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Court : Delhi

Decided On : Dec-08-1967

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Judge : T.V.R. Tatachari, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 491A

Appeal No. : Criminal Revision Appeal No. 60 of 1967

Appellant : Nand Gopal

Respondent : State

Advocate for Pet/Ap. : R.B. Barparshad and; S. Malhthora, Advs

Judgement :

T.V.R. Tatachari, J.

(1) These are two petitions by Nand Gopal Sardana and Darya Singh Lathar under section 561-A and 439 Criminal Procedure Code, for the expunging of certain adverse remarks against the petitioners passed by the Chief Judicial Magistrate, Simla, in his order, dated 20th June, 1967, in a case before him. State v. Lahori Ram At the relevant time, i.e. on 25th January 1966, Nand Gopal Sardana, Public Witness 6, was the Manager of the State Bank of Patiala at Simla, and Darya Singh Lathar, Public Witness 3, was the cashier in the said bank.

(2) The facts of the case, as set out by the learned Chief Judicial Magistrate in his Judgment, may be summarised as follows: -

(I) On 25th January 1966, Nand Gopal Sardana, P W.6, sent a written complaint (Ex. P/B), through his peon. Jit Ram, to the Station House Officer, Police Station Sadar, reporting that a shortage of Rs. 40,000.00 in four packets of hundred rupee currency notes in the bank's cash balance had been detected on that day, that at about 10-15 a.m. on that day the cash was brought from the strong room in the usual manner after making the proper entries in the vault register, that at about 10-40 a.m. when the Cashier in charge, Darya Singh Lathar, was arranging routine remittance for the State Bank of India, Simla, he discovered the shortage and immediately reported the same to the Manager. Nand Gopal Sardana, that a thorough search was made by the Manager but without any effect, and that the Manager was holding the entire staff of the bank for investigation. (ii) On the basis of the said complaint, a case was registered by the Police Station Sadar, Simla, under section 409, Indian Penal Code. The Station House Officer, Balbir Singh, of the Police Station Sadar, went to the spto and started the investigation. On checking the cash balance of the bank, it was discovered that currency notes of the value of Rs.-39,500.00 were found missing instead of Rs. 40,000.00 as reported by the Manager. On the next day, the Deputy S. P. went to the spto for investigation. (iii) On 27th January 1966, Lahori Ram, accused, who was a Gard Man of the Bank, went to the residence of the Manager, Nand Gopal Sardana, who was then taking tea with one Santokh Singh, Chief Accountant of the State Bank of Patiala, and voluntarily stated that the police had enquired from the staff if the entire building of the bank had been thoroughly searched, on which all the members of the staff had made a false statement th-u a thorough search had been made, that, in fact on search had been made in the Record Room of the bank, and that the accused, may be permitted to search the Record Room. In the meantime, the peon, Jit Ram, also reached there and both Lahori Ram and Jit Ram went away, with the permission of the Manager, to search the Record Room. The Manager and the Chief Accountant were still having their tea, when Jit Ram came running to them and reported that the bundles of currency notes had been found hurried in the lowermost room and were taken out by the accused, Lahori Ram. On receiving the said information, the Manager and the Chief Accountant went to the

spto and found 4 bundles of currency notes wrapped in a newspaper lying in a corner of the room. The police was informed and the Deputy S. P. came to the spto and took possession of the currency notes along with the newspaper, dated 6th December, 1965, in which they were wrapped, and also three pieces of string with which the newspaper wrapper had been tied. After spraying some powder on the newspaper wrapper, some finger prints were detected, and photographs thereof were taken. The articles so recovered were put into a tin box and made into a sealed parcel, which was taken into possession by the police. (iv) The accused, Lahori Ram, was arrested on 31st January 1966, as it was found during the investigation that on 22nd January 1966, after closing the daily accounts, the Cashier, Darya Singh Lathar, went out to make water, when the accused was standing near the counter, and it was suspected that the accused might have utilised that opportunity to remove the currency notes from the attache-case of the Cashier. The manner in which the accused got the currency notes recovered strengthened the suspicion further, and he was, therefore, arrested on 31st January 1966. After further investigation, the accused was charged under sections 409 read with sections 380 and 381, Indian Penal Code. After going through the police report under section 173, Criminal Procedure Code, a charge under section 381, Indian Penal Code, was framed. The charge was read over and explained to the accused. The accused pleaded not guilty to the same and claimed to be tried.'

