
(1973) 01 P&H CK 0005
In the Punjab And Haryana At Chandigarh

Sat Narain and Others

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 08-01-1973

Acts Referred:

Penal Code, 1860 (IPC) — Section 405, 406, 420

Citation : (1974) CriLJ 232

Hon'ble Judges : Man Mohan Singh Gujral, J

Bench : Single Bench

Judgement

Man Mohan Singh Gujral, J.—This petition u/s 561-A, Criminal Procedure Code, is directed against the order of the Judicial Magistrate Ist Class, Fazilka, dated July 2, 1971, whereby the petitioners were directed to be charged u/s 406, Indian Penal Code.

2. The facts giving rise to this petition are that a case under Sections 420 and 406, Indian Penal Code, was registered against the petitioners on the following allegations:

Manohar Lal and Hari Krishan petitioners had formed a company named as Sanehi Chit Fund Private Limited with its registered office at Delhi. Subsequently, the other petitioners became Directors of this company. The company was established with the object of starting a scheme under which members were to be enlisted who were to pay Rs. 10/- per mensem for 50 months and to receive this money with interest at the rate of 6 per cent, at the end of the stipulated period. In the scheme, there was a provision for a lucky draw every month which entitled the successful subscriber to receive Rs. 500/- as prize and to discontinue payment of the balance of instalments. The company could also give loan to the subscribing members by charging higher rate of interest which could be adjusted against their deposits.

Some of the prosecution witnesses in this case became members of the Sanehi Chit Fund Private Limited and deposited various amounts from time to time. They

were, however, not returned their deposits with interest as stipulated, and with these allegations the Directors were challaned for having committed criminal breach of trust in respect of the money deposited with them. At the time of framing of the charge, it was vehemently urged before the trial Magistrate that no case u/s 420 or 406, Indian Penal Code, had been made out. On a consideration of the arguments advanced, the learned trial Court came to the conclusion that charge u/s 420, Indian Penal Code, could not be framed, but a prima facie case u/s 406, Indian Penal Code, had been made out. Being aggrieved with this order, the accused-petitioners have brought the present petition for quashing the charge.

3. The main and the only contention raised on behalf of the petitioners is that under the scheme, the money paid by the subscriber to the company, was not an entrustment with the Directors and a relationship of debtor and creditor only was created. It is urged that Section 405, Indian Penal Code, does not cover the case of a loan or advance of money, especially when the money deposited or lent could be used or utilized as the property of the person with whom the deposit has been made or to whom the money had been lent.

Support for this contention is sought from the view taken in State Vs. Tirath Das, wherein the facts were these. An amount of Rs. 10,000/- had been handed over to the accused to be sent to his firm in the first instance to be held by the firm for the purchase of goods. No interest was to be payable. Subsequently, the receipt of the amount was denied when it was demanded. On these facts it was held that the handing over the money could be termed as a deposit or as an advance. It was further noticed that the money was not to be returned in specie and the depositee was entitled to use the amount in his own business, but was bound to return the equivalent amount according to the directions of complainant. On a consideration of these facts, the view taken was that no case of entrustment had been made out. The following observation may be read with advantage:

The one underlying idea in Section 405 is undoubtedly this that the property which is the subject-matter of entrustment, or in respect of which dominion is passed over to the accused, does not even for the time being, become the property of the accused, which he could use for his own purposes. The creation of the trust or the passing of dominion over certain property implies that the person to whom property is handed over does not become the beneficial owner thereof even for the time that the property is not to be used according to the directions given at the time of entrustment of the property. Thus the section does not cover the case of a loan or of an advance of money when the borrower or the depositee intends to use or utilise that money, for the time being, till he is in possession of it, although he may have to return an equivalent amount later on to the person making the advance with or without interest, or compensation for the use thereof.

4. It is further stated as follows ;

When a relation of debtor and creditor alone is created by the bailment of money a civil liability is created. The criminal liability arises in addition to the civil liability when the beneficial ownership in the property is not transferred to the accused and he is placed under an obligation, contractual or otherwise, to utilise the money for the specific purpose for which it was handed over to him. In the present case upon the facts as they appear from the record and as the jury must have found them, a relation of debtor and creditor was created between the parties. The beneficial ownership in the money so advanced to the opposite party was intended to be transferred to the opposite party and his partners in the firm, and it could not be said that it was intended that he was to keep the money intact in his possession and make no use of it at all whether or not interest was paid on it.

5. The above observations are fully attracted to the facts of the present case. It cannot be denied that the money which was deposited with the company was to be utilised by the company as its own money by giving it to other members as a loan on higher interest. The depositors could get the equivalent amount back after the end of 50 months along with interest at 6 per cent. The money was not to be returned in specie and could not be termed as entrusted to the company. In such a situation, only a civil liability is created, and even if the prosecution allegations are accepted, no case of criminal breach of trust within the meaning of Section 405, Indian Penal Code, is made out. In coming to this conclusion, I have been influenced by the fact that from the balance sheet of the company it appears that the petitioners had returned a large amount to the various depositors and had advanced money to the other depositors under the scheme.

6. For the reasons stated above, I allow this petition and quash the proceedings pending against the petitioners in the trial Court.