

(1956) 06 P&H CK 0003
In the Punjab And Haryana At Chandigarh

S.G. Tambe

APPELLANT

Vs

State of Delhi

RESPONDENT

Date of Decision : 15-06-1956

Acts Referred:

Penal Code, 1860 (IPC) — Section 420, 468
Provincial Insolvency Act, 1920 — Section 20

Citation : (1957) CriLJ 92

Hon'ble Judges : Bhandari, C.J

Bench : Single Bench

Judgement

Bhandari, C.J.—This petition raises the question whether the Resident Magistrate of Delhi was justified in directing that a sum of Rs. 1,17,000 should be handed over to Dr. Gurbux Singh under the provisions of S.516-A of the Code of Criminal Procedure.

2. Early in 1950 Dr. Gurbux Singh a businessman of Delhi entered into partnership with one H. K. Gupta, a person of shady reputation and doubtful antecedents. The partners were to carry on business in sugar in the name and style of Gupta Gurbux & Co., and their extensive dealings in this commodity were to be financed by the Punjab National Bank on the security of Dr. Gurbux Singh. The accused pledged a number of forged Railway Receipts with the Bank secured a loan of the aggregate value of Rs. 1,17,000 and disappeared mysteriously from Delhi Dr. Gurbux Singh who was called upon to reimburse the Bank for the loss which had been occasioned by the fraudulent conduct of the accused reported the matter to the police and a case under Sections 420 and 468 of the Penal Code was registered against him. The accused was arrested at Bangalore on the 24th June 1955 and two bags a chocolate coloured bag with two handles containing Rs. 1,17,000 and another bag containing Rs. 92,000 were recovered from his possession. He was produced before S. Hardayal Singh, Resident Magistrate of Delhi, on the 1st September and remanded to police custody the same day. He confessed his guilt before a Magistrate of the first class and stated that the sum of Rs. 1, 17,000 which was recovered from the chocolate coloured

bag with two handles belonged to Gupta Gurbux & Co. and should be made over to Dr. Gurbux Singh to enable him to settle the accounts with the Bank. He retracted this confession in part a few days later and stated that he had borrowed only a sum of Rs. 80,000 from Dr. Gurbux Singh and that the rest of the money had been borrowed from others. The Resident Magistrate at Delhi requested the City Magistrate at Bangalore to remit the sum of Rs. 1,17,000 to him by means of a bank draft, but the City Magistrate expressed his inability to comply with this request. He explained that a number of civil and criminal cases were pending against the accused in Patna, Delhi and Indore, that the money recovered from the accused had been attached by a Sub-Judge at Patna and that one Mr. S. G. Tambe who had been appointed Interim Receiver of the property of the accused u/s 20 of the Provincial Insolvency Act claimed that he was entitled to hold the money for the benefit of all the creditors of the accused. As each currency note was likely to be required for purposes of identification and investigation of the offences which were alleged to have been committed, the City Magistrate was of the opinion that the amount should not be deposited in a bank and that the identity of the notes should not be destroyed. He accordingly decided to send the entire sum of Rs. 3,09,000 to the Resident Magistrate at Delhi under a special police escort.

3. The notes arrived in Delhi on the 1st September and on the same day Dr. Gurbux Singh presented an application to S. Hardayal Singh in which he stated that he had indemnified the Punjab National Bank to the extent of Rs. 1,17,000 and requested that the money which had come from Bangalore should be paid to him as he was incurring a loss of Rs. 600 per mensem on account of interest alone. Mr. S. G. Tambe who had been appointed Interim Receiver of the property of the accused objected strongly to the payment of the money to Dr. Gurbux Singh. He stated that this money had been attached by the Additional District Judge of Indore in his capacity as an Insolvency Judge, that the learned Additional District Judge had directed that this money be handed over to the Interim Receiver, that a number of persons including the United Commercial Bank at Indore were putting forward their respective claims in regard to this property, that it was necessary to hold an enquiry in order to determine the title to the property and that as an enquiry in regard to the title was to be made by the Insolvency Judge of Indore it was open to Dr. Gurbux Singh to obtain his relief by making an application to the appropriate Court. He argued (1) that in the eye of law this money was being held for and on behalf of the Insolvency Judge of Indore, and (2) that no order for the disposal of this money could be passed pending the disposal of the insolvency proceedings. He requested S. Hardayal Singh to retain the money in his possession until such time as it was required for being handed over to the Interim Receiver for payment to the creditors of the accused. S. Hardayal Singh brushed aside these arguments and proceeded forthwith to pass the following order:

