

(1982) 03 DEL CK 0024

In the Delhi High Court

Case No : Criminal Revn. No. 346 of 1981 (Against order of G.S. Dakha, Addl. Sessions J. Delhi, D/- 2-9-1981)

R.P. Sablok

APPELLANT

Vs

Smt. Kaushalya Devi

RESPONDENT

Date of Decision : 12-03-1982

Acts Referred:

Citation : (1982) 21 DLT 364 : (1982) 3 DRJ 225

Hon'ble Judges : Charanjit Talwar, J

Bench : Single Bench

Judgement

1. This petition is directed against the order of the Additional Sessions Judge passed on 2nd September, 1981, whereby in exercise of revisional jurisdiction he set aside the order of dismissal of the complaint and held that the accused-petitioner herein, R. P. Sablok was liable to be summoned for an offence under S. 408 of the Penal Code. The Additional Sessions Judge was of the view that prima facie petitioner herein who is a Manager of Kirti Nagar Branch of Syndicate Bank had misappropriated the amount of Rs. 24000/- which had been deposited by respondent No. 1 in a fixed deposit in the said Bank.

2. The finding of the Additional Sessions Judge being assailed is "it is proved on the record that the petitioner had deposited the money for a fixed time and it was the duty of the respondent to pay back that amount after the expiry of the period of the fixed deposit. It is also proved that the report of the police was obtained by the learned Magistrate which has corroborated the statement of the complainant which is to the effect that amount has not been paid to the complainant/petitioner so far. I find that the trial Court has not taken into consideration the fact that the respondent cannot keep this amount with him after the expiry of the period of one year. If it has been kept so, then he has committed an offence. I find that prima facie a case under S. 408 Indian Penal Code is made out against the respondent."

3. It appears to me that the learned Additional Sessions Judge, in view of that

finding, in fact wanted the petitioner to be summoned under S. 409 of the Indian Penal Code. It is not the case of the complainant that the Manager of the Bank was employed as her clerk or a servant and in that capacity had been entrusted with any property. Her complaint was that R. P. Sablok had dominion over the amount of Rs. 24,000/- in his capacity as a banker and had committed breach of trust in respect of that amount. The reference to S. 408 Penal Code appears to be a typographical error. I will proceed on the basis that the petitioner has been directed to be summoned under S. 409 of the Penal Code and not under S. 408 of the Code.

4. The allegations of Smt. Kaushalya Devi, the complainant, were that she had invested a sum of Rs. 24,000/- in the said branch of Syndicate Bank, on 10th June, 1978, vide fixed deposit receipt No. 961. In paragraph 5 of the complaint, it was alleged that "the complainant had entrusted the above said amount for a specific period of one year and after the expiry of that period that is on the maturity of the fixed deposit receipt 21-5-1979, the accused/respondent was under a positive obligation to return the entrusted amount to the complainant along with the interest as permissible by the rules and directions of the Reserve Bank of India".

5. In her testimony in Court her case was that she had herself gone to Kirti Nagar Branch of the Syndicate Bank on 10th June, 1978, for depositing the amount. On the representation of the Manager R. P. Sablok that she would get good interest if she deposited the amount in a fixed deposit she did so and a receipt bearing No. 961 in her name was issued. The amount was deposited for one year. According to her, after expiry of the said period she went to the bank to get the amount; the Manager got her to sign on the revenue stamp at the back of the fixed deposit receipt which she presented for encashment and also made her to sign some other documents, but thereafter refused to pay the money due on the ground that this receipt had been pledged to the bank to wards a loan account of her son-in-law. Her other son-in-law and one Mr. Kohli a family friend who had accompanied her, protested to the Manager but he persisted in not paying the amount. The police was sent for by her relatives and on their intervention the signature at the back of the said receipt were scored out. According to her, the documents which she had signed were torn by the Manager. Neither the amount of the fixed deposit receipt nor the interest was paid to her. The said receipt, however, was retained by the Manager. Her complaint was that if she had known that she would not get back the amount along with interest, she would not have entrusted the sum of Rs. 24,000/- to the Manager at the first instance. She stated that the act of the Manager was dishonest and that he had misappropriated the amount. The letter sent on her behalf demanding the said amount and putting the bank on notice that in default legal action was contemplated, was proved by her as Exhibit PW 1/A. The reply sent by the Bank to that legal notice was also proved by her as Exhibit PW 1/B.

