
(2015) 06 KL CK 0100
In the High Court Of Kerala
Case No : Criminal Appeal No. 1179 of 2003

P.M. Nazar

APPELLANT

Vs

C.B.I.

RESPONDENT

Date of Decision : 19-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 386(b)(i)
Penal Code, 1860 (IPC) — Section 120B, 420, 477A, 5(1)(d), 5(2)

Citation : (2015) 06 KL CK 0100

Hon'ble Judges : P. Ubaid, J

Bench : Single Bench

Advocate : B. Raman Pillai, George Philip, R. Anil, Raju Radhakrishnan and Delvin Jacob Mathews, for the Appellant; S. Sreekumar, SC and P. Chandrasekhara Pillai, SC, Advocates for the Respondent

Final Decision : Allowed

Judgement

P. Ubaid, J.—The appellant herein is the 2nd accused in C.C. No. 5/1997 of the Special Judge,(SPE/CBI)-I, Ernakulam. The 1st accused in this case was the Assistant Manager of the Canannore branch of the Syndicate Bank, in 1981-82. The appellant herein was only a customer of the said bank, having a Savings Bank account. When the Deputy Inspector in the inspection Wing of the Mysore Divisional Office of the Syndicate Bank made an inspection in the Canannore branch of the Syndicate Bank in 1990, he detected some instances of appropriation of amounts by the then Assistant Manager, by crediting some amounts to the Saving Bank account of the appellant herein under false and fabricated vouchers. Six such instances were detected by the Inspection Wing. Some such instances of misappropriation through the Savings Bank account of one Ashok Prabhu and one Mohammed Farooq were also detected by the Inspection Wing. On the basis of the report of the Deputy Inspector, the Kochi unit of the Central Bureau of Investigation (CBI) registered a crime against the Assistant Manager, Abu Muhammed, and the appellant herein as accused Nos. 1 and 2, and also against the said Mohammed Farooq, as the 3rd accused, as

crime No. RC19(A)/91 under Section 120B read with 420 and 477A IPC, and also under Section 5(2) read with 5(1)(d) of the Prevention of Corruption Act, 1947 (for short, "the P.C. Act"). After investigation, the CBI submitted final report against the 1st and 2nd accused in the crime, without stating anything about the 3rd accused in the crime and without explaining what happened to the proceeding against the 3rd accused. Pending the prosecution the 1st accused (Abu Muhammed) absconded, and thus obstructed the trial. The 2nd accused (appellant herein) faced trial and he pleaded not guilty to the charge framed against him by the learned trial Judge under Section 120B and 420 IPC read with Section 5(1)(d) and 5(2) of the P.C. Act. Prosecution was brought against the appellant herein, and a charge was also framed against him by the trial court, on the allegation that the 1st accused (Abu Muhammed) appropriated amounts on different occasions through the Savings Bank Account of the 2nd accused with his knowledge and consent, as part of a conspiracy to cheat the bank, and thus the 2nd accused, in all ways possible, helped the 1st accused, or facilitated the commission of offence by the 1st accused.

2. The prosecution examined eight witnesses in the trial court, and also marked Exts. P1 to P28 documents. When examined under Section 313 Cr.P.C., the appellant herein (2nd accused) took a definite defence, that he was not in fact aware of any dishonest intention or malpractice on the part of the 1st accused (Manager), that he had sold foreign goods on many occasions to the Bank Manager(1st accused) as a foreign goods vendor, he used to sell such goods in houses and offices, the Manager would not make payment of the price of goods directly, but would make payment through his bank account, he was not in any manner a party to the mischief done by the Manager, and he was not aware of any such malicious intention or dishonest intention on the part of the Manager. Thus, the 2nd accused practically admitted that he had received amounts through his bank account, credited by the 1st accused on different occasions, and he withdrew it with the belief and knowledge that the amount was credited by the 1st accused as the price of the goods purchased from him. The appellant also examined two witnesses on his side and marked Exts. D1 to D25 documents in defence.

3. On an appreciation of the evidence adduced by the prosecution and the defence, the trial court found six instances of misappropriation made by the Assistant Bank Manager through the Savings Bank account of the appellant herein (2nd accused) by false credit under fabricated credit bills, and the trial court also found that the Assistant Bank Manager could not have appropriated the amounts thus without the knowledge and connivance of the 2nd accused. The trial court found that the 2nd accused was a party, as conspirator, to the illicit misappropriation of amounts made by the 1st accused, and thus found him guilty under Section 120B IPC and 420 IPC, read with Section 5(1)(d) and 5(2) of the P.C. Act. On conviction he was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 25,000/- under Section 120B IPC, and to undergo another period of rigorous imprisonment for three

years under Section 120B IPC read with Sections 5(1)(d) and 5(2) IPC. No separate sentence was imposed under Section 420 IPC. Aggrieved by the said judgment of conviction dated 28.06.2003, the 2nd accused in the court below has come up in appeal.