Dr. Gurbux Singh, a P. W. in the case, has filed an application requesting that out of the property recovered from the accused, custody of Rs. 1,17,000 in regard to

which amount he has already indemnified the Punjab National Bank and in regard to which he is incurring an interest of Rs. 600 per mensem, may be given to him. The request is supported by the investigating officer, Deputy Supdt. Police, Supdt, Police Crime, and the Prosecuting Inspector, New Delhi. I have no reason to reject this request and therefore direct that the amount of Rs. 1,17,000 which is the case property in this case may be handed over to Dr. Gurbux Singh on sapurdari on his furnishing a surety in the sum of Rs. 2 Lakhs, to produce the same whenever called upon to do so.

S. Hardayal Singh passed this order at about 2 o'clock on the afternoon of the 2nd September 1955 and handed over currency notes of the value of Rs. 1,17,000 to Dr. Gurbux Singh even though he was aware that these notes were to be deposited in a bank and the identity of these notes was almost certain to be destroyed.

4. Mr. Tambe presented a revision petition against the order of S. Hardayal Singh on the 3rd September and the Additional Sessions Judge promptly issued an order staying the payment of the money to Dr. Gurbux Singh until the application of Mr. Tambe could come up for hearing on the 15th September. This order was served on S. Hardayal Singh at about 2-45 p. m. on the 3rd September but S. Hardayal Singh expressed his inability to comply with it as the money had already been paid to Dr. Gurbux Singh.

5. On the 5th September Mr. Tambe moved an application u/s 561 A, Criminal P. C., in which he stated that as the sum of Rs. 1, 17,000 was found to have been paid to Dr. Gurbux Singh before the delivery of the orders to the Resident Magistrate and that as these monies consisted of currency notes of the value of Rs. 3, 09, 800 and were case-property in case State through United Commercial Bank Indore against the accused pending in the Court of the City Magistrate, Indore, these monies did not belong to Dr. Gurbux Singh whose main object was to destroy the evidence of the United Commercial Bank in the Indore case. It was accordingly requested that Dr. Gurbux Singh be ordered to return the monies to the trial Court so that the evidence of the Indore case may remain unimpaired. As it was of importance that the evidence in the case should not be destroyed, the Additional Sessions Judge directed that Dr. Gurbux Singh should not do away with the money which had been withdrawn from the Court and that he should preserve it till the 15-9-1955 in the form in which he had withdrawn it from the Court. This order was served on Dr. Gurbux Singh without loss of time but he replied back to say that the cash received from the Court had already been deposited in the bank. The Sessions Judge is inclined to view the conduct of S. Hardayal Singh censoriously and has expressed the opinion that S. Hardayal Singh's order "directing the payment of such a huge sum of money to Dr. Gurbux Singh was either made recklessly or proceeded upon considerations which do not at all seem to be judicial". He recommends that Dr. Gurbux Singh should be required to pay back the money in Court if not in species which no longer was possible so that the interests of the rightful claimant or claimants

may be protected.

6. While the case was being argued before me I issued a peremptory injunction restraining the Bank in which the money was lying in deposit from paying it out to anyone except after obtaining the order of this Court. The safety of the money has thus been secured.