6. The only other witness produced by her in the enquiry u/s 202 of the Code of

Criminal P.C. is Mr. S. S. Goel, Assistant Manager, Syndicate Bank, Kirti Nagar Branch, Delhi. This witness has categorically stated that the fixed deposit receipt in question which was in the name of Smt. Kaushlya Devi for the sum or Rs. 24,000/- was one of the receipts renewed out of the old four fixed deposit receipts standing in the name of a partnership, M/s. Viking Dyeing and Woollen Mills. That partnership firm was enjoying credit facilities on security of the said four receipts. In his own words, "at the request of I. R. Chopra partner of the said firm those four fixed deposit receipts were converted into two fixed deposit receipts. Those two fixed deposit receipts were in the name of I. R. Chopra for a sum of Rs. 20000/- and the second fixed deposit receipt is in the name of Kaushlya Devi for a sum of Rs. 24,000/-". This witness further clarified that the earlier fixed deposit receipts had been pledged by the partnership with the bank. However, there was no writing available with the bank that the renewed fixed deposit receipt in question had also been pledged.

7. I may note here that the details of earlier fixed deposit receipts have been given in Ex. PW 1/B, the letter written on behalf of the bank in reply to the legal notice. Those fixed deposit receipts totalling to Rs. 47,900/- were expiring in early 1978 as per the particulars given therein. The particulars are :-

----- "FDR No. &					
Date	Name	Amount	Date	of	Maturity
----- (i)					
494050/571	Mr. Satish Kumar	Rs. 12950/-	28-2-1978	D/-	28-2-1977 (ii)
494048/607	do	Rs. 11000/-	18-4-1978	D/-	18-4-1977 (iii)
494051/571	Mr. Inder Raj Chopra	Rs. 12950/-	28-2-1978	D/-	28-2-1977 (iv)
494049/608	do	Rs. 11000/-	18-4-1978"	D/-	18-4-1977
----- 8.					

The averment of PW 2 S. S. Goela that M/s. Viking Dyeing Woollen Mills had been granted over-draft facilities is borne out from Exhibit PW 1/B.

9. The learned Magistrate appears to be of the view that Shri Goela's testimony demolishes the case of the complainant. His assessment is that even prima facie it cannot be held that there was any dishonest intention on the part of the Manager of the Bank in not repaying the amount. He found that from the fact that the amount of Rupees 24,000/- had been retained by the Bank and appropriated towards the loan account it could not be established that it had been misappropriated. Accordingly, the learned Magistrate dismissed the complaint filed under S. 409 read with Sections 406, 420, 468 and 511 of the Penal Code. As noticed above, the learned Additional Sessions Judge while allowing the revision petition of Smt. Kaushalya Devi held that the petitioner herein was liable to be summoned u/s 409 of the Penal Code only.

10. From the evidence led by the complainant the following facts emerge :

(i) that it was not the complainant who had herself deposited the amount of Rs. 24,000/- but the fixed deposit receipt in her name for Rs. 24,000/- was issued

on the instructions of an erstwhile partner of M/s. Viking Dyeing Woollen Mills;

(ii) that the said receipt was renewed on the expiry of four fixed deposit receipts which were in the name of partnership firms M/s. Viking Dyeing Woollen Mills;

(iii) that the said four receipts had been pledged with the bank as a security;

(iv) that over-draft facility was granted by the bank to the partnership firm;

(v) that on the expiry of the fixed deposit receipt in question, the amount of Rs. 24,000/- has not been paid to the complainant and the amount appears to have been appropriated towards the loan account of the partnership firm M/s. Viking Dyeing Woollen Mills;

(vi) that the complainant had been made to sign on the revenue stamp at the back of the said receipt is taken of having received the amount of Rupees 24,000/-.

