

In Re: Marudamuthu Pillai

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Court : Chennai

Decided On : Nov-28-1940

Reported in : AIR1941Mad853

Appellant : In Re: Marudamuthu Pillai

Judgement :

Lakshmana Rao, J.

1. The appellant has been convicted under Sections 409, 467 and 471, Penal Code, and sentenced to rigorous imprisonment for four years for each of the offences, the sentences being directed to run concurrently. He has also been fined Es. 2000 with rigorous imprisonment for one year in default and the fine, if levied, has been ordered to be paid to P.W. 1. Notice was issued to r, w. 1 and she does not appear. The appellant was the secretary of the Mahalakshmi Bank, Coimbatore, and he was in charge of the cash and securities of the bank. The ' opening balance on 27th August 1938 was Es. 2099 according to the accounts, and the fixed deposit of P.W. 1 for Es. 2450 matured that day. She applied for payment and the appellant asked her to return ten days later, saying that the funds were insufficient. She got nothing in spite of several visits thereafter, and the bank went into liquidation. It was then discovered that there were ample funds on hand on 27th August, and they were shown to have been utilized for three loans of ES. 1000, 500 and Es. 500, to three railway officials : M. Section Narayanaswami Iyer, Smith and Hazeline. Investigation disclosed that these were fictitious persons, and

their loan applications were missing. Exhibits D and E, the promissory notes executed by two of them, were delivered to the liquidator by the appellant, and there was a note by him in Ex. E, the loan register, that the promissory note executed by Hazeline had been sent to the Insolvency Court. There was however no insolvency proceeding by or against any one named Hazeline, and the appellant was charged with criminal breach of trust in respect of the cash on hand on 27th August, forgery of Exs. D and E, the promissory notes and using them as genuine.

2. The appellant denied the offences and before the committing Magistrate he alleged that the three borrowers were brought and introduced to him as railway officials by P.W. 11 the president of the bank. The loan applications and promissory notes were prepared under P.W. 11 'a directions and he paid the money to the borrowers. Interest was received subsequently through P.W. 11, and the amount was credited in the accounts. Notices for repayment of the loans were not sent, as P.W. 11 stated that they were respectable persons, and he handed over the loan applications and promissory notes to the liquidator. He adhered to this statement in the Sessions Court except for a variation regarding the loan applications which, he alleged, were handed over to the clerk of the liquidator and he did not examine any witnesses. That the alleged borrowers were fictitious persons was proved beyond dispute by P.ws. 6,7 and 8, the railway officials; and the evidence of P.W. 4, the clerk of the bank, shows that he prepared and gave the loan applications to the appellant under his directions on 27th August. The borrowers were not present and the appellant went out with the applications to obtain their signatures. He returned with the applications about 2-30 P.M. with the signatures on them and the witness prepared and gave the promissory notes to the appellant as directed. The appellant then left saying that he was going to Podanur to obtain the signatures and he returned the next day with the promissory notes with the signatures and got the witnesses to make the necessary entries in the registers. P.W. 5, the peon, corroborates P.W. 4 as to what happened on 27th August; and the plea of the appellant that the borrowers were brought by P.W 11 and he paid the amounts to them is unfounded. Under the circumstances it cannot reasonably be doubted that the appellant misappropriated the amount and fabricated the promissory notes to cover up the fraud, and he would be guilty

under S3. 409, 467 and 471, Penal Code. The conviction is therefore correct and the sentences are not excessive. The conviction and sentences of the appellant are accordingly confirmed and the appeal is dismissed. But the amount misappropriated was the money of the bank, and the fine if recovered should have been ordered to be paid to the liquidator for the benefit of all the creditors. The order for payment to P.W. 1 is therefore set aside and the fine if levied will be paid to the liquidator for the benefit of the creditors.

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