4. The points for decision in this appeal are;

"i) Whether the prosecution has proved different instances of misappropriation of amount by the Bank Manager through the Savings Bank account of the appellant herein by making credits under bogus or fabricated credit bills.

ii) Whether the appellant herein was in any manner a party to the acts of offence committed by the Bank Manager, as a conspirator or otherwise, or whether the Bank Manager misappropriated amounts through the Savings Bank account of the appellant herein with his knowledge and consent, or with his connivance.

iii) Whether the sentence imposed by the trial court requires interference in appeal, in case the conviction is confirmed."

5. As regards the definite allegation of misappropriation made by the 1st accused, nothing was argued on facts by the learned counsel for the appellant. He submitted that even during trial the 2nd accused (appellant) had maintained a definite stand that he had received amount through his Savings Bank account as credited by the Manager, and that he had withdrawn the amount, but the appellant was not in any manner a party to any dishonest intention or any dishonest act or misappropriation by the Manager. His definite case is that as a foreign goods trader, he used to sell such goods in houses and offices, he used to visit the Canannore branch of Syndicate Bank also for sale of such goods, and the staff of the Bank including the 1st accused used to purchase goods from him. The Assistant Manager, Abu Muhammed, was his customer and he had purchased such goods on many occasions. The Manager would not make payment directly, but would make credit to his bank account. As and when money is credited in the account, the Manager would inform him, and he would withdraw the amount. Thus he withdrew the amount on different occasions with the belief that the amount which was credited to his account by the Manager was the price of the goods purchased by the Manager. He had no reason or occasion to suspect any mischief or dishonest intention or dishonest act on the part of the Manager. Thus the appellant pleaded absolute innocence throughout the whole trial. It is true that the Assistant Manager has not so far faced trial. However, all the allegations of misappropriation against the Manager will have to be gone into, because without a finding on these aspects the case against the appellant cannot be decided, and his complicity as conspirator or otherwise cannot be found.

6. PW2, the then Assistant Manager in 1990, has given definite evidence proving different instances of crediting of amount by the 1st accused to the Savings Bank account of the 2nd accused. She also identified the signature of the 1st accused, Abu Mohammed, in the Exts. P1, P7, P12, P13, P16, P19 and P22 credit slips under which the said credits were made by the 1st accused. She also proved that

all these credit slips are in fact bogus slips made in the name of the North Malabar Gramin Bank (hereinafter referred to as "the NMGB). PW3, the then Branch Manager of the Peringathoor branch of the NMGB, gave definite evidence that the credit bills under which the 1st accused credited amounts in the account of the 2nd accused in the name of the NMGB are bogus and fabricated credit bills. Exts. P3, P8, P14, P17, P20 and P23 are the withdrawal cheques. There is no dispute regarding the fact that the amounts credited by the 1st accused were withdrawn by the 2nd accused from the bank.

7. PW2 and PW3 have proved the different instances of credit made by the 1st accused in the Savings Bank account of the appellant herein, and they have also well proved that all such credits were made by bogus or fabricated credit bills in the name of the Peringathoor branch of the NMGB. The six instances of such misappropriation proved by the prosecution are;

"a) An amount of Rs. 4,000/- was credited to the account of the appellant herein by the 1st accused on 19.12.81 by using Ext. P1 false credit voucher, and from out of this amount, Rs. 3,500/- was withdrawn by the 2nd accused under Ext. P3 cheque on the same day. Entries regarding these transactions are there in the Ext. P2 ledger sheet in respect of the Savings Bank account No. 19658 in the name of the 2nd accused. This transaction is proved by PW2 and PW3, and also PW1, the Deputy Inspector, who made inspection in the branch.

b) An amount of Rs. 5,000/- was credited to the account of the 2nd accused by the Manager on 05.03.1982 by using Ext. P7 bogus credit slip, and this amount was withdrawn by the 2nd accused by Ext. P8 cheque leaf. These entries are also there in the Ext. P2 ledger account.

c) On 26.03.1982 an amount of Rs. 2,950/- was credited to the Savings Bank account of the appellant by the Manager by Ext. P2 bogus credit voucher, and on 30.06.1982 an amount of Rs. 3,000/- was withdrawn by the 2nd accused by Ext. P14 cheque. These entries are also there in the ledger.

