(1997) 09 GAU CK 0060

In the Gauhati High Court

Case No : Criminal Appeal No. 17 of 1994

State of Tripura — APPELLANT

Vs

Kanulal Das and Others — RESPONDENT

Date of Decision : 23-09-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319, 353, 354(1), 378, 386
Penal Code, 1860 (IPC) — Section 201, 34, 409, 468, 471

Citation : (1998) 3 GLT 321

Hon'ble Judges : N.G. Das, J

Bench : Single Bench

Advocate : S. Das, P.P, for the Appellant; D. Sarkar, S.M. Chakraborty and S. Majumder, for the Respondent

Judgement

N.G. Das, J.—This appeal u/s 378 of Code of Criminal Procedure has been preferred by the State of Tripura against the judgment of the learned Chief Judicial Magistrate, West Tripura, Agartala dated 18.10.1993 whereby learned Chief Judicial Magistrate acquitted the Respondents herein of the charges framed u/s 409 read with Sections 34 and 201 read with Section 34 of IPC.

2. I have heard Mr. S. Das, learned Public Prosecutor appearing on behalf of the Appellant, Mr. D. Sarkar, the learned Counsel appearing on behalf of the Respondent No. 2, namely, Nitya Gopal Roy, Mr. S.M. Chakraborty, the learned Counsel appearing on behalf of the Respondent No. 1, namely, Kanulal Das and Mr. S. Majumder, the learned Counsel appearing on behalf of the Respondent No. 3, namely, Satyajit Roy.

3. Before entering into the merit of the case it may be mentioned here that the learned Counsel for the Respondents without any hesitation made the submission that this is a case which should be remanded for fresh trial. Learned Public Prosecutor has also submitted that he has also filed an application u/s 319 of Code of Criminal Procedure as according to him, in view of the evidence already recorded by the learned trial Court, charge should, at least, be framed also

against Pranab Kanti Roy, the Deputy Manager of United Bank of India, Agartala Branch as then he was, Anil Chandra Sarkar, Head Cashier, United Bank of India, Agartala Branch as then he was and Narayan Chandra Shil, Duftry, United Bank of India, Agartala Branch as then he was. It is submitted by learned Public Prosecutor that a perusal of the evidence recorded by the learned trial Court will show that these 3 (three) persons have also taken part in misappropriating the sum of Rs. 2 lakhs which was alleged to have been withdrawn from the United Bank of India, Agartala Branch by a Cheque issued from the Tripura Gramin Bank, Agartala Branch.

4. The prosecution case as disclosed by the prosecution witnesses is that on 10.6.1986 a Cheque for encashment of a sum of Rs. 2 lakhs was issued by the Manager, Tripura Gramin Bank on Agartala Branch of United Bank of India. As a matter of procedure the Cheque was sent by some official of the Tripura Gramin Bank, Agartala Branch and after necessary entries made in the Registers such as Token Register, Ledger etc. in the Agartala Branch of United Bank of India, the Cheque was honoured and the money was paid to the bearer. But thereafter this amount was not received in the Agartala Branch of Tripura Gramin Bank. The matter was, however, detected after a couple of years at the time of reconciliation of the account when it was detected that the amount was actually withdrawn from the Agartala Branch of United Bank of India but the same was not entered in the Cash Book of Agartala Branch of Tripura Gramin Bank. The matter was, therefore, reported to the Officer-in-Charge, West Agartala Police Station who on receipt of the first information report registered a case u/s 468 / 471 of IPC and on completion of the investigation submitted charge-sheet for prosecution of the Respondents, namely, Kanulal Das, Nitya Gopal Roy and Satyajit Roy for commission of the offence under Sections 468 / 471 / 409 / 201 / 34 of IPC.

5. Learned trial Court, namely, Chief Judicial Magistrate after perusal of the materials made available to him framed two distinct charges against the aforesaid Respondents, namely, a charge u/s 409 read with Section 34 of IPC and Anr. charge u/s 201 read with Section 34 of IPC.