7. Mr. Ram Lal Anand, who appears for Dr. Gurbux Singh, contends that Section 516 A confers full power on a criminal Court during the progress of an inquiry or a trial to make such order as it thinks fit for the proper custody of the property pending the conclusion of the inquiry or trial, that the accused had deprived the Punjab National Bank of a large sum of money by the production of forged railway receipts, that Dr. Gurbux Singh who had stood surety for the accused had to reimburse the Bank for the loss sustained by it, that Dr. Gurbux Singh applied to the Court that the sum of Rs. 1, 17,000 should be handed over to him and that it was the duty of the Resident Magistrate exercising his own independent judgment to decide whether the property should be retained by the Court itself or should be handed over to Dr. Gurbux Singh who was losing a sum of Rs. 605 per mensem by way of interest alone. S. Hardayal Singh examined the confessional statements of the accused and the statements made by Dr. Gurbux Singh and certain officials of the Bank and came to the conclusion that this money belonged to Dr. Gurbux Singh. He accordingly directed that it be paid to Dr. Gurbux Singh. As this order was passed in exercise of the discretion which vested in him by law and as the action of the trial Court as to matters within its judicial discretion cannot be lightly disturbed, this Court should refrain from interfering in the present case. My attention was invited to "Jagan Parshadv. Emperor" A.I. R. 1930 Lah. 346 (A) in which a Division Bench of the Lahore High Court held that there is ordinarily no justification for a High Court to take up in revision what are really interlocutory matters in a criminal Court.

8. For reasons which appear hereafter these arguments cannot, in my opinion, bear a moment's scrutiny. If an order in respect of a discretionary matter has been passed conscientiously and not arbitrarily, takes into account the law and the particular circumstances of the case and is directed by the reason and conscience of the judge towards a just result, there can be no doubt that it will not be altered or modified in exercise of revisional jurisdiction. If on the other hand the discretion has not been exercised according to common sense and according to justice or there has been a clear abuse of discretion, then in the eye of law judicial discretion has not been exercised at all and the revisional Court will not hesitate to interfere.

9. The facts and circumstances of the present case make it quite clear that it is a fit case for interference, for not only has the discretion vested in S. Hardayal Singh been exercised arbitrarily and capriciously but also because the officer is guilty of such improper and illegal exercise of authority as will warrant the conclusion that he intended from the first to use his legal authority as a cover for his illegal conduct.

10. I entertain no doubt in my mind that S. Hardayal Singh had no justification to make over this large sum of money to Dr. Gurbux Singh for safe custody or to allow its identity to be destroyed. It is a recognised rule of practice in all civilised countries that property recovered from the possession of a person charged with a crime is retained intact in Court for purposes of identification until such time as the case is concluded. If the property is subject to a speedy or natural decay it is open to the Court to make an order for its sale or disposal, but if the property does not answer this description the Court can only make an order for its custody pending the conclusion of the inquiry or trial. In actual practice an order for custody of property is confined only to articles such as animals, vehicles and perishable goods, for the Court has no funds for feeding the animals, no accommodation for keeping motor vehicles and no arrangement for preserving the goods which are perishable. If any such articles come into the possession of a Court, it is open to the presiding officer to provide for their safe custody until such time as the case is concluded. Provision can be made only for their custody and not for their conversion. The property in the present case consisted solely of a bundle of currency notes and if the Court was anxious only to provide for their custody nothing could have been easier for the Court than to direct that they be kept carefully in a safe in the Malkhana or in a vault of the local Treasury. It is contended on behalf of Mr. Tambe, and in my opinion with a certain amount of justification, that the currency notes were handed over to Dr. Gurbux Singh not with the object of providing for their custody but with the object of destroying their identity or of treating Dr. Gurbux Singh as a favoured creditor or of enabling him to earn a profit of Rs. 600 per mensem by way of interest alone. The Court had power only to provide for the custody of the currency notes but not to provide for their conversion. Legal authority has obviously been used as a cloak to cover the Magistrate's illegal conduct.

