AIR 1971 SC 759 : (1971) CriLJ 651 : (1971) 3 SCC 232 : (1971) SCC(Cri) 440 : (1971) 3 UJ 528

Supreme Court of India

Case No: Criminal Appeal No. 104 of 1968

Patel Uka Naran		APPELLANT
	Vs	
Kalyan Karsan and Another		RESPONDENT

Date of Decision: Jan. 18, 1971

Acts Referred:
Penal Code, 1860 (IPC) â€" Section 406, 409, 420

Citation: AIR 1971 SC 759 : (1971) CriLJ 651 : (1971) 3 SCC 232 : (1971) SCC(Cri) 440 : (1971) 3 UJ 528

Hon'ble Judges: P. Jaganmohan Reddy, J; I. D. Dua, J

Bench: Division Bench

Advocate: G.D. Gupta, for the Appellant; S. K. Dholakia and S.P. Nayar, for the Respondent

Final Decision: Dismissed

Judgement

I.D. Dua, J.
The appellant, Patel Uka Naran, was the President of the Sultanpur Juth Vividh Karyakari Sahkari Mandli (hereinafter called

the Mandli) on January 22, 1966, having held that office for nearly 7 or 8 years till August 31, 1966 when he was succeeded by Arjan Limba.

Kalyan Karamshi (complainant) an illiterate agriculturist was a shareholder of the Mandli He,had taken a loan of Rs. 500/-from the Mandli and in

January, 1966 Rs. 1,215.73 (inclusive of interest upto January 15, 1966 and expenses for notice etc.) were due from him on account of this loan.

On January 10, 1966 he was given a notice by the Mandli to pay this amount within eight day from its receipt failing which it was threatened that

the amount would be recovered by proceedings for recovery of revenues. It was pointed out that the Mandli had obtained a certificate to recover

the amount according to revenue proceedings. To avoid unnecessary additional expense the complainant was requested to make arrangements for

paying the amount. On January 22, 1966 Bhagvanji Vithaldas was the Secretary of the Mandli. These facts are not disputed. According to the

prosecution case on January 22, 1966 the complainant went to the Mandli office and paid to the appellant Rs. 1,220/-(12 currency notes of Rs.

100/-each and two currency notes of Rs. 10/-each) who gave him a receipt for the amount scribed by a clerk and signed by the appellant with the

seal of the Mandli thereon Ex. P/13. The Secretary was not present in the office on that day and that is why a pucca receipt for this amount was

not issued. The appellant told the complainant that after adjusting the account the amount received in excess would be returned to him. The

complainant, feeling satisfied went home with the kutcha receipt. On October 29, 1966 after the appellant had ceased to be the President of the

Mandli and Arjan Limba had taken over, a notice Ex. P/15 described as the last notice was sent by the Mandli to the complainant informing him

that Rs. 415.73 had become due as interest on the principal amount of Rs. 800/-upto January 16, 1966 and requiring him to pay the principal and

interest accrued upto the date of payment and also the expenses of the notice. This notice further pointed out that earlier a notice dated January 10,

1966 had been sent to the complainant on which no action was taken by him and as the debt had become barred by time, a certificate had already

been received by the Mandli for recovering the amount ""by attachment according to land revenue proceedings"". It was emphasised that if the

amount was not paid the Mandli would be obliged to take attachment proceeding On the complainant informing the Mandli of the payment having

already been made by him and enclosing a copy of the receipt (Ex. P/13), the Secretary of the Mandli wrote back on December 5, 1966

intimating to the complainant that the amount of the receipt had not been credited in the account books on the date of the receipt or thereafter. He

was informed that he might take such further action in the matter as he liked. It may be pointed out here that Bhagvanji Vithaldas, who was the

Secretary on January 22, 1966 had since died and he was now succeeded by Bhikhalal Shamjibhai (P.W. 4) sometime in March, 1967 as

deposed by him. On December 20, 1966 the complainant received a letter from the Registrar of Co-operative Societies, Rajkot asking him to

institute a complaint in respect of the payment of Rs. 1,220/-made by him to Uka Naran, the ex-President of the Mandli promising him the

necessary assistance in the matter Three days later the complaint, out of which the present appeal arises, was instituted and after trial the Judicial

Magistrate First Class, Gondal, convicted the appellant on September 22, 1967 of an offence u/s 409, I.P.C. sentencing him to simple

imprisonment for one year and fine of Rs. 2,000/-, with further simple imprisonment for two months in case of default in payment of fine. Out of the

fine, if realised, Rs. 1,220/-were directed to be paid to the complainant. That Court also convicted him of an offence u/s 420, I.P.C. imposing a

sentence of simple imprisonment for two months.

2. On appeal the Sessions Judge, Rajkot set aside the appellant''s conviction u/s 420, I.P.C. and converted his conviction u/s 409 to one u/s 406,

I.P.C. and also reduced the sentence to simple imprisonment for 9 months. The fine was also reduced to Rs. 1,500/-and it was directed that out of

the fine, if realised, Rs. 1,220/-be paid to the Mandli instead of the complainant. The appellant''s revision to the High Court of Gujarat was

summarily rejected on April 19, 1967 and leave to appeal to this Court was declined on December 19, 1967. The appellant secured special leave

to appeal to this Court on May 3, 1968.