6. The charges were read over and explained to the Respondents who pleaded not guilty and claimed to be tried.

7. In order to bring home the charges the prosecution examined 8 witnesses in all and also exhibited a good number of documents marked as Ext. "P"-1 to Ext. "P"-11. The prosecution also exhibited Cash Account for 10.6.86, GLB Figure with United Bank of India, Agartala Branch dated June, 86 and January, 87 and Ledger Account of Bank with United Bank of India, Agartala Branch which the learned trial Court marked as Ext. M.O. 1, Ext. M.O. 2 and Ext. M.O. 3 respectively. Some other documents were also marked as Ext. M.O. 5, Ext. M.O. 6 and Ext. M.O. 7 etc. Here it is necessary to mention that on going through the judgment I could not find any reason why these documents were marked as material objects.

8. However, coming now to the merit of the case it would be found from the judgment of the learned trial Court that the learned trial Court framed only 3 points for determination of the case. These 3 points are as follows:

i) Whether Rs. 2 lakhs was withdrawn from the current account No. 2671 of Tripura Gramin Bank by Cheque No. 438885 with United Bank of India, Agartala Branch.

ii) When the Cheque was issued and who issued the Cheque.

iii) Who has collected the amount?

9. So far as point No. 1 is concerned learned trial Court made an elaborate discussion of the evidence and came to the finding that a sum of Rs. 2 lakhs was withdrawn from the deposit of the current account of the Tripura Gramin Bank in the Agartala Branch of United Bank of India on 10.6.1986 and the same was also entered in some registers such as ledger, token registers of the United Bank of India, Agartala Branch.

10. It is submitted by learned Public Prosecutor that he has no grievance so far as this finding is concerned. But as regards the finding of the learned trial Court that the prosecution could not prove the charge against the Respondents, it is submitted that the finding in view of the evidence, is not acceptable, I have already stated above that learned Counsel for the Respondents have also made a submission that in view of the evidence on record, this case deserves to be remanded for re-trial. On going through the judgment I find that learned trial Court did not decide the material points which are actually involved in this case.

11. In an offence u/s 409 of IPC the first point which is required to be dealt with is whether the accused was either a public servant or a banker or a merchant or a factor or a broker or an attorney or an agent. The second point is whether he was in such capacity entrusted with the property in question or with dominion over it and the third point which is required to be dealt with is whether he committed criminal breach of trust in respect of it.

12. Coming now to the charge u/s 201 of IPC it is necessary to mention here that 3 points which are required to be determined for a charge u/s 201 of IPC are as follows:

i) Whether the offence has been committed.

ii) Whether the accused knew, or had reason to believe, that such offence had been committed.

iii) Whether the accused caused evidence thereof to disappear or gave false information respecting such offence, knowing or having reason to believe the same to be false.

In this case the charge being framed with the aid of Section 34 of IPC a finding is also necessary as to whether there was any common intention of the accused-persons. But a bare perusal of the impugned judgment will eloquently say that although the learned trial Court made a finding that a sum of Rs. 2 lakhs was withdrawn from the Agartala Branch of United Bank of India on 10.6.86, the learned trial Court did not make any endeavour to decide the points I have mentioned above. In this context it is necessary to mention here that Section 354(1)(b) of Code of Criminal Procedure requires that every judgment shall contain the point or points for determination, the decision thereon and the reason for the decision. The relevant provision may be quoted in verbatim as under:

(1) Except as otherwise expressly provided by this Code, every judgment referred to in Section 353:

(a)...

(b) shall contain the point or points for determination, the decision thereon and the reasons for the decision.

(c)...

(d)...

The language itself shows that it is a mandatory provision but the learned trial Court did not mention all the points to be decided in this case. Not only this, on going through the judgment I find that he did not deal with any of those relevant points. A perusal of the evidence on record, particularly the evidence of P.W 2 shows that this defalcation was done conjointly and it could not have been done without the aid and assistance of the Bank officials as mentioned in the petition filed by the learned Public Prosecutor u/s 319 of Code of Criminal Procedure 13. For all the infirmities 1 am in full agreement with the learned Counsel for the Respondents as well as learned Public Prosecutor that this is a fit case which should be remitted to the learned trial Court for fresh trial. While deciding point No. 1 learned trial Court discussed the evidence of P.W. 1 but he made the observation that both from the oral as well as documentary evidence he did not find who was deputed by the Manager to collect the amount from the Agartala Branch of United Bank of India. The evidence on record clearly shows that Kanulal Das was the Manager-in-Charge on that date. The evidence of P.W. 2 who is the Chief Manager of Agartala Branch of United Bank of India is very relevant in this respect and hence the material portion of his evidence may be quoted as under:

