(1993) CriLJ 547

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 402-DBA of 1985

State of Haryana	APPELLANT
Vs	
Shiv Singh and Others	RESPONDENT

Date of Decision: Feb. 22, 1992

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 468#Penal Code, 1860 (IPC) â€" Section 406, 467, 471

Citation: (1993) CriLJ 547

Hon'ble Judges: J.S. Sekhon, J; Amarjeet Chaudhary, J

Bench: Division Bench

Advocate: J.C. Sethi, A.A.G, for the Appellant; Sheela Didi and S.S. Dalal, for the Respondent

Final Decision: Allowed

Judgement

Amarjeet Chaudhary, J.
These Criminal Appeals Nos. 400/ DBA, 401-DBA and 402-DBA, all of 1985, are directed against the

judgment of Judicial Magistrate 1st Class, Fatehabad, District Hissar, dated 16-2-1985, who had acquitted the accused-respondents by holding

that the challans were filed beyond the period of limitation.

2. We have heard the learned Additional Advocate General Haryana and the Counsel for the respondents.

3. Mr. Sethi, learned Addl. A. G. Haryana had assailed the judgment of the trial Court on the ground that Section 468, Cr. P.C. was not

applicable to the facts of the case as the accused-respondents were charged u/s 471, IPC for fraudulently using promissory note and the

punishment for the said offence is ten years as provided u/s 467, IPC. The said Section of the IPC provides punishment for ten years and not 3

years. Therefore, the provision of Section 468 Cr. P.C. is not applicable. On the other hand, the Counsel for the respondents has argued that the

instant case is quite an old matter and no useful purpose would be served if the cases are remanded for fresh decision on merits.

4. On the consideration of the arguments, we find force in the contention of the learned counsel for the State.

5. The accused were charged on 29-4-1981 by Judicial Magistrate 1st Class, fatehabad which reads as :-

Firstly, that you Shiv Singh, Brij Mohan and-Kesho Ram in the months of January and June, 1970 at Dhani Tehliwali, being members of the Dhani

Tehliwali Agricultural Cooperative Services Society and in your capacity as Treasurer, Secretary and President respectively, were entrusted with

or having dominion over three different sums of money, i.e. 5,000/- Rs. 10,000/- and another sum of Rs. 20,500/-totalling Rs. 35,000/-committed

criminal breach of trust in respect of the aforesaid amounts and thereby committed an offence u/s 406, IPC and within my cognizance.

Secondly, that you all on the aforesaid date and place, in your aforesaid capacity of the aforesaid society in discharge of your duties, fraudulently

forged promissory notes in respect of the amounts allegedly disbursed and used those Tamasaka (Promissory Notes) as genuine documents which

you then knew or had reasons to believe the same to be forged one and that you thereby committed an offence u/s 471, TPC and within my

cognizance.

6. No doubt the accused were not charge-sheeted u/s 467, IPC, but the second charge framed against them does speak about fraudulently forging

of promissory notes and the forgery regarding Promissory Note is provided under the provisions of Section 467, IPC, which provides

imprisonment which may extend to 10 years, whereas Section 471 of the Indian Penal Code does not itself provide for any punishment.

7. u/s 406, IPC, the punishment for criminal breach of trust is three years with fine. u/s 467, IPC whoever forges a document shall be liable to

punishment for 10 years with fine. Section 468 of the Criminal Procedure Code prescribes bar to taking cognizance after lapse of the period of

limitation. According to sub clause (2)(c), the period of limitation is three years, if the offence is punishable with imprisonment for a term exceeding

one year, but not exceeding three years. Therefore, in such a situation, the provisions of Section 468 are not applicable as it covers the offences

punishable up to 3 years only.

8. For the reasons aforesaid, the order of the learned Magistrate, dated 16-2-1985 is hereby set aside and the cases are remanded to him for

fresh decision on merits in accordance with law.

9. The respondents, through their counsel are directed to appear before Judicial Magistrate, 1st Class, Fatehabad, on 10-4-1992, to receive

further instructions in the matter.