

Tilak Raj Vs. State

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Court : Delhi

Decided On : Feb-10-2014

Judge : Indermeet Kaur

Appellant : Tilak Raj

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on :

04. 02.2014 Judgment delivered on :10.02.2014 CRL.REV.P. 65/2014 TILAK RAJ Petitioner Through Ms.Charu Verma, Adv. versus STATE Respondent Through Mr.Navin K. Jha, APP. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1. Petitioner is aggrieved by the impugned judgment dated 17 th October, 2000 wherein the order passed by the Magistrate convicting the appellant Tilak Raj under Section 420 read with Section 511 of the Indian Penal Code (IPC), Sections 468 and 471 read with Section 511 of the said Act had been endorsed and the appeal had been dismissed.

2. Vide the aforementioned impugned judgment, the appellant was sentenced to undergo RI for one year and to pay a fine of Rs.200/- for the offence under Section 420 read with Section 511 of the IPC; for the offence under Section 468 read with Section 511 of the IPC he had been sentenced to undergo RI for one year and to

pay a fine of Rs.200/- ; for the offence under Section 471 read with Section 511 IPC he had been sentenced to undergo RI for six months.

3. The allegations against the appellant were that he had opened an account No.14574 in the Punjab and Sind Bank, Tilak Nagar Branch by depositing Rs.20/-. This was on 17.9.1979. Thereafter, he deposited two cheques in the sum of Rs.5,000/- and Rs.5,200/- drawn on the Super Bazar, Connaught Circus, Syndicate Bank which were dishonoured on presentation on the ground that the signatures of the drawer was different. On 20.9.1979, accused came to the Punjab and Sind Bank to withdraw a sum of Rs.1,000/- and presented a cheque bearing No.623956. Since the Syndicate Bank had returned the cheques of the petitioner on an earlier date, the Punjab and Sind Bank had been warned that these cheques were bogus and as such the Bank was vigilant. The accused was apprehended on the same date. He was arrested. Challan was filed.

4. The prosecution examined 9 witnesses in all. PW2, Parshottam Sharma had deposed that on 10.9.1979, he had gone to the bank and withdrawn some amount; on 14.9.1979, he had gone to deposit a cheque where he was informed by the bank officials that some person had got issued a cheque book in his name and the requisite slip did not bear his signatures. He closed his account. Since this witness did not come for his cross-examination the learned Metropolitan Magistrate rightly discarded his version.

5. The account opened by the petitioner had been introduced by Smt. Surjit Kaur. She was examined as PW7 She has on oath deposed that she was maintaining an account at Punjab and Sind Bank and on 17.9.1979, she had withdrawn some money from the bank. CRL.REV.P. 65/2014 20.9.1979, she received a message from the Manager of the bank and on reaching the bank, she was informed that her signatures had been forged in the account opening form (Ex.PW3A) where she had been shown as the introducer to the account holding of the appellant.

6. Amarjit Singh Bindra (PW3) was the Manager of the bank at the relevant time. He had deposed that the appellant had opened an account in the bank disclosing the name as Ram Lal and Ex.PW3A was the account opening form filled in by the accused in his presence. As per procedure, this form was sent to the Assistant

Manager, Sh. V.K. Sachdeva. He admitted that as per the discretion of the Manager, even a holder of Rs.20/- can be issued a cheque book. It is also not necessary that the passbook has to be issued on the next date. He admitted that Ex.PW3E and Ex.PW3F which were the return memos of the two dishonoured cheques of Rs.5,000/- and Rs.5,200/- from the Syndicate Bank had been returned along with the return memo. He admitted that no actual monetary loss had been caused to the bank.

7. The Assistant Manager V.K. Sachdeva was examined as PW4 He deposed that the appellant had opened an account in the bank in the name of Ram Lal on 17.9.1979 and he had signed at point X. On 19.9.1979, PW4 had been informed by PW3 to be vigilant about the customer of this account as the Syndicate Bank had suspected something in view of his two dishonoured cheques which had not tallied with the signatures of the drawer. He admitted that on 20.9.1979 accused had come to the bank to get a cheque of Rs.1,000/- encashed. He was arrested and apprehended on the spot.

8. Testimony of PW3 and 4 was also corroborated by another officer of the bank namely PW5 Amarjit Singh Madan. he had deposed that the accused was arrested on the spot when he was trying to withdraw a sum of Rs.1,000/- from his account.