11. The history of this litigation makes it quite clear that not only did the learned Magistrate transgress the provisions of law but that he did so in the teeth of strong opposition. The first note of protest appears to have been sounded by the City Magistrate at Bangalore when S. Harclayal Singh asked him to remit the sum of Rs. 1,17,000, to him by means of a bank draft. He refused to credit the money in a bank or in the treasury as a number of cases were pending against the accused and as it was likely that each currency note would be required for investigation and identification of the several offences which were said to have been committed by the accused in Delhi, Patna and Indore. He sent the property to the Resident Magistrate at Delhi under a special escort.

12. The Second Additional District Judge at Indore who was apprised of the request of the Resident Magistrate for transmission of the monies to Delhi appears to have been equally emphatic in his protest. On the 4th August he sent a detailed telegram to the Resident Magistrate at Delhi in which he stated that an insolvency petition had been presented against the accused and that S. G. Tambe had been appointed Receiver with full powers to hold the properties of the debtor wherever situate. He accordingly requested the Resident Magistrate "not to pass

any order for the disposal of the monies until further and other orders of this Court in insolvency proceedings." The request made by him was completely unassailable in the eye of law.

13. One would have imagined that in view of the requests which had been received from the City Magistrate at Bangalore and the Additional District Judge at Indore S. Hardayal Singh would have refrained from making an order which was calculated to destroy the identity of the currency notes and to put the money beyond the reach of the Insolvency Court. None of the arguments which were advanced by these Courts appear to have deflected him from the course which he had chosen to pursue. In his letter dated the 12th August to the address of the Additional District Judge at Indore S. Hardayal Singh stated that the accused had made a confession according to which the sum of Rs. 1,17,000 recovered from the possession of the accused belonged to Dr. Gurbux Singh, that this property did not belong to the accused and that it could not be used for liquidation of his debts.

14. The Additional District Judge was not prepared to accept the correctness of the proposition propounded by the Resident Magistrate and endeavoured to expose the obvious hollowness of the arguments advanced by him. In his letter of the 24th August he endeavoured to explain firstly that a mere confessional statement by the accused could not justify the Court in holding as established that the money belonged to Dr. Gurbux Singh and not to the accused; secondly, that this confession having been recorded behind the back of the creditors could have no evidentiary value against them; thirdly, that it was not possible to identify the money contained in the bag and it was not possible to hold that the offence was committed in respect of this particular sum of money; and lastly that as the matter was already under enquiry by a civil Court it was not within the competence of the criminal Court to make an order for the disposal of the property until the civil Court had passed an order concerning the respective rights of the creditors including Dr. Gurbux Singh. The Additional District Judge accordingly advised Dr. Gurbux Singh to prove his claim before him at Indore and requested the Resident Magistrate to refrain from making an order for disposal of the monies during the pendency of the proceedings in his Court.

15. Mr. Tambe addressed a similar communication to the Resident Magistrate and reiterated this request which had been made by him previously that the Resident Magistrate should not deliver possession of the money seized at Bangalore except to the Interim Receiver,

16. The Provincial Insolvency Act has been designed to secure that the Insolvency Court should be at liberty to seize the debtor's property and to make it available for equitable distribution among his creditors. The property of the insolvent in his actual or constructive possession at the time of the filing of the petition of insolvency is presumed to be in the custody of the Insolvency Court from the filing of the petition and the Insolvency Court alone has power to hear and determine all conflicting claims in the regard to title, possession and control

of the property. The Insolvency Court exercises jurisdiction over the assets of the insolvent not because the insolvent has title in the property but because the insolvent is in actual or constructive possession of the property at the time of the filing of the petition of insolvency. When the assets of the insolvent have been brought into the custody of the Insolvency Court all orders, decrees and judgments of the said Court as to the rights and title to the property and as to the distribution of it among the parties are binding upon all persons and on every Court. In view of exposition of the law there can be little doubt that the Insolvency Court at Indore had power to restrain the Resident Magistrate Delhi from parting with the money which had been recovered from the possession of the accused.