11. In view of the above facts, can it be said that refusal of the Manager to repay the sum of Rs. 24,000/- and retaining it with the bank amounted to an offence of misappropriation as defined u/s 405 of the Penal Code ? The learned Additional Sessions Judge has found it to be so. I have quoted earlier his reasons. In my view the impugned judgment cannot be sustained.

12. It is well-settled that the legal relationship of the bank with its customer is of a creditor and a debtor. The amount deposited is not a trust with the bank; money paid to the bank ceases to be the money of the depositor; it becomes the money of the bank with the only stipulation that the sum equal deposited with the bank is to be paid when asked for or in the case of fixed deposit receipt when it becomes due in accordance with the terms agreed upon between the parties and the depositor. (See Shanti Prasad Jain Vs. The Director of Enforcement, . The Bank, Therefore, cannot be termed as a trustee. In Santosh Kumar and Others Vs. The King, , on the ratio that the legal relationship between the depositor and a bank was simply a relationship of creditor and debtor, the cognizance taken by a Magistrate against Managing Agent of a Bank on a complaint of a depositor that the bank had used the money deposited by him in his current account for the purpose of other business was held to be bad in law. The criminal proceedings were quashed. Applying the law laid down by the Supreme Court, it cannot be held in the present case that the petitioner was a trustee of the amount deposited on behalf of the complainant. The refusal to pay back that amount, for the reason stated by Mr. S. S. Goela (PW 2) and brought out in Exhibit PW 1/B, does not constitute an offence u/s 409 of the Penal Code. It is not the case of the complainant that the Manager withdrew the amount of the said receipt and misappropriated it for himself. Accordingly, the petitioner is not liable to be summoned for that offence. The submission of the respondent that at this stage it cannot be prima facie held that the Manager had not misappropriated the amount is clearly misplaced.

13. In view of the legal position, it cannot be held that any offence has been

made out. Accordingly, I allow this petition and set aside the impugned order of the learned Additional Sessions Judge.

14. Before, however, parting with this case I may note that while going through the record of the Additional Sessions Judge's Court I have found that in the revision petition no notice was issued to the petitioner herein, R. P. Sablok. The order sheet shows that the impugned order was passed after hearing only the complainant's counsel.

15. Mr. Tiger Singh, learned counsel for respondent Smt. Kaushlya Devi submitted at the bar that as the revision petition was directed against the order of dismissal of the complaint, no notice was sent to the petitioner herein who had been named as an accused. According to him in such like revision petitions the Sessions Courts do not issue notice and only the counsel for the petitioner or the Public Prosecutor is heard while deciding them.

16. This practice of not sending notice of the revision petition to the person who is likely to be prejudiced by any order to be passed by the Court is not in accordance with law. It appears to me that the amended provision of sub-section (2) of Section 401 of the Criminal P.C. 1973, was not brought to the notice of the learned Additional Sessions Judge. The said sub-section reads as follows :

"(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defense".

Under Section 399 of the Code a Sessions Judge exercises the same powers as the High Court u/s 401 of the Code. Sub-section (2) of Section 399 of the Code specifically lays down "Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of Section 401 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge."

17. It is thus clear that it is mandatory for the Sessions Judge while exercising his powers of revision not to make any order which would prejudice the accused or other person unless he had been given an opportunity of being heard.

18. The words "or other person" have been added in the amended provision of Section 401(2) in the 1973 Criminal P.C. In Section 439(2) of the Criminal P.C. 1898, the words "or other person" do not find mention. In the present case, Therefore while admitting the revision petition to a regular hearing, it was required under the law to issue a notice to the petitioner herein by the Additional Sessions Judge.

19. However, the power of revision of the High Court and Sessions Judge being concurrent and as sub-section (3) of Section 399 of the Code is not applicable to the present case, it was not considered necessary by me to remand the matter.

20. Petition allowed.