9. The Investigating Officer SI Satpal was examined as PW9 He has also corroborated the aforementioned versions.

10. In the statement of the accused recorded under Section 313 of the Cr.P.C, his defence was that on the fateful day, he had gone to the bank to get a change of Rs.100/- where he was falsely apprehended and implicated in the present case.

11. On the basis of the aforementioned evidence, which was led before the trial court, the accused was convicted as aforementioned. The Sessions Judge had endorsed this finding.

12. This Court is sitting in revision. The powers of revision under Section 397 of the Cr.P.C are limited. Unless and until there is a patent illegality or a perversity in the fact findings of the two courts below, interference is not called for. While

exercising revisional jurisdiction the court has a limited power. It is severely restricted. It is only when there is a miscarriage of justice arising out of misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment that revisional jurisdiction may be exercised.

13. In 2004 Cri LJ4254 State of Maharashtra v. Jagmohan Singh Kuldip Singh Anand, the Supreme Court had observed:

In embarking upon the minutest re-examination of the whole evidence at the revisional stage, the learned Judge of the High Court was totally oblivious of the self-restraint that he was required to exercise in a revision under Section 397 Cr. PC. On behalf of the accused, reliance is placed on the decision of this Court to which one of us (Justice Sabharwal) is a party i.e. Ram Briksh Singh v. Ambika Yadav. That was the case in which the High Court interfered in revision because material evidence was overlooked by the Courts below.

14. The categorical fact findings returned by the two courts below do not call for any interference. There was no reason for the bank officials to falsely implicate the accused but for the reason that he was guilty of the crime for which he has been convicted. In this context, the testimony of the Bank Manager PW3 the Assistant Bank Manager PW4 and the officer of the bank PW5 are relevant. Admittedly, the appellant had opened account No.14574 in the bank with an amount of Rs.20/-. The account opening form Ex.PW3A was filled in by him and duly signed by him. Appellant had introduced himself as Ram Lal and signed all documents as Ram Lal. He had also deposited two cheques of Rs.5,000/- and Rs.5,200/- in the said account which had been returned dishonoured for the reason that the signatures did not tally with the name of the drawer. The specimen signatures of the appellant were also taken in the presence of the Magistrate Sh. I.C. Tiwari. Section 73 of the Indian Evidence Act was relied upon by the Magistrate to examine the signatures on the disputed documents i.e. the two dishonoured cheques and the specimen writings of the accused. The signatures of Parshottam Sharma appended on the two dishonoured cheques (PW3A and PW3F) tallied with the handwriting of the accused Tilak Raj. The forgery on the part of the accused to cheat the bank with a dishonest intention appeared writ large. He had forged the signatures of

Parshottam Sharma.

15. However, admittedly since there was no actual monetary loss which was caused to the bank nor had any actual wrongful gain accrued to the appellant, the appellant had been convicted under Section 420 read with Section 511 of the IPC as also under Sections 468 and 478 for an attempt only. The conviction of the appellant calls for no interference. However, the second line of argument propounded by the learned Amicus Curiae for the appellant was that the appellant has suffered a protracted trial since the year 1979 and it is now almost 3 decades since the date of the incident; the appellant was also present in person during the course of hearing; he is stated to be 77 years of age; he has suffered a paralytic stroke on his right side and has difficulty in walking. Because of his physical condition, he is also stated to be unemployed. It is further stated that he is a family man. Leniency is accordingly prayed for in sentence.

16. The sentence awarded to the appellant is a maximum sentence of one year. All sentences were to run concurrently. Fine has since been deposited. Nominal roll of the appellant shows that as on the date he was granted bail, he had suffered incarceration for about two months.

17. Keeping in view the aforementioned background and the submissions of the learned counsel for the appellant, the fact that the offence relates to the year 1979, dating back almost 35 years from today; the appellant having grown old not only in years but his physical condition also evidently being impaired having suffered a right paralytic stroke; in the fitness of things and in the interest of justice, there would be no useful purpose in sending the man back to jail. He is also not in a financial position to pay any further fine. This Court has been informed that the appellant is being assisted by learned amicus curiae. This Court is thus of the view that the sentence already suffered by him is the sentence to be imposed upon him.

18. The revision petition stands disposed of in the above terms. **INDERMEET KAUR**, J FEBRUARY 10 2014/rb

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