated cheques against the alleged loan in no manner attracts the provisions of Section 406 IPC. Since there was no breach of trust, no offence u/s 406 IPC is made out.

4. Jurisdiction of this Court is also disputed by the petitioners as according to them no part of cause of action arose in Delhi. The cheques were issued at Agra and petitioners were resident of Agra at the time of issuance of the cheques.

5. It is further submitted by the learned Counsel for the petitioners that respondent who happened to be a close relative of the petitioners managed to lay his hands on the cheque book of deceased Gurbachan Singh after his death and misused the cheques by forging the signatures of Gurbachan Singh with ulterior motives to defraud and cheat the petitioners. The complaint having been filed malafidely, learned MM failed to appreciate the evidence and the facts pleaded in the complaint and acted mechanically while passing the impugned order. Therefore, neither the complaint nor the summoning order dated 16.10.2007 are sustainable and are liable to be quashed.

6. Mr. Manish Tiwari, learned Counsel for the respondent, has submitted that petitioner No. 2 along with Gurbachan Singh had approached the respondent for the said loan of Rs. 4 lacs and she had also assured that the loan amount would be paid after some time. She became dishonest after the death of Gurbachan Singh and with malafide intentions had been putting off the respondent on one pretext or the other with a view not to repay the loan amount along with interest accrued thereon. It is urged that under the circumstances the petition is without any merits and should be dismissed. Reliance is placed on the following judgments:

1. Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, .

2. State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others, .
3. Bhola Nath Arora and Another Vs. The State, .
4. State of Bihar Vs. Murad Ali Khan and Others, .
5. Rajesh Bajaj v. State NCT of Delhi and Ors. 1999 1 AD (Cri.) S.C. 545.
6. Krishna Devi Sood @ Purni Devi v. State NCT of Delhi and Ors. 2007 (3) JCC 2337.

7. The admitted facts of this case are:

a. Parties to the petition are closely related. Petitioner No. 2 happened to be the sister-in-law (Jethani) of the sister of the respondent and petitioner No. 1 happened to be son of petitioner No. 2.

b. The amount of Rs. 4 lacs was purportedly advanced as a friendly loan in two installments in December, 2000.

c. As an assurance for repayment of this loan amount three post-dated cheques bearing No. 685442 dated 5.1.2004 for Rs. 1,00,000/-, 685443 dated 5.1.2004 for Rs. 1,00,000/- and 685444 dated 15.1.2004 for Rs. 2,00,000/- drawn on Federal Bank Limited, Civil Line, Agra, were purportedly issued by Gurbachan Singh in favour of the respondent.

d. Gurbachan Singh died on 15.1.2001.

e. Complainant approached the petitioners in January 2004 and sought repayment of the advanced friendly loan.

f. The legal notice of demand dated 26.12.2004 and reminder dated 8.2.2007 were sent to the petitioners and the complaint was filed on 5.6.2007.

8. In view of the admitted facts it is obvious that at the time when Gurbachan Singh had taken friendly loan he had no intention not to return back the loan amount. It is surprising that the cheques allegedly issued by Gurbachan Singh in favour of respondent were dated 5.1.2004 i.e. after three years of the raising of the alleged loan from the respondent. Advanced cheques issued by Gurbachan Singh were never presented by the respondent for encashment within the period of their validity for the reasons best known to the respondent. After the death of Gurbachan Singh his account must have been closed or transferred in the name of the petitioners. Undisputedly the claim of the respondent for Rs. 4 lacs with interest @12% per annum had become barred by period of limitation for a civil remedy when first oral demand was made in January 2004

9. Loan was paid to Gurbachan Singh and not to the petitioners. Loan must have been utilised by Gurbachan Singh during his life time as he needed the money for his commercial purposes i.e. business. Since, as per the allegations in the complaint respondent had not paid any amount as part of the loan to the petitioners, they cannot be said to have malafide intentions not to return back

the loan amount to the respondent. Respondent had never entrusted the petitioners with any money much less Rs. 4 lacs and therefore to involve them for an offence of criminal breach of trust u/s 406 IPC is neither just, proper nor legal.

10. To make out an offence u/s 406 IPC following ingredients of criminal breach of trust are required to be made out in the complaint:

- a. A person should be entrusted with a property or with dominion over a property.
- b. The said person dishonestly uses or disposes of that property.
- c. Such user or disposal of the property was in violation of any direction of law prescribing the manner in which the such trust is to be discharged or of any legal contract which such person had made touching the discharge of such trust.
- d. Such person is also liable for criminal breach of trust if he wilfully suffers any other person so to do.

11. None of these ingredients have been made out from the averments contained in the complaint. As already stated above, prima facie there is no evidence to indicate that complainant had entrusted the petitioners with Rs. 4 lacs. In fact the said money was allegedly advanced as friendly loan to Gurbachan Singh and not to the petitioners. Gurbachan Singh had issued three post-dated cheques which were surprisingly accepted by the respondent. No prudent man would accept post-dated cheques beyond three years knowing it well that any claim after three years would become barred by period of limitation. There is no evidence to indicate that the petitioners had misappropriated or done away with the money allegedly advanced to Gurbachan Singh; their predecessor in interest. The averments in the complaint clearly indicate that it was a transaction of loan and on failure of Gurbachan Singh to repay the same or the petitioners as the case may be, the dispute if any was essentially of civil in nature. No criminality is involved nor any such malafide intention to commit breach of trust is reflected from the facts contained in the complaint and the evidence of the complainant placed on record.

12. Under these circumstances, the trial court went wrong when it took cognizance of the offence u/s 406 IPC and summoned the petitioners vide impugned order dated 16.10.2007. Summoning of a person is a serious matter and the Magistrate therefore should have applied his mind after considering the evidence available on the record and the contents of the complaint in a reasonable manner instead of proceeding with the complaint and summoning the petitioners in a mechanical manner. His order should have indicated that before taking cognizance of the offence and summoning the accused persons he had weighed the material available on record and had applied his mind for coming to a conclusion that prima facie an offence was made out against the petitioners.

13. Under these circumstances, none of the cases referred to and relied upon by the counsel for the respondent, as above, have any bearing to the facts and

circumstances of this case.

14. Hence petition is allowed. Complaint No. 156/2001 and summoning order dated 16.10.2007 are hereby quashed.

Attested copy of the order be sent to the trial court.