
(2008) 08 OHC CK 0128
In the Orissa High Court

Srikanta Pattanaik

APPELLANT

Vs

Republic of India

RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2008) CLT 1270 (Suppl Crl) : (2008) 2 OLR 758 : (2008) OLR 1270 (Suppl Crl)

Hon'ble Judges : B.P. Ray, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.P. Ray, J.—The petitioner has preferred this revision challenging the judgment and order of learned Addl. Sessions Judge, Bhubaneswar in Criminal Appeal No. 3 of 1997 confirming the judgment and order of conviction passed by Addl. C.J.M. Bhubaneswar in S.P.E. Case No. 8 of 1989 convicting him Under Sections 420, 468, 471 and 120-B of the I.P.C. and sentencing him to undergo R.I. for two years u/s 420, IPC; two years u/s 468 read with Section 471, IPC and to pay a fine of Rs. 3000/- u/s 420, I.P.C. and Rs. 3000/- for the offence u/s 468 read with Section 471, IPC and in case of default of payment of fine, the accused is to undergo R.I. for three months more on each count.

2. The case of the prosecution in brief is that one Akhila Chandra Naik was working as an Accountant in the State Bank of India, Panpos Branch, Rourkela. In absence of Branch Manager, he was also performing the duty of Branch Manager. While the said Akhila Chandra Naik was working as Branch Manager, one Jalandhar Bal was working as Cashier, Srikanta Patnaik as cashier-cum-clerk and one Suleman Kujuru was working as cashier in the said Branch during the period between August, 1984 and December, 1985. During that period one Sri Sukhalal Bhumji and his wife Smt. M. Bhumji opened an account bearing S.T.D.R. Account No. 292528 on 24.4.1979 for Rs. 20,000/- in the said Panpos Branch.

The said amount was to be matured on 20.9.1984. Before maturity of the aforesaid amount, the account holders obtained a loan of Rs. 1500/- from the said account on 17.10.1986 and the loan amount was repaid within two months by Sri Bhumji. When the said S.T.D.R. got matured on the due date and the account holders did not turn up to receive the matured amount, a cheque for Rs. 17,607.09 was prepared in the said Bank on 20.9.1984 and was sent to the account holders. But the same returned back undelivered and was kept in the bank. Thereafter the deceased-accused-Akhila Chandra Naik opened one fictitious S.B. Account No. 2923 in the name of Sukhlal Bhumji, the previous account holder by crediting the amount under the undelivered cheque. The accused Srikanta Patnaik became the introducer for opening of the said account. In absence of the regular Branch Manager, the deceased-accused preparing false vouchers withdrew Rs. 17,500/- on three different dates. Accused Jalandhar Bal made payment of Rs. 2000/- and Rs. 500/- to the accused-petitioner by mentioning the name of the payee in the related cash payment register as "Behera Saheb" and "B.M." respectively. As regards payment of Rs. 15,000/-, on 24.1.1985 accused S. Kujuru made the payment to deceased-accused and mentioned the name of the payee as "S. Bhumij" in cash payment register. During course of investigation the I.O. sent the L.T.Is purporting to be of Sri S. Bhumij and Smt. M. Bhumij appearing on the account opening form, the specimen signature card and withdrawal vouchers to the finger print expert and after completion of investigation and on receipt of the opinion from the said expert, the I.O. submitted the present charge sheet Under Sections 120-B, 420, 467, 471 and 468, IPC against the accused persons and hence the case.

3. In order to substantiate its case the prosecution has examined as many as 9 witnesses and exhibited several documents and the defence examined two witnesses in support of their case. After investigation, separate charge sheet was submitted in respect of various transactions. The allegation against the petitioner is that he has identified the account holders of the S.B. Account opened by Shri Naik. The allegation against the two other accused persons is that they paid the amount in cash to accused-Shri Naik in respect of various withdrawals from the said Savings Bank Account which was fraudulently opened by accused-Shri Naik.

4. Mr. D.P. Das, learned Counsel for the petitioner submits that Shri Naik, the deceased accountant got opened a fictitious account No. 2923 in the name of the Sukhlal Bhumij and credited the proceeds of undelivered banker cheque on 24.1.1985. Subsequently, Rs. 15,000/- and Rs. 2,000/- have been withdrawn by means of withdrawal vouchers. The false vouchers, attestation and passing for payment have been done by deceased Naik which has been proved by the witness. Srikanta Patnaik, the petitioner was the introducer of the fictitious account. He introduced the account holder as his friend in the account opening form prepared by the accused Naik. Finger print expert has opined that the L.T.Is. of the purported account holder appearing on the account opening form, specimen signature and withdrawal voucher are that of the accused Naik. P.W.2 is the account holder, who denied to have opened the account and withdrawn the

money. P.Ws. 1, 3, 4 and 7 are the witnesses to the seizure of different documents of the bank and two of them are witnesses to the obtaining of the specimen writing and signature of accused persons. P.W.5 is the enquiry officer of bank who had conducted enquiry about the alleged irregularities. P.W.6 was the then Branch Manager who has deposed about the transaction. P.W.8 and 9 are C.B.I. Officers who have taken part in the investigation.