17. On the 28th August the Additional District Magistrate, Indore, addressed a communication to the Resident Magistrate, New Delhi, in which he stated that the accused had defrauded the United Commercial Bank at Indore to the tune of Rs. 4,65,152/2/- and the Indore Bank Limited to the extent of Rs. 45,500/- respectively and that two separate cases had been registered against him in Madhya Bharat. He accordingly requested that the sum of Rs. 3,09,600/- which had been recovered from the possession of the accused and were obtained by cheating and fraud should be sent to Indore for purposes of investigation and trial.

18. While the Courts of Bangalore, Indore and Patna were issuing injunctions and prohibitory orders and requesting the Resident Magistrate to refrain from surrendering possession of the money Dr. Gurbux Singh was waiting anxiously for the brown bag with two handles and the treasure which it contained. This bag was received in Delhi on the 1st September 1955 and on the same day Dr. Gurbux Singh applied to the Resident Magistrate for permission to withdraw the money from his Court as he had indemnified the Punjab National Bank to the full extent of Rs. 1,17,000/- and was incurring a loss of Rs. 600/- per mensem on account of interest alone.

19. As soon as this application was presented in Court S. Hardayal Singh and the members of the Police appear to have evinced the utmost anxiety to dealing with this application expeditiously and acceding to the request of Dr. Gurbux Singh S. Hardayal Singh forwarded the application to Shri S. S. Bedi Prosecuting Inspector the same day and the latter forwarded it to the Inspector Mehr Singh the same day. Mr. Bedi's note was in the following terms:

Please report how much money should or should not be given to the applicant. Please take into consideration the fact that on our recommendation 400 bags of sugar were released on sapurdari and handed over to the applicant who under the orders of the Court has disposed them of and is retaining its price.

Immediately on receipt of this note Inspector Mehr Singh recorded the following note:

The accused has confessed before the Court that Rs. 1,17,000/. belong to the

applicant which was obtained by him concerning the cheating case. There is no objection if the same amounts is returned to the applicant please.

The application was sent to Mr. S. Singh Deputy Superintendent of Police the same day and the latter recorded the following note:

The accused has already confessed his guilt and the Court has already issued instructions in this connection. The whole money Rs. 1,17,000/- may be passed on to the applicant according to the decision of the Court and we have no objection in this connection.

The papers were forwarded to Mr. Harnam Singh, Superintendent of Police the same day and he promptly made the following recommendation:

The money recovered is case-property. The Court has sent for it. The accused has made certain confession about the cash recovered. We have to abide by the decision of the Court. We should have no objection if the money is ordered to be paid to the applicant to the extent of Rs. 1,17,000/-.

The amazing speed with which these several reports were recorded on the 1st September 1955 appears to indicate that papers were not being dealt with in the ordinary routine but that sinister and powerful forces were at work. It is not necessary to repeat the subsequent history of the case, for it is well known that Mr. Tambe's application protesting against the payment of money to Dr. Gurbux Singh was dismissed by S. Hardayal Singh and that the efforts of the learned Additional Sessions Judge to prevent the identity of the notes being destroyed ended in smoke.

20. The above narration of events makes it quite clear that although there was no occasion for S. Hardayal Singh to hand this money over to Dr. Gurbux Singh he did so in spite of the protests of the City Magistrate of Bangalore the District Judge of Indore, the City Magistrate of Patna and the Interim Receiver appointed by the Insolvency Court at Indore. The money was handed over in contravention of the provisions of law and in defiance of the prohibitory orders issued by Courts of competent jurisdiction. It was difficult to say whether the object of the Court was to destroy the identity of the notes or to treat Dr. Gurbux Singh as a favoured creditor or to benefit him to the extent of Rs. 600/- per mensem. It is difficult to speculate on the motives which actuated the learned Magistrate to pass the extraordinary order the validity of which has now been impugned. I need only say that the order of the learned Magistrate constitutes such a complete departure from the line of duty and such an improper and illegal exercise of his authority to the prejudice of others that his conduct can only be characterised as abuse of process of Court.

21. For these reasons I would accept the petition, set aside the order of the Resident Magistrate and direct that the money together with the interest which has accrued thereon be deposited in Court for disposal in accordance with law.