(3) The learned Chief Judicial Magistrate, by his judgment, dated 20th June, It-67, acquitted the accused. In the said judgment, the learned Chief Judicial Magistrate, made certain observations which were adverse to the petitioners herein. It is these remarks that are sought by the petitioners to be expunged from the judgment on the grounds that they were wholly uncalled for, unjustified, unwarranted and irrelevant to the point in issue, that the said observations or remarks relate to some act, conduct and statements of the petitioners, that they were never brought to the knowledge of the petitioners and no opportunity was given to them to furnish their Explanations thereto, and that they were not necessary for the decision of the case and were not an integral part thereof. The grievance of the petitioners is that the said disparaging observations or remarks are likely to seriously affect the entire career of the petitioners, who described

themselves in the petitions as young men with high academic qualifications and unblemished and meritorious record of service.

(4) It is now well Settled that undel section 561-A of the Criminal Procedure Code, the High Court has inherent jurisdiction to expunge remarks in the judgments of Subordinate courts, when they deserve to be so expunged. In State of Uttar Pradesh v. Mohd. Naim, it. was held that- 'The High Court can in the exercise of its inherent jurisdiction expunge remarks made by it or by a lower court if it be necessary to do so to prevent abuse of the process of the Court or toherwise to secure the ends of justice; the jurisdiction is, however, of an exceptional nature and has to be exercised in exceptional cases only'. As regards the principles to be borne in mind in exercising the said jurisdiction, the Supreme Court observed as follows: -

'If there is one principle of cardinal importance in the administration of justice, it is this: The proper freedom and independance of judges and Magistrates must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by any body, even by this court. At the same time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair play and restraint. It is nto infrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the manner of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself: (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (e) whether it is necessary for the decision of the case, as an integral part thereof to animadvert him on that conduct. It. has also been recognised that judicial pronouncements must be judicial in nature, and should nto normally depart from sobriety moderation and reserve.'

(5) In the present case, the petitioners herein, the Manager and the Cashier of the State Bank of Patiala at Simla, were witnesses (P.W. 6 and Public Witness , 3 in

the case. The former was also the complainant. The Circumstances under which a High Court would expunge such remarks and the principles which are to be borne in mind have been succinctly stated, after a detailed consideration of the case-law, by Gosain and Harbans Singh, Jj in Swiar Lal Singh Kang v. The State, in the following terms;-

'WITH regard to the right of the trial Court to make damaging observations and the circumstances under which the High Court would normally expunge such remarks, there is a general consensus of opinion that -

(1) In weighing evidence, in arriving at conclusions on questions of fact and in reviewing the conduct and the veracity of witnesses with reference to the particular incidents, the trial Court is entitled to make remarks which may reflect adversely on the character and conduct of the witnesses and the parties to the case and the High Court cannot substitute its own opinion and expunge such remarks, it being, of utmost importance to the administration of justice that the trial Courts should be allowed to perform their functions freely and fearlessly without any undue interference by the High Court:

(2) However, as such adverse remarks are likely to injure the reputation or prejudicially affect the means of livelihood or the career, of the person concerned, this power should be exercised by the trial Court with great reserve and moderation so as to ensure that the witnesses are not restrained from coming forward to give evidence and giving their real opinions for fear of displeasing the trial Court. The need for this caution is still greater in case of remarks against officials whose entire career is likely to be affected by such remarks; (b) In any case, such remarks, where justified, should be couched in restrained and decorous terms

(5) No such remarks should be made unless- (a) they are based on material legally and properly brought on the record: and (b) where adverse inference is sought to be drawn from some alleged prior act, conduct or statement or a witness, an opportunity is afforded to such witness to furnish an Explanation, by bringing such act, conduct or statement to his notice, while he is being examined or by recalling him :

(5) So far as persons, who are neither witnesses nor parties to the case, no adverse remarks should normally be made because they have no opportunity of saying anything in their defense

(6) The High Court will in the exercise of its inherent jurisdiction, expunge such remarks if the same are likely to do harm to the person concerned and - (a) are based on no evidence or on irrelevant or inadmissible evidence; or (b) even if based on proper evidence, they are wholly irrelevant to any point in issue and are not necessary either to the conclusions or for the arguments of the Court concerned ; or (c) where such remarks are based on some prior act, conduct or statement of a witness, which has not been brought to his notice, to enable him to furnish an Explanation ;

(7) this jurisdiction of the High Court is, however, of an exceptional nature and is to be exercised in rare cases of exceptional hardship, to avoid abuse of process of the Court and to secure the ends of justice;

(8) However, if the remarks, though unjustified, form an integral part of the judgment and are not distinctly separable, the High Court would not expunge the same but content itself by recording its observations that the same are unjustified.'

