

Madan Mohan Vs. the State

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Court : Delhi

Decided On : May-23-1994

Reported in : 1994(29)DRJ433

Judge : Devinder Gupta, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 468

Appeal No. : Criminal Revision Appeal No. 39 of 1980

Appellant : Madan Mohan

Respondent : The State

Advocate for Pet/Ap. : P.S. Sharma, Adv

Judgement :

Devinder Gupta, J.

(1) This revision petition has arisen out of an order dated 6.2.1980 passed by Shri K.S. Gupta, Additional Sessions Judge, Delhi dismissing the petitioner's appeal and thereby confirming the judgment dated 15.4.1978 passed by Shri O.P.Divedi, Metropolitan Magistrate, Delhi and convicting the petitioner for an offence punishable under Sections 468 and 471 of the Indian Penal Code (for short 'the Code') and the order dated 20.4.1978 sentencing the petitioner to undergo R.I. for two years and to pay a fine of Rs.500.00 each in regard to both the said offences.

(2) The background of the case is that in September, 1968, the petitioner approached State Bank of Bikaner and Jaipur, Chandni Chowk, Delhi CrI.R.39/ 80 for being allowed Cash Credit Facility up to Rs.25,000.00 against pledge of stock of soap and soap oil with the bank. Necessary formalities were completed by executing loan documents. C.C. Limit was later on enhanced to Rs.50,000.00 .In the month of June, 1970 it came to the notice of the bank that M/s Raj Soap Mills of whom the petitioner-accused was one of the partners, had earlier been permitted to have credit facility with the State Bank of India, Shahdara and the godown, where the soap and soap oil were stated to be lying, was under the lock and key of the said State Bank of India. On this information officials of the State Bank of Bikaner & Jaipur withdrew some samples from the soap oil contained in drums. On analysis it was found that most of the drums contained foam like coloured water of no value at all. The petitioner was thereafter asked to furnish alternate security of the value of the stock pledged by the petitioner with the bank. The petitioner deposited title deeds of his properties. On enquiry made by the bank's legal advisers it was found that the said property had also been sold to the petitioner prior to offering the same to the bank as collateral security. The bank's officials thereafter are alleged to have checked various bills and invoices and it was found that even invoices and bills issued by M/s Standard Soap Mills and M/s Mohan Soap Mills were forged. In this background, after obtaining report from the C.F.S.L. and completing the investigation, challan was presented and the petitioner-accused was tried for offences under Section 420/468/471 of the Code.

(3) During the course of trial, by virtue of an order dated 9.12.1975, offence under Section 420 of the Code was allowed to be compounded since in the meanwhile the petitioner and the bank had sorted out the matter and the petitioner had cleared all his outstandings. For the other two offences, which are not compoundable, the petitioner was tried and the trial court found Bill Ext.PW5/B to have been forged by changing figure of Rs.5,514.02 to Rs.15,515.02. Not only the figure of the amount was changed but also certain other corresponding figures were changed.

(4) The petitioner was convicted for offences under Section 468 & 471 of the Code and sentenced to imprisonment as mentioned. The appeal preferred was also

dismissed. Appellate court concurred with the finding of fact. It is this judgment, which is under challenge in this revision petition.

(5) When the petition was called for, none appeared for the petitioner. I have heard the learned counsel for the respondent Mr. P.S. Sharma.

(6) It is vehemently urged by Mr. Sharma that in view of the finding of facts recorded by the two courts below, no interference is called for by this court in exercise of its revisional jurisdiction; He has contended that it has concurrently been found that the document, Ext. Public Witness 5/B was forged by the petitioner by inflating the weight and rate of the stock and this obviously was done dishonestly by the petitioner with a view to cheat the bank and he used it to avail C.C. facility.

(7) No doubt the findings recorded by the courts below that Ext. PW5/B was forged are not capable of interference by this court in exercise of revisional jurisdiction. Such findings are to the effect that so far as the figures of amount and weight are concerned, the same had been inflated but the question which further deserves to be examined is about the intention part whether it was done with dishonest intention to cheat the bank. It has been the contention of the petitioner during trial that what was pledged by him with the bank was the stock of soap and soap oil and not the document itself. The bank was in fact required to actually weigh the soap as well as soap oil and there was no occasion for the bank to accept the same without proper weighment. K.L. Sharma Public Witness 7, in his cross-examination also admitted that Cash Credit facility which was to be allowed to be availed by the petitioner was not to be on the basis of the bills but was on the basis of actual stock of soap and soap oil for which purpose bills had no relevance. In case this was so then it can be said that there was no question of petitioner ever intending that Bill Ext. Public Witness 5/B would be used by him for the purpose of cheating the bank. Had it been merely the bill by which the bank was induced to advance money to the petitioner in that case there was no scope for interference but when it was the stock of soap and soap oil which were pledged with the bank by weight there is no question of petitioner's intention to use the bill Ext. PW5/B for the purpose of cheating. It has come in the evidence that as a result

of sanction of C.C. facility, the petitioner had to execute various loan documents and had to pledge with it the stock of soap and soap oil. It is not in dispute that actual quantity of soap and soap oil which were pledged with the bank was in fact not made available by the petitioner for the said purpose. The mere fact that figures of rate and weight of the soap and soap oil stock were inflated in the bill makes no difference since the bill was never intended to be kept as pledge with the bank. It was the stock of soap and soap oil by weight and not by virtue of entries made in the bill which was pledged. It is also not disputed that the stock which was pledged was contained in 25 drums and there was no discrepancy therein. Actually 25 drums were pledged with the bank. In these circumstances, one of the necessary ingredients of offence under Section 468 was lacking, namely, intention of the petitioner that the document would be used for the purpose of cheating.

(8) The petitioner had during the pendency of the trial paid the entire outstandings to the bank. Nothing stands recoverable from the petitioner. C.C. facility was availed in the month of September 1968 and June 1970. Though no leniency should be shown in such cases but in the facts & circumstances of this case, I find it to be a fit case for interference in revisional jurisdiction.

(9) Resultantly, the impugned order is set aside and the petitioner-accused is acquitted of the offences under Sections 468 and 471 of the Code. The bail bond and surety bond shall stand discharged.

(10) Revision petition is disposed of.