Learned Counsel for the petitioner submits that all the documents of the bank in respect of nine different accounts through which deceased Naik had withdrawn the money have been tampered, manipulated and forged by him. It has been proved that the deceased Naik got opened the fictitious accounts by preparing false vouchers. Further by attesting and passing the same by himself, he has withdrawn the amount. The report of the finger print expert reveals that it was the deceased Naik, who had put his own L.T.I. for the purported account holder in the account opening form, specimen signature card and withdrawal voucher, etc. It is also in the evidence of the witnesses that the attestation and order for passing the payment are in the hands of the deceased Naik.

Mr. Das, further submits that (i) from the evidence on record both oral and documentary, it has been conclusively proved that the deceased-accountant with his evil design has created forged document and utilizing the same has misappropriated the money from the accounts of nine different account holders, (ii) that there is no evidence that the petitioner had any semblance of knowledge that the account opening form was a forged one and the Manager had created the said forged document. In absence of any evidence that the petitioner had prior knowledge about the fictitious documents and that knowingly he extended his helping hand for commission of offence, the conviction of the petitioner can not be sustained" (iii) merely because the petitioner had subscribed the endorsement by reposing faith on the deceased accountant, who subsequently utilized the same for committing the offence, the petitioner should not be saddled with criminal liability. It was further submitted that the act of the petitioner may be a negligent act or irresponsible act, but certainly it does not constitute an offence in absence of mens rea. The most important ingredient i.e. criminal intention is lacking in this case. Therefore, the judgment and order of conviction can not stand the scrutiny of law.

5. Mr. S.K. Padhi, learned Senior Standing Counsel appearing for the C.B.I. submits that the revision is directed against the concurrent findings of the learned Courts below, who have found that the present petitioner is guilty of the offence for which he was charged. Furthermore, the petitioner himself has admitted that he had filled up the introduction form and had thus, acted as an introducer for facilitating the opening of a new fictitious account in the names of the Bhumijis. As both the Courts below have found that the petitioner was the instrumental in creating the fictitious accounts, the petitioner's conviction should not be interfered with.

6. The admitted fact in this case is that the petitioner was a new entrant to the

services of the bank. Hardly he has completed six months by the date of occurrence. Taking advantage of the Inexperience of the petitioner, the deceased Naik who was functioning as the Branch Manager on that day got the account introduced by the petitioner. Admittedly, the L.T.Is. appearing on the account opening form belonged to deceased Naik. There is no material on record that the petitioner has knowledge that the deceased-accountant himself had put his own L.T.I. Rather, there is material that the deceased-Naik persuaded the petitioner to introduce the account holder. The petitioner believing the Accountant, which is quite natural, gave his endorsement of introduction. There is also no material to come to the conclusion that the petitioner had any semblance of knowledge that the account opening form was a forged one and the deceased accountant had created the said forged document. In absence of the material that the petitioner had prior knowledge about the fictitious document and knowingly he extended his helping hand for commission of the offence, in my considered view, the act of the petitioner might have facilitated the deceased-accountant for commission of offence, but it can not be said that the petitioner has conspired with the deceased-Naik. The element of conspiracy is conspicuously lacking. In order to constitute an offence u/s 120-B, I.P.C. as has been interpreted by different Courts that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing by illegal means an act which by itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. But if those circumstances are compatible also with the innocence of the accused persons then it can not be held that the prosecution has successfully established its case. Even if some acts are proved to have been committed it must be clear that they were so committed in pursuance of an agreement made between the accused who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. From the above discussion it can be seen that some of the circumstances relied upon by the prosecution are not established by cogent and reliable evidence. Even otherwise it can not be said that those circumstances are incapable of any other reasonable interpretation.

7. Much stress has been laid by the prosecution on the statement of the petitioner u/s 313 Cr.P.C. It has been argued that since the petitioner has admitted that he has filled up the introduction form, the dishonest intention of the petitioner has been proved. On a bare reading of the statement u/s 313 Cr.P.C. and from the tenor of cross examination it appears to me that the petitioner had no knowledge that the account opening form was a forged one and the deceased-accountant had created the said forged document. Therefore, I am

inclined to hold that the mens rea or the criminal intention is significantly lacking in this case.

On perusal of the undelivered bankers cheque under Ext.24/ 2 it appears that the same has been received by the deceased Naik. The L.T.Is. purported to be that of the account holder on the account opening form, specimen signature form and withdrawal voucher have been put by the deceased Naik as found out by the finger print expert. The attestation, passing for payment and other endorsements appearing on the exhibited documents are all in the hands of the deceased accountant. Besides the said documents, the deceased Naik has also made entries in the ledger under Ext.33. All those evidence conclusively proves that the entire exercise to defraud the bank/ account holder was done by the deceased-Naik. In that process he got the other employees involved without their knowledge to cheat the bank.

8. After careful examination of the entire materials on record, I have no hesitation to hold that the prosecution has" failed to prove its case against the petitioner beyond reasonable doubt. Accordingly, I set aside the order of conviction and sentence passed against the petitioner.

9. The criminal revision is thus allowed.