(2005) 01 DEL CK 0008

In the Delhi High Court

Case No : WP (C) . 2587 of 1990

Shri Krishan Kaushik APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 20-01-2005

Acts Referred:

Citation : AIR 2005 Delhi 276 : (2005) 117 DLT 197 : (2005) 80 DRJ 57

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : S.N. Bhardwaj, for the Appellant; Sidharth Mridul and Tanuj Khurana, for the Respondent

Judgement

Manmohan Sarin, J.—Petitioner, a teacher by profession, by this writ petition seeks a direction to the respondents namely Director General, Post and Telegraphs Department, New Delhi and the Assistant Superintendent, Post Office Sonepat, Sub Division Sonepat (Haryana), to refund the amount of Rs. 4,000/- deposited with the Sub Post Office in Village Sasana, Tehsil & District Sonepat (Haryana), together with interest @ 12% p.a.

2. Notice to show cause had been issued on 16th October, 1990 Upon perusal of the record summoned from the Court of Judicial Magistrate, First Class, Sonepat, Haryana, rule was issued on 29.1.1992. Counter affidavit as well as rejoinder have since been filed.

3. With the consent of the parties the writ petition is taken up for disposal.

4. Petitioner had opened an account in the Post Office, Village Sasana, Sonepat, Haryana. Petitioner claims to have deposited a sum of Rs. 4,000/- in cash on 25.8.1983 in his account No. 351047. It is stated that one Shri Satya Narain, employee of the respondents collected the amount and had issued a receipt for the same. The Pass Book with entry of deposit was not handed over on the plea that the same had been sent to Sonepat. In due course, Satya Narain handed over the Pass Book which contained the entry of Rs. 4,000/- together with seal.

At the time of handing over of pass book, he took back the provisional receipt given by him earlier. Petitioner''s case is that the said Shri Satya Narain had committed fraud and cheated, apart from him, number of other genuine depositors. The modus operandi of the said Shri Satya Narain was common in all cases. He would take amount from the depositor, deposit in the Post Office a nominal amount out of the deposit, while giving a provisional receipt for the full amount given by the depositor. He would then forge the entry in the Pass Book and give the Pass Book with the forged entries reflecting the amount as given by the depositor and take back the provisional receipt issued by him. The amount deposited in the case of petitioner in the Post Office by the said Shri Satya Narain was only Rs. 100/- as against Rs. 4,000/- collected by him.

5. Respondents filed the counter affidavit claiming that the petitioner was not entitled to relief in writ jurisdiction and claimed that on 25.8.1983 only a sum of Rs. 100/- had been deposited. Respondents have filed photocopy of the receipt showing deposit of Rs. 100/-. It is further averred that the Pass Book which showed the deposit of Rs. 4,000/- had over writings and was a patent forgery.

6. The said Shri Satya Narain was tried in Criminal Case No. 132/2 of 1988/91 for offence u/s 409/420/468/471, IPC, FIR No. 169 registered on 20.6.1985. After trial and recording of evidence, he was convicted for the offences committed. Copy of the judgment dated 30.9.1993, passed by the Chief Judicial Magistrate, Sonepat, has been placed on record narrating the manner in which fraud was committed and depositors from village Sasana were defrauded. The Chief Judicial Magistrate found him guilty. Evidence was led in the cases of one Smt. Dharmo Devi and Smt. Sarti Devi who had given Satya Narain Rs. 3,000/- and Rs. 14,000/- respectively for depositing. The found to their charging that only Rs. 300/- and Rs. 40/- had in fact been deposited. Petitioner''s case is that although his case had also figured amongst numerous persons who had been cheated, evidence was recorded only in few instances which were found to be sufficient to sustain conviction in trial. These were all cases of other villagers from the same village namely Kamla Devi and Sarti Devi. Petitioner''s statement had also been recorded by the police and photocopy of the same had been placed on record.

7. As noted earlier at the time of issuance of Rule original record had also been summoned. Copies of the Pass Book containing the forged entry of Rs. 4,000/- is available on record.

8. Learned counsel for the petitioner has stressed that this is a case where the petitioner has been cheated by an employee of the respondent in the discharge of his duties while operating from the Post Office. Innocent depositors have been deprived of their savings. Petitioner a teacher by profession has been deprived since August, 1983 of the sum of Rs. 4,000/-. Respondents are liable to compensate the petitioner for the amount received by their agent/ employee for deposit in the Post Office. Petitioner has made out a case for grant of relief.

9. Counsel for respondent attempted to urge that as disputed facts were involved claim should not be entertained under writ jurisdiction. Rule in this case was issued as far back as on 29.1.1992. The original record from the Court of Chief Judicial Magistrate, Sonepat, Haryana had been called for and seen by the Court at the time of issuance of Rule. The employee of the respondent has been convicted by the Court of Chief Judicial Magistrate for the offence committed in relation to the deposits made by the villagers.

10. In these circumstances it is not open for the respondents to contend that deposits were not made by the depositors. Writ of mandamus shall issue to the respondents to pay to the petitioner within 30 days from today the sum of Rs. 4,000/- together with interest at rates, as admissible for deposits with them in Savings Bank w.e.f 1st September, 1983.

