(1948) 08 CAL CK 0022

In the Calcutta High Court

Case No : Criminal Revn. No. 506 of 1948

Sunil Chandra Banerjee APPELLANT

Vs

Krishna Chandra Nath RESPONDENT

Date of Decision : 26-08-1948

Acts Referred:

Citation : (1948) 08 CAL CK 0022

Judgement

Sen, J.—This rule was obtained by Sunil Chandra Banerjee alias Sunit Kumar Banerjee who is the Manager of the Behala Branch of the Darjeeling Bank.

2. The facts which need be mentioned for the disposal of this rule briefly are as follows: The complainant Krishna Chandra Nath filed a petition of complaint against Sunil Chandra Banerjee stating that the complainant had a current account with the Bank and had issued a cheque on the Bank for Rs. 5620 and odd for payment to the Bengal Textile Association. The Textile authorities sent back the cheque as it was dishonoured and the complainant had to pay cash. He then went to Sunil Kumar Banerjee and told him about this and Sunil Banerjee said that it was necessary always for the complainant to have a cash balance of Rs. 200 in the Bank and that as there had not been Rs. 5820 and odd in the Bank to his credit the cheque had been dishonoured. He asked the complainant to deposit Rs. 200 more and said that if this were done, the cheque would be honoured. The complainant deposited the sum of Rs. 200 on 17th December 1946 and he also deposited the cheque in the Bank with the Manager. The complainant''s case is that at that time the Bank had already gone into liquidation and had he known that he would not have made the deposit of Rs. 200. He accordingly charged the accused petitioner with having committed offences punishable under Ss. 403, 406 and 420, Penal Code. A warrant was issued against the petitioner. The criminal proceedings, however, were not proceeded with because of an order passed by Das J. in a company matter whereby these proceedings were stayed till the disposal of an application for the sanction of a scheme of amalgamation in respect of the Darjeeling Bank. That application was disposed of on 5th May 1947 by Edgley J. Thereafter the criminal

proceedings were continued, some witnesses were examined and the petitioner was charged with having committed the offence of cheating.

3. The petitioner now applies for the quashing of the said proceedings on various grounds. The first ground is that the proceedings could not continue by reason of the provisions of S. 171, Companies Act, as an official liquidator had been appointed and as no leave had been taken of the Court to continue the criminal proceedings. The next ground taken was that the complainant was given an opportunity for having the stay order vacated but as he did not apply to have the order vacated the continuance of the proceedings without vacating the stay order was without jurisdiction. The next objections related to the merits of the case and it was contended that the evidence does not disclose an offence of cheating.

4. As regards the ground that the evidence does not disclose an offence of cheating I am of opinion that it cannot be sustained at this stage. There is evidence on the record of the representation made by the accused that the cheque would be honoured on the deposit of the sum of Rs. 200 by the complainant. There is also evidence that at the time when the statement was made by the accused to the complainant the Bank was already in liquidation and it was not possible for the cheque to be honoured. These facts are sufficient to entitle the Court to draw up a charge. I am not, however, in any way suggesting that the offence has been proved. That will have to be decided after all the evidence is taken in the case.

5. As regards the objection that the complainant had not obtained an order for vacating the stay order passed by Das J. there is no substance. The criminal proceedings were actually stayed in accordance with the order passed by Das J. The order was that there should be a stay of all proceedings till the disposal of the application for the sanction of the scheme of amalgamation. The criminal proceedings were revived only after the stay order had spent its force by reason of the disposal of the application for the sanction of the scheme of amalgamation by Edgley J.

6. The only question that remains for decision is whether the point taken that the criminal case should not have been proceeded with by reason of the provisions of S. 171, Companies Act, is sustainable. That section is in the following terms:

When a winding up order has been made or a provisional liquidator has been appointed, no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose.

For the section to apply it must be held that the present proceedings are against the company or against the Bank. In my opinion the present criminal proceedings are not against the Bank but against the accused, the Manager of the Behala Branch. It is true that the accused was acting as the Manager of the Bank at the time that he made the representation. This fact may render the Bank civilly liable, but I cannot see how it can be said that these proceedings are against the Bank it self. I do not see how a bank can be charged with cheating. The Bank is a person, but it is a juridical person and not an actual person. The Bank is such that it cannot be said to have the mens rea requisite for the offence of cheating. The Bank as such cannot be punished for cheating because it has no physical body. The proceedings were, therefore, not against the Bank but against the petitioner as Manager of the Bank. That being so, S. 171, Companies Act, does not apply.

7. In these circumstances I see no reason to interfere with the progress of the case and I, therefore, discharge this rule.