d) On 03.05.1982 an amount of Rs. 5,000/- was credited by the 1st accused to the Savings Bank account of the 2nd accused by Ext. P16 bogus credit voucher, and this amount was withdrawn by the 2nd accused by Ext. P17 cheque. The entries regarding this credit and withdrawal are also there in the ledger proved by the manager.

e) On 29.06.1982 an amount of Rs. 3,000/- was credited to the account of the 2nd accused by the 1st accused by Ext. P19 false credit vouchers in the name of the NMGB, Mattool branch, and this amount was withdrawn by the 2nd accused by Ext. P20 cheque on 29.06.1982 itself. Entries regarding this transaction are also there in the ledger proved by the Bank Manager, and the Deputy Inspector.

f) The sixth instance of false credit and misappropriation proved by the prosecution was made on 28.01.1982. An amount of Rs. 1,500/- was credited to the account of the 2nd accused by Ext. P22 false credit voucher in the name of

the NMGB, and this amount was withdrawn by the 2nd accused on 30.01.1982 by Ext. P23 cheque. Entries regarding this transaction in the ledger are proved by the Bank Manager and the Deputy Inspector."

8. The defence could not discredit the evidence of PW1 to PW4 regarding the different instances of misappropriation by the Manager by making false credit to the account of the 2nd accused. Much need not be discussed on this aspect, because the 2nd accused has no dispute on facts regarding these transactions made by the Manager, or regarding the different instances of credit of amount made by the 1st accused to his bank account. During trial, and also when examined under Section 313 Cr.P.C., the appellant maintained a definite stand, that he had withdrawn these amounts credited by the 1st accused, and he did so with the belief that these amounts were credited by the 1st accused to his account as the value of the goods purchased by him on different occasions. The evidence given by the material witnesses regarding the instances of false credit made by the Manager to the account of the 2nd accused stands not effectively challenged or discredited. Accordingly, I find on point No. 1 that the prosecution has proved different instances where amounts were falsely and illicitly credited to the account of the appellant herein by the then manager in office.

9. Now, the very material point for decision in this appeal as regards the appellant is whether he was in any manner a party to the misappropriation made by the Manager, or whether such misappropriation was made by the Manager with the knowledge and connivance of the appellant, or as part of the conspiracy between them. This appellant can be found guilty and punished, if there is evidence to prove that he was also a party to the false credits and false misappropriation made by the Bank Manager. If there is no material to connect the appellant with the transaction of misappropriation made by the Manager, the appellant will have to be acquitted. The appellant admits that he had received some amount through his bank account, and the amount credited by the Bank Manager to his account was promptly withdrawn by him. He has no dispute or contest on these aspects, and he admitted everything subject to the contest in defence that he withdrew the amount as the price of the goods purchased from him by the Bank Manager.

10. The next question is whether the appellant herein can be held liable, or punished for the misappropriation amounting to misconduct allegedly done by the 1st accused. Just because the 1st accused wrongly or dishonestly credited some amount to the Savings Bank account of the appellant herein, the appellant cannot be found guilty by the court. The appellant is being prosecuted on the allegation that the 1st accused committed acts of misconduct amounting to misappropriation as part of a conspiracy, or that the appellant herein helped the 1st accused or facilitated the appropriation of amount through his Savings Bank account as part of a conspiracy. In short, the very material question is whether the appellant herein was in any manner a party to the acts of misappropriation alleged against the 1st accused, who is still absconding. To a very specific

question asked by me, whether the prosecution has a case that the appellant herein had given the withdrawn amount to the 1st accused as part of any arrangement or conspiracy, the learned Standing Counsel for the CBI cited a decision of the Honourable Supreme Court in Vinayak Narayan Deosthali Vs. C.B.I., (2015) 1 CCR 130 : (2015) 1 RCR(Criminal) 372 , wherein the Honourable Supreme Court held that when unauthorised transfer of funds through the bank account by the accused is established, there is no need to show that the accused had derived any benefit from such dishonest arrangements.