(6) In the present case, the observations which are sought to be expunged from the judgment of the learned Chief Judicial Magistrate are the following : -

(A)'... ..in order to shield the real culprits who appear to be none else than the cashier and the Manager of the Bank. While there is absolutely no evidence against the accused, the conduct of these two officials of the bank remains unexplained.' (b) 'No sensible person should have considered the advisability of awaiting sanction from the head office before lodging the report'. (c) 'It appears to me that the cashier in collusion with the Manager made an effort to embezzle the amount and when they realised that the scheme could not succeed, the entire burden was thrown on the poor accused.' (d) and that both the Manager and the cashier had slipped away from the Bank premises within half an hour of the detection of the loss and without taking any steps in the matter.'

(7) The observation (a) occurs in para 3 of the judgment. The observations (b) and (e) occur in paragraph 6 of the judgment, and the observation (d) occurs in paragraph 7 of the judgment

(8) The hist of them, i.e.(a), was made by the learned Chief Judicial Magistra'e in paragraph 3 of his judgment immediatcly after referring to the case of that prosecution in paragraphs 1 and 2. that observation(a) occurs in the middle of paragraph 3, which runs as follows :-

3.After going through the evidence on record, I have nto the least douto that the case against the accused his bean fabricated and he his been falsely involved in order to shield the real culprits who appear to be none else than the Cashier and the Malaga r of the Bank. While there is absolutely no evidence that accused, the conduct of these two officials of the Bank remains unexplained.'

The Chief Judicial Magistrate then discussed the evidence in paragraphs 4, 5 and 6. In paragraph 4, the learned Chief Judicial Magis trate printed, out firstly that in order to bring home the charge against the accused, the first ingredient which the prosecution had to establish was inat the accused rennoved currency ntoes from the possession of the Cashier of from the Cashier's room or at least the accused had an opprtunity of so doing, and then observed that there appered to be absolutely ntohing an record in supoort of this ingradient. The learned Chief Jadicial Magistrate then referred to the relevant portions of the evidence of the Cashier, Public Witness 3, and pointed out that it only showed that at about 3 p.m. on 22nd January, 1966 the Cashier, along with the Manager and a peon by name Ashok and the accused Lahori Ram went to the strong room for depositing the cash which amounted to Rs. 83, 472/36 P., that the money had been put into two containers, one attache-case containing R; 75000.00 and the toher containing Rs. 8, 472/36 p., that the attache-case containing Rs 75.000.00 was put in double lock after proper verification and Rs. 8,472/36 P. in single lock, and that all the persons then returned to the bank from the strong room. The learned Chief Judicial Magistrate then pointed out that 23rd and 24th January, 1966, were holidays and the bank reopened on 25th January, 1966, that on that day the Cashier along with the Manager, Lahori Ram (accused), and Jit Ram (Peon) went to the strong room

at about 10 15 A. M. and brought the cash into the Cashier's cabin, that the cash was then carried by Jit Ram and the acd had no opportunity to handle it at any stage, that at about 10,15 A M. the Cashier counted the cash and detected a shortage of about Rs.40,000.00 that it was nowhere alleged that the accused entered into the Cabin of the Cashier during that interval or that the accused was found missing from the bank of any part of the day, and that under those circumstances, by no stretch of imagination, could the accused be involved in the theft.