The procedures of withdrawal of money by cheque are as follows:

The bearer will present the cheque in the bank and at that time the receipt section will ascertain whether the bearer put his signature on the reverse side of the cheque. Afterward, bank will ascertain and verify the signature of issuing authority and then it will be ascertained whether he has money in the account. After verification of all these things the cheque will go to cash section. Prior to that the cheque will be entered in a token register and the amount will be debited in a ledger and one token will be issued to the bearer and prior to payment of the cash the bearer will have to put his signature in presence of the cashier and cashier will verify the signature before making payment.

14. From the above quoted statement of P.W. 2 it is clear that a register is maintained where signature of the bearer of the cheque is taken before issuing the token. But the impugned judgment does not show that learned Magistrate examined that aspect. The judgment actually did not show that learned Magistrate made any endeavour to discuss the documentary evidence, namely, the registers which were exhibited by the prosecution. The register where the signature of the bearer of the cheque is taken before issuing the token will definitely indicate who put the signature and took the token. But the judgment does not indicate that learned Magistrate discussed about the documentary evidence. The charge-sheet shows that the Investigating Officer cited as many as 12 witnesses. The order of the learned Chief Judicial Magistrate dated 24.8.93 shows that he passed order to issue summons upon all the witnesses mentioned in the charge sheet with break up of the dates. The order dated 11.10.93 further shows that the learned Chief Judicial Magistrate called for some documents from the Chairman and General Manager. But those were not received till then. But before receipt of those documents some witnesses are found to have been examined. That apart, although out of 12 witnesses only 8 witnesses were examined, learned Chief Judicial Magistrate suddenly by his order dated 12.10.93 closed the prosecution evidence. No reason has been assigned as to why the remaining witnesses were not examined.

15. As already stated, learned Chief Judicial Magistrate passed order for issuing summons upon all the witnesses. It is, therefore, incumbent upon the learned Chief Judicial Magistrate to secure attendance of the witnesses and if necessary by coercive method. But in the instant case it is quite apparent from the order sheets that learned Chief Judicial Magistrate suddenly passed the order on 12.10.93 closing the prosecution evidence. No reason has been assigned as to why the remaining witnesses were not examined. I was inclined to make an independent finding on re-appreciation of the evidence on record but as it has been pointed out that some material witnesses were actually not examined by the learned trial Court and that learned trial Court examined some witnesses before receipt of the relevant documents, I cannot help passing order for re-trial of the case.

16. Moreover learned Public Prosecutor has filed an application before this Court u/s 319 of Code of Criminal Procedure for initiating proceeding against 3 bank officials of the Agartala Branch of United Bank of India, namely, Pranab Kanti Roy, Deputy Manager, United Bank of India, Agartala Branch as then he was, Anil Chandra Sarkar, Head Cashier, United Bank of India, Agartala Branch as then he was and Narayan Chandra Shil, Duftry, United Bank of India, Agartala Branch as then he was. As. in view of the above facts and circumstances and infirmities I have decided to remand the case to the learned trial Court for re-trial, I am not

passing any order on this application which the learned trial Court must dispose of after hearing the learned Counsel of the parties.

17. In view of all the infirmities pointed out above, I set aside the order of acquittal passed by the learned Chief Judicial Magistrate. Section 386 of Code of Criminal Procedure entitles the appellate Court to reverse the findings and then to interfere in any of the ways enumerated under Clause (b). Therefore, in view of my above findings of facts reversing the findings of the learned trial Court I remit this case to the Court of learned Chief Judicial Magistrate, West Tripura, Agartala for re-trial of the case. It is made clear that learned Chief Judicial Magistrate shall himself try the case after causing service of notice to all the persons involved in this case with expedition.

18. The appeal is accordingly allowed.