11. The 1st accused could have appropriated money in three ways through the Savings Bank Account of the appellant herein. One mode of operation can be with his knowledge and connivance as part of a conspiracy, in which case the account holder would withdraw the amount and give it to the 1st accused. The second mode is by discharging some debts due to the appellant by dishonestly crediting some amounts to his bank account with the knowledge of the appellant. The third way is by crediting some amount to the account of the appellant in discharge of some liability, making the appellant believe that it was an honest transaction. In the first mode, the account holder will be a party to the transaction, having full knowledge of the vicious and dishonest acts of the Manager. The account holder will withdraw the account and pay it to the 1st accused after receiving some benefit or commission. In the second mode, the account holder will receive the amount in discharge of debt due to him, but he will be aware of the vicious and dishonest ways of the debtor. He will, accordingly, withdraw the amount and utilise it. In the third mode of operation, where the debt is discharged by crediting the amount to the account of the customer by making him believe that it is an honest transaction in discharge of debt, the account holder cannot be held liable. In the other two modes of appropriation, the account holder will be a party to the transaction as conspirator or otherwise, and the 1st accused can appropriate the amount or withdraw the amount only with the help of the account holder. Here, in this case, the defence pleaded by the accused is that he was not in fact aware of the dishonest ways of the 1st accused, and that he withdrew the amount on the belief that the amount was legally credited to his bank account in discharge of the price of the foreign goods purchased by the 1st accused.

12. The definite defence pleaded by the appellant stands well proved by the evidence of the defence witnesses. DW2 is an Asst. Bank Manager. His evidence is that the 1st accused was his colleague in the Kannur Branch of the Syndicate Bank, and that the appellant herein used to come there for the sale of foreign goods. He says that the 1st accused and the others used to purchase such foreign goods, and on no occasion the 1st accused had made instant payment. He is definite that he had on many occasions seen the 1st accused purchasing goods from the appellant without making payment on the spot. I find no reason or ground to suspect the evidence given by DW2. The appellant herein is definite that as a foreign goods trader he used to sell such goods in different offices and houses, and that on many occasions he had sold such goods to the 1st accused.

He has also stated, on examination under Section 313 Cr.P.C., that the 1st accused would not make payment on the spot, and instead he would tell him that he would credit the amount to his bank account.

13. On an appreciation of evidence given by DW2, who was a colleague of the 1st accused, and also on an examination of the statements given by the appellant under Section 313 Cr.P.C., I find that the defence urged by the appellant is in fact probable. Even if it is not fully acceptable, the next question is whether the appellant herein can be found liable for the criminal acts done by the 1st accused, or whether the prosecution has a case that the 1st accused appropriated the amount through the bank account of the appellant herein with his knowledge and connivance as part of a conspiracy.

14. The decision of the Honourable Supreme Court in Vinayak's case (cited supra) can well be applied when the 1st accused faces trial. The said decision cannot be applied against the appellant herein because, whatever be the evidence proving misappropriation of amount by the 1st accused through the bank of the appellant herein, the court cannot enter a finding against the appellant in the absence of any evidence or material to show that the appellant herein had withdrawn the amount and paid it to the 1st accused as part of some arrangement or conspiracy. Just because the 1st accused wrongly or dishonestly credited some amount to the Savings Bank account of the appellant herein by making him believe that it was in discharge of the debt due from him, the court cannot find the appellant herein guilty for the acts of misconduct committed by the 1st accused. The decision cited by the learned Standing Counsel for the CBI will definitely have application against the first accused, because acts of misappropriation of amounts under bogus or fabricated vouchers were allegedly done by the 1st accused, and once the said acts of misappropriation are proved, the court need not go into the other question whether the 1st accused was in any manner benefited, or whether he had derived benefit from his vicious and dishonest acts of misappropriation. In the absence of any evidence or material proving the complicity of the appellant herein, the appellant cannot be found guilty for the acts of misappropriation amounting to misconduct allegedly committed by the 1st accused.

15. In fact the cross examination of the material witnesses examined by the prosecution will also probabilise that the appellant herein was a petty trader of foreign goods, and that he used to sell such goods to the bank employees including the 1st accused. DW2 is definite that on many occasions he had seen the 1st accused purchasing such goods from the appellant without making payment on the spot. This evidence, and also the statement given by the prosecution witnesses in cross examination will compel the court to accept the probability of the defence pleaded by the appellant, that the amount was in fact credited to his bank account by the 1st accused in discharge of the price of the foreign goods purchased by him. I find that the defence case stands probabilised. To convict a person, there must be clear and satisfactory evidence proving his

guilt or complicity beyond reasonable doubt. If the prosecution case is in any manner tainted with doubts, and such doubts are created by the accused by presenting some materials in connection with the transactions alleged by the prosecution, he must definitely get the benefit of such doubts.

In the result, this appeal is allowed. The appellant herein is found not guilty of the offence under Section 5(1)(d) read with Section 5(2) of the P.C. Act, and Section 120B IPC, and the appellant is accordingly acquitted of the said offences in appeal under Section 386(b)(i) Cr.P.C. The conviction against the appellant herein in C.C. No. 5/97 of the court below will stand set aside. The bail bond, if any, executed by the appellant will stand discharged.