(9) In paragraph 5 of his judgment, the learned Chief Judicial Magistrate dealt with the toher part of the story which related to. the alleged discovery of the missing currency ntoes from the stationary room at the instance of the accused. It may bs stated here that the learned Chief Judicial Magistrate reterred to the discovery being from affrecord room in setting out the prosecution case in paragraph I of hii judgment and to scationary in paragraph The learned counsel for the petituoners poioted out that this was a mistake turn a cellar, as the currency ntoes were actually discovered in cellar. In my opinion, this alleged mistake, even if it was a mistake, is immaterial so far as the cosidertion of the question for determination in the present petitions is concerned. The learned Chief Judicial Magistrate then referred to the evidence of Public Witness 4, Santokh Singh, Chief Accountant of the Bank, . and P. W. 5, Jit Ram (Peon) and pointed out certain contradictions between the statements of the two witnesses. The learned Chief Judicial Magistrate then referred to the evidence of P. W 6, Nand Gopal Sardana, and pointed out that his version was in some particulars different from the versions of the aforesaid two witnes- ses, Santokh Singh and Jit Ram The learned Chief Judicial Magistrate in dealing with the evidence of P. W 6, Nand Gopal Sardana, in the context of the discovery of the cuirency nates, pointed out that Nand Gopal Sardana denied having stated before the police that on 27th January, 19613, when he reached the cellar on getting news from Jit Ram, he saw 4 packets of currency ntoes wrapped in newspaper lying in one corner of the cellar, and that the witness was confronted with the portion marked 'AA' in Ex. D/B whers it was so recorded, and then observed that-

'It cannot be explained as to how this witness had so materially contradicted his earlier statements made before the police.'

The learned Chief Judicial Magistrate next pointed out that Nand Gopal Sardana stated in his cross-examination that Jit Ram left two or three minutes earlier than the accused, and that after the departure of Jit Ram, the accused was granted permission to search the cellar, while the witness had stated before the police in Ex. D/B that the accused was having talks with them when Jit Ram reached, and then both, Jit Ram and the accused, were granted permission to search, and then both of them left, and that the witness denied having made such a statement and was confronted with the portion marked 'BB' in statement Ex. D/B, where it was so recorded. Thus, after referring to the differences in the versions of P. Ws. 4, 5 and 6, and the two statements marked 'AA' and 'BB' in Ex. D/B, which P.W. 6 denied having made to the police, the learned Chief Judicial Magistrate expressed his view at the end of paragraph 5 as follows :-

'In view of such serious contradictions in the statements of all the material Public Witness PWs. and the fact that cellar was accessible to all the accused cannot in any manner be connected with the discovery of the currency notes. The accused thus can neither be connected with the removal of the currency notes from the Cashier's possession nor with their discovery from the cellar and there was no justification whatsoever for his prosecution in this case.'

(10) In paragraph 6 of his judgment, the learned Chief judicial Magistrate discussed the conduct of the Cashier and the manager of the bank in respect of the happenings which had given rise to the criminal case. The learned Chief Judicial Magistrate pointed out firstly that the loss of the currency notes is alleged to have been detected at about 10.45 a.m on 26th January, 1966, that although the loss was detected as early as 10.45 a.m, no report of the same was made to the police till 6 p.m., and that no satisfactory Explanation for such long delay in reporting the matter to the police has been brought on the record, that the Manager, . Nand Gopal Sardana, tried to explain the delay by stating that he contacted his head office at Patiala for obtaining permission to lodge a report, that no such permission for lodging a report to the Police Station was in the

Magistrate's view, necessary, and even if it was so, it should not have taken more than 15 or 30 minutes through an urgent trunk call, that the head office could never be expected to have withheld sanction for lodging the report to police in respect of a loss of Rs. 40,000.00 which was public money, that-

'No sensible person should have considered the advisability of awaiting sanction from the head office before lodging the report', (this is the and observation sought to be expunged) that in natural course, report should have been lodged immediately with the police and necessary intimation should have been given to the head office, that the record is silent as to at what time the sanction was obtained from the head office and in what manner and that even on the receipt of that sanction, the Manager did not care to telephone to the police, but only sent the complaint (Ex. P/B) through his peon. Jit Ram, only at 6 P.M. The learned Chief Judicial Magistrate next pointed out that in his cross examination the Manager stated that the Cashier Darya Singh Lathar, left the bank premises and went to his house at about 11.15 A.M. on 25th January, 1966 without any permission, that the loss of Rs 40,000.00 was reported by the Cashier to the Manager at about 10.45 A.M. and the Cashier left the bank premises without any permission of the Manager at 11.15 A.M. and still no notice was taken of this act by anybody, that the Manager himself followed the Cashier and brought him back to the bank from the Ridge, where the Cashier met him from his way back from the house, that, admittedly, the person of the Cashier was not searched by anybody, that it was so strange that no suspicion arose against the Cashier who, under those circumstances left the bank premises without the permission of the Manager, that the Manager claimed to have stated before the police about the visit of the Cashier to his house without the Manager's permission, but the statement of the witness (Ex. D/B) before the police does not contain a mention of that fact, and that the Cashier made no reference about the visit in his statement and no question was put to him about the same either in chief examination or in cross examination of the Cashier. The learned Chief Judicial Magistrate then pointed out that the Cashier stated in his evidence that on detecting the loss, he reported the matter to the Manager, who then came to his counter, the entire office was checked and thereafter he lost his conscience, that this statement of the Cashier was apparently incorrect in as much as seven half an hour of the detection, the

