(2000) 04 MAD CK 0084

In the Madras High Court

Case No : Criminal R.C. No. 588 of 1999

Vinitha Associates Ltd., R. Sumer Chand Bafna and R. Sunil Chand Bafna — APPELLANT

Vs

State — RESPONDENT

Date of Decision : 26-04-2000

Acts Referred:
Penal Code, 1860 (IPC) — Section 34, 409, 477A

Citation : (2000) 1 LW(Cri) 391

Hon'ble Judges : N. Dhinakar, J

Bench : Single Bench

Advocate : V. Gopinath and Ms. Nappinai, for the Appellant; Babu Muthu Meeran, Govt. Advocate, for the Respondent

Judgement

N. Dhinakar, J.—Petitioners are accused 1 to 3 in C.C. No. 4574 of 1997 on the file of the IX Metropolitan Magistrate. Saidapet. Chennai. They are now sought to be prosecuted for offences under Sections 409 and 477-A r/w. 34 IPC.

2. The facts which lead to the present prosecution can be briefly summarised as follows:

First accused is a company functioning under the name and style of M/s. Vinitha Associates. Respondents 2 and 3 are the Directors of the said company. The de facto complainant in the case is a Director of a company by name Lakshna Holdings of which his wife is the Managing Director He is the Managing Director of M/s. Uttathur Securities Private Limited of which his wife is one of the Directors. The first accused company. Vinitha Associates, is dealing in company shares by purchasing and selling them on behalf of their clients. Other two companies, viz.. Lakshna Holdings and Uttathur Securities Private Limited were sub-brokers and were having dealings with the first accused company. On 26.6.1996 a cheque was drawn by Uttathur Securities Private Limited in favour of first accused company for a sum of Rs.14 lakhs and the same was sent to the first accused company with a covering letter. In the said letter. Uttathur

Securities Private Limited have informed that they are enclosing a cheque drawn on Bank of Baroda for a sum of Rs.14 lakhs with a request to acknowledge the receipt of the same. In the column meant for enclosures they have mentioned the cheque number and in the column meant for description, they have stated as "A/c to cheque" and in the column meant for credit, they have mentioned Rs.14 lakhs On receipt of the cheque and the covering letter and in view of the description given by them in the said covering letter, the first accused company deposited the said cheque and credited the same to the account of Uttathur Securities Private Limited of which the de facto complainant is the Managing Director.

3. On 11.9.1996. The first accused company sent a letter enclosing the accounts to Uttathur Securities Private Limited stating that they have credited the amount of Rs.14 lakhs to the account of Uttathur Securities Private Limited and also claimed that the balance of Rs.5.20 lakhs towards the settlement of the running account. The said letter was received by the Uttathur Securities on 13.9.1996. But no reply was sent by the company. As there was no reply from Uttathur Securities Private Limited, the first accused company was constrained to send a notice on 16.2.1997 demanding an amount of Rs.5.20 lakhs. Uttathur Securities thereafter sent a reply dated 25.2.1997 requesting 15 days time for suitable reply to the notice and thereafter, sent a reply on 6.3.1997 denying the liability of Rs.5.20 lakhs. They have also denied that they have any transaction with Vinitha Associates. On 7.3.1997. a private complaint came to be filed by Lakshna Holdings represented by its Director Lakshmi Narasimhan against Vinitha Associates and the second accused for offences punishable under Sections 420, 409, 477-A, 468 and 471 of the Indian Penal Code. Learned Magistrate before whom the complaint was filed referred it u/s 156(3) of the Code of Criminal Procedure and the investigating agency after investigation filed a report against the first accused as well as the second accused mentioned in the private complaint and also against another person who is arrayed as the third accused for offences punishable under Sections 409 and 477-A r/w 34 of the Indian Penal Code.

4. Learned counsel appearing for the petitioners contends that the entire allegations, even if taken to be true, do not make out an offence punishable under Sections 409 and 477-A of the Indian Penal Code. I have heard the learned Public Prosecutor and pursued the materials.

5. The sum and substance of the grievance of the defector complainant is that the cheque should have been credited to the account of Lakshna Holdings instead of Uttathur Securities Private Limited and the first accused company by crediting the amount of Rs.14 lakhs to the account of Uttathur Securities has committed an offence of breach of trust and also falsified the accounts The fads extracted in the order above show that a cheque was drawn on Bank of Baroda and sent on 26.6.1996. with a covering letter In the said covering letter, the have mentioned the cheque number and also the description. A perusal of the covering letter