3. The appellant had denied receipt of the sum of Rs. 1,220/-and execution of the receipt, Ex. P/13. But the trial Court and the Sessions Court on

appeal, concurrently found that the receipt was signed by the appellant after receiving the amount of Rs. 1,220/-The evidence of the complainant

Kalyan Karamshi (P.W. 1) and of Narain Chaggan (P.W. 2) the tolat of the Mandli who had scribed the receipt, in whose presence the amount of

Rs. 1.220/-was paid by the complainant to the appellant and who had put the seal of the Mandli on the receipt was believed by both the Courts.

The receipt was accordingly held to be genuine and not forged as suggested by the appellant. The plea of the appellant that he was not present at

Sultanpur on January 22, 1966 but was at Khodinar was found by both the Courts to be untrustworthy. The learned Sessions Judge, while

rejecting the plea of the receipt being forged also took notice of the fact that during the trial different positive suggestions were made by the

appellant in regard to the forgery of the receipt.

4. In this Court the appellant''s learned Counsel was unable to make out any special ground for reappraisal and re-examination of the evidence

afresh and for review of the concurrent conclusions of the two Courts below. This Court, it may be remembered, normally does not proceed to

review the evidence in appeals in criminal cases unless there is some illegality or grave irregularity or some serious lapse on the part of the Court

below in marshalling or evaluating the evidence and feels justified in adopting such a course in the larger interests of justice. We find no such

extraordinary circumstance in this case impelling us to re-examine the evidence in order to determine its credibility.

5. The only point which the appellant''s Counsel pressed and did so with a certain degree of persistence, is that after the new President of the

Mandli had taken over the charge, the debts due to the Mandli were got verified and the debtors were personally called for the purpose of

verification. The Counsel desired this Court to summon the records of the verification proceedings to see if the appellant had been summoned and

if his debt was verified in his presence. In case it was so verified, then the story of the payment of Rs. 1,220/-to the appellant on January 22, 1966

must, according to the appellant''s conusel, be held to be false. His application u/s 47 of the Supreme Court Rules made on January 4, 1971

prayed for permission to the appellant to rely on verification report and copy of which was filed with the SLP and on all the annexures and

documents mentioned therein.

6. Now Jayantilal, a senior clerk in the Rajkot District Registrar''s office, was examined by the appellant as D.W.I. He produced a copy of the

verification report Ex. 43 dated September 11, 1966, relating to the enquiry held by the new Managing Committee into the advances made by it.

Neither in the trial Court nor on appeal in the Sessions Court was any point sought to be made on behalf of the appellant with any seriousness on

the basis of this report. In the SLP in this Court in para 7 it was averred that the verification report conclusively proves the petitioner''s innocence.

It is stated there that the new Managing Committee verified the debts due to it on September 11, 1966 and some of the debts were verified by the

committee by calling the debtors personally. Those who could not come were served with the notices for the purpose of verifying the amounts due

from them. The report Ex. 43, as produced at the trial was incomplete because it did not contain the list of the person served with notices.

According to the appellant''s averments the complainant''s name does not appear in the list of persons served with notices for the purpose of

verifying the debts due from them and since the complainant had admittedly received the notice of demand for the amount due as per Ex. P/15 it is

sought to be inferred that his claim had been verified by calling him personally. In that event, according to the appellant the receipt, Ex. P/13, must

be held to be a forged document. This reasoning is prima facie unacceptable. It may be recalled that as soon as the complainant received Ex. P/15

on October 29, 1966 he immediately informed the Mandli about the payment and also forwarded a copy of the receipt and on learning that the

amount had not been credited in his account he lodged the complaint. We have not been able to appreciate how this demand notice can establish

the forged nature of the receipt. On this view we do not consider it necessary to refer in detail to the order of this Court dated September 21,

1970 in this appeal on which the appellant''s Counsel attempted to rely. Suffice it to say that on that date after hearing the appellant''s Counsel a

Bench of this Court of which one of us was a member directed the office to send for the records of the Mandli mentioned in the report (Ex. P/43)

including the annexures and also any further report that might be found on the record. On December 15, 1970 on a representation by the

appellant''s Counsel it was ordered that he should make an application before the lose of the Court for adducing additional evidencs. This order

was not complied with The application presented on January 4, 1971 is not accompanied by any prayer to condone the delay. In any event in face

of the direct evidence of P.W. 1 and P.W. 2 regarding the payment of the amount by the complainant to the appellant and execution of the receipt,

in our view, it is futile for the appellant to rely on verification enquiry proceedings. Ex. P/43 does not help the appellant and there is no cogent

ground made out for, nor does the cause of justice require, the production of any additional evidence as desired by the appellant. The application

dated January 4, 1971 is without merit and is rejected.

7. The concurrent conclusions of the two Courts below are not tainted with any infirmity and they are binding on this Court. This appeal must,

therefore, be dismissed. The appellant should surrender to his bail bond to undergo the remaining sentence of imprisonment.