Cashier went to his house, and also because the Manager denied the suggesting that the Cashier became unconscious. The learned Magistrate next pointed out that no other member of the bank staff was produced to show as to how the news of the loss was broken and what steps were taken by the Bank Management on receipt of such news, that in the natural course such news should have spread not only within the bank premises but in the entire city like a wild fire, and that it was strange that even the bank staff did not appear to have acquired knowledge of the news. The learned Chief Judicial Magistrate referred to the evidence of Jit Ram and observed that in the natural course on hearing the news the Manager should have ordered that all inlets and outlets of the bank premises be closed and police be called at the spot, that the Manager did neither of the two with the result that a person of the importance of the Cashier had an occasion to leave the bank premises without the knowledge or permission of the Bank Manager, that from this circumstance, the Magistrate could conclude that other members of the staff were not then aware of the incident or else they would not have allowed the Cashier to go out of the bank premises or, in any case, they would have reported the fact to the police or some authority of the bank, and that from all the above it appeared to the learned Chief Judicial Magistrate that- the Cashier in collusion with the Manager made an effort to embezzle this amount and when they realized that the scheme could not succeed, the entire burden was thrown on the 'peer accused' (this is the 3rd observation sought to be expunged).

(11) After stating the aboveview at the end of paragraph 6 of his Judgment, the learned Chief Judicial Magistrate, stated in the 7th paragraph of his judgment as follows :-

7. Before parting with the case, I would like to condemn the conduct of the police officers entrusted with the investigation of this case. No proper investigation appears to have been conducted by them or else this poor accused would not have been in the docks to all this period. Proper investigations by the police must have revealed the fact that the accused could possibly have no occasion to have access to the bank's cash 'and that both the Manager and the Cashier had slipped away from the bank premises within half an hour of the detection of the loss and without taking any steps in the matter.' (This is the 4th observation sought to be

expunged) The other members of the staff of the bank do not appear to have been joined in the investigation, which under the circumstances of the present case was most desirable to do. No effort was made to prove the prosecution story as given in the challan in as much as the incident of 22nd evening about the Cashier's leaving the cash cabin for making water, and the alleged photographs of thumb marks on the discovered packet of currency notes were completely ignored at the evidence stage. These facts appear to have been mentioned in the challan simply to show a prima facie case against the accused. A proper investigation of the case, must, in my opinion, lead to different results. The learned Chief Judicial Magistrate ended his judgment with paragraph 8 which runs as follows :- '8. With these remarks, I would acquit the accused.'

(12) The first observation which is sought to be expunged, as already stated, occurs in paragraph 3 of the judgment immediately after the prosecution case was set out. This observation implicates the Manager and the Cashier and expresses the learned Chief Judicial Magistrate's conclusion that the real culprits were the Cashier and the Manager, and that in order to shield them the accused was falsely involved in the case. I have set out above the discussion of the evidence by the learned Chief Judicial Magistrate and the various inferences drawn and comments made by him in the course of the said discussion in paragraphs 4 to 7. There is nothing in the evidence or in the comments made or in the inferences drawn by the learned Chief Judicial Magistrate in the said paragraphs, which establishes that the Cashier and the Manager were the real culprits. The observation to that effect made in paragraph 3 was nothing but a surmise on the part of the learned Chief Judicial Magistrate. It was wholly unnecessary and uncalled for and there was no need for the learned Chief Judicial Magistrate to have expressed his surmise in recording his conclusion that the case against the accused was not established by the evidence adduced by the prosecution. The observation was not merely a characterisation or assessment of the evidence given by the Manager and the Cashier, but a clear condemnation that they were the real culprits. The Manager and the Cashier were not put any questions regarding the same, and they had no opportunity at all to meet or defend against the said condemnation. While it was open to the learned Chief Judicial Magistrate to assess the evidence of witnesses and to characterise the same as reliable or unreliable in considering

the question as to whether the guilt of the accused in the case was made out or not, observations like the one in question based on mere inferences or surmises and implicating the witnesses are not to be made in judgments since they would tantamount to condemnation which the witnesses concerned had no opportunity to explain or rebut. The observation (a) which occurs in paragraph 3 of the judgment was wholly irrelevant to the point in issue, namely the guilt or otherwise of the accused, Lahori Ram, and was not necessary for expressing the conclusion of the Court that the case against the accused was not made out and that he was to be acquitted, I am, therefore, of the opinion that the said observation in paragraph 3 of the judgment, namely, the words-