does not show that there was a direction to the first accused company that the cheque sent. should be credited to Lakshna Holdings. Even from the letter dated 26.6.1996. addressed by the Uttathur Securities Private Limited to Lakshna Holdings (a copy of which was sent to the 1st accused company) in which it is found mentioned that as per the instructions of Lakshna Holdings. they have sent a cheque for a sum of Rs.14 lakhs to Vinitha Associates, one cannot come to the conclusion that the said cheque was sent to the first accused company for it be credited to the account of Lakshna Holdings. The covering letter which was referred earlier and sent along with the cheque to the first accused company also does not contain any direction to the first accused company to credit the amount to the account of Lakshna Holdings Private Limited Further, even in the notice dated 16.3.1997. the defector complainant though denied the liability of Rs.5.20 lakhs, did not say that the amount of Rs.14 lakhs earlier sent by way of a cheque by them was intended to be credited to the account of Lakshna Holdings. They have only stated that they never had any transaction with the first accused company. The above facts do not indicate that the first accused company credited Rs.14 lakhs to the account of Uttathur Securities Private Limited instead of crediting it to the account of Lakshna Holdings with an intention to commit criminal breach of trust.

6. Learned counsel appearing for the petitioners contends that even if the entire allegations are taken to be true, neither an offence u/s 409 Indian Penal Code nor an offence u/s 477-A r/w. 34 Indian Penal Code is made out. To appreciate the arguments, it will be relevant to extract the definition of "breach of trust" defined u/s 405 of the Indian Penal Code which reads as follows:

Criminal breach of trust:-Whoever being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that properly in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do. commits "Criminal breach of trust

A reading of the above definition indicates that for a person to be convicted for an offence of criminal breach of trust, an offender must have been entrusted with the property or should have been given any dominion over such property and that the offender must dishonestly misappropriate or convert the same to his own use or should have used it dishonestly or disposed of the said property in violation of any direction of law prescribing the mode for which the said trust is to be discharged.

7. Learned Government Advocate Mr. Babu Muthu Mccran. relying on illustration "C" in Section 405 Indian Penal Code contended that the first accused Company ought to have credited Rs.14 lakhs to the account of Lakshnai Holdings Private Limited since the amount was intended to be credited to the said company. I am at a loss to under stand as to how one could infer that Uttathur Securities sent

the cheque to the first accused company intending that the first accused company should credit it to the account of Lakshna Holdings. I have already extracted and discussed the covering letter as well as the letter addressed by Uttathur Securities to Lakshna Holdings dated 26.6.1996 which do not disclose any such intention on the part of Uttathur Securities that the cheque has to be credited to the account of Lakshna Holdings. At this stage, it is relevant to refer to a decision of the Supreme Court in The State of Gujarat Vs. Jaswantlal Nathalal, Supreme Court had on occasion to deal with the word "entrustment" mentioned in Section 405 IPC. In the case before the Supreme Court, cement was sold to the contractor who had to construct a building on contract and the contractor diverted the cement and did not utilise the same for the purpose of construction. The Supreme Court held that the expression "entrustment" carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. It further held.

A mere transaction of sale cannot amount to an entrustment. Thus, where the Government sells cement to its contractor solely for the purpose of being used in connection with the construction work the circumstance does not make the transaction anything other than sale. After delivery of the cement, the Government has neither any right nor dominion over it. If the purchaser or his representative fails to comply with the requirements of any law relating to cement control he should be prosecuted for the same But it cannot lie held that there was any breach of trust.

8. If we apply the above principle enunciated by the Supreme Court to the facts of this case, it is crystal clear that after the cheque was sent to the first accused company. the de facto complainant thereafter cannot claim any ownership of that cheque nor had he any dominion over that cheque since the cheque was drawn in favour of the first accused company Alter the cheque had been drawn in favour of the first accused company which was duly dispatched and received by it. the first accused company becomes the owner of the said cheque. Illustration "C" relied on by the learned Government Advocate will not apply to the facts of this case. An offence of criminal breach of trust as defined u/s 405 Indian Penal Code on the facts does not get attracted. I therefore, hold that even if the allegations are taken to be true, no offence u/s 409 Indian Penal Code is made out.

9. I will now take up the charge u/s 477-A IPC. For a person to be punished u/s 477-A IPC. it is necessary that the person who falsified the amounts must be a clerk, officer or servant or must have been under the employment or acting in the capacity of a clerk or officer or servant. Further, he must also have wilful intention to defraud, destroy, alter, mutilate or falsify any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer or has been received by him for or on behalf of his employer or with intent to defraud, he must abet the making of any false entry If a person omits or alters or abets the omission or alteration of any material particular form or in

any book, paper, writing, valuable security or account, then he can be punished for falsification of accounts. None of the ingredients mentioned above, as could be discerned, from a reading of Section 477-A IPC. are made out on the facts of this case It is an admitted fact that the first accused company was neither a clerk, officer or servant or employed under the defector complainant nor was it acting in the capacity of a clerk, officer or servant of the said defector complainant. In view of the discussion made above. I am of the view that the proceedings against the petitioners in the above calendar case have to be quashed and accordingly, they are quashed. Consequently, pending Crl.M.P. is dismissed.