'In order to shield the real culprits who appear to be none else than the Cashier and the Manager of the Bank. While there is absolutely no evidence against the accused, the conduct of these two officials of the bank remains unexplained. should be expunged, and I direct accordingly.

(13) The observation (b) sought to be expunged occurs in paragraph 6 of the judgment. This observation merely expresses the view of the learned Chief Judicial Magistrate that the Manager did not act as a sensible person in considering that it was advisable to await the sanction from the head office before lodging the report. While it was open to the learned Chief Judicial Magistrate to express his view as to what, in his opinion, should have been done in the circumstances in which the Manager was at that time, the characterisation of what the Manager did by awaiting the sanction of the head office as not sensible is uncalled for and objectionable, or at any rate not in good taste. This observation again was wholly irrelevant to the decision of the case against the accused or for the appreciation of the evidence, as the Court was concerned with only what was alleged to have been done by the persons concerned and not what should have been done or ought to have been done. I am, therefore, of the opinion that the observation (b) which occurs in paragraph 6 of the judgment namely, the words -

'Not sensible person should have considered the advisability of awaiting sanction from the head office before lodging the report.' should be expunged, and I direct accordingly.

(14) The observation (e) sought to be expunged also occurs in paragraph 6 of the judgment. In this observation again, the learned Chief Judicial Magistrate expressed his conclusion that the Cashier in collusion with the Manager made an effort to embezzle this amount and when they realized that the scheme could not succeed, the entire burden was thrown on the poor accused.' This observation is thus on the -same footing as the observation (a) which I have discussed above. It clearly amounts to a condemnation without an opportunity being given to the Cashier or the Manager to explain or rebut the same or to defend themselves against the same. It was also irrelevant to the decision of the case against the accused. I am, therefore, of the opinion that this observation, namely, the words:-

'It appears to me that the Cashier in collusion with the Manager made an effort to embezzle this amount and when they realized that the scheme could not succeed, the entire burden was thrown on the poor accused.'

should be expunged, and I direct accordingly.

(15) The observation (d) occurs in paragraph 7 of the judgment. In this observation. the learned Chief Judicial Magistrate, while commenting that the investigation by the police was not properly made in the case, remarked that proper investigation by the police must have revealed the facts that the accused could possibly have no occasion to have access to the bank's cash, and that both the Manager and the Cashier had slipped away from the bank premises within half an hour of the detection of the loss and without taking any steps in the matter. This observation would have been quite innocuous if only the words 'slipped away' had not been used. The remark that both the manager and the Cashier had slipped away from the bank's premises within half an hour of the detection of the loss and without taking any steps in the matter, in the wake of the earlier observations (a), (b) and (c) is only an expression of the same view which the learned Magistrate held, namely, that 'the Manager and the Cashier were the real culprits', but in different words. That it is the same view, is clearly suggested by the words 'slipped away'. Even if This observation is considered apart from the previous observations (a), (b) and (e), these words 'slipped away' do suggest and imply an attribution of a guilty conscience to the Manager and the Cashier. This observation again is

entirely irrelevant and unnecessary for the decision of the case against the accused. I am, therefore, of the opinion that this observation (d) also, namely, the words:

'AND that both the manager and the Cashier had slipped away from the bank premises within half an hour of the detection of the loss and without taking any steps in the matter.'

should be expunged from the judgment. and I direct accordingly.

(16) The four observations or remarks mentioned above are all separable from the Judgment, and their expunction from the judgment does not in any manner affect the decision of the learned Chief Judicial Magistrate so far as the accused is concerned.

(17) In the result, the two petitions are allowed, and the remarks or observations (a), (b), (e) and (d) mentioned in para 8 of each of the petitions are directed to be expunged from the judgment of the learned Chief Judicial Magistrate.

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