

State Bank of Hyderabad, Bolaram Branch Vs Anil Kumar Surana, Proprietor, Surana"s Rawat Super Bazar and Another

Court: Andhra Pradesh High Court

Date of Decision: July 21, 1997

Acts Referred: Constitution of India, 1950 â€" Article 215

Citation: (1997) 5 ALD 277 : (1997) 5 ALT 45

Hon'ble Judges: P.S. Mishra, C.J; P. Ramakrishnam Raju, J

Bench: Division Bench

Advocate: K. Mohan, for the Appellant; B. Kamalachand Jain, for the Respondent

Judgement

P.S. Mishra, C.J.

Questioning the action of the petitioner-Bank in seizing stock-in-trade, locking and sealing the business premises of the

1st respondent-contemnor was called in question by the latter in Writ Petition No. 28081 of 1995. The authority of the petitioner - Bank to seize

the stock-in-trade by virtue of the powers vested in it under Clause 7 of the Deed of Hypothecation was not disputed before the Court. Learned

single Judge dismissed the writ petition holding, inter alia, as follows:

There is no dispute between the parties that as against the drawing power of the petitioner to draw a sum of Rs. 19.2 lakhs, the petitioner drew a

sum of Rs. 22,85,607-48 ps. In other words, the outstanding is more than the limit. Therefore, it cannot be said that the action of the respondents-

Bank to resort to the power available to it under Clause (7) of the Hypothecation agreement is illegal or invalid.

2. The said order was challenged in appeal wherein it was brought to the notice of the Court that the respondent-Branch Manager of the bank had

allowed his wife to interfere with the clients of the bank and the Court accordingly on 29-12-1995 in W.A. No. 1738 of 95 ordered that a further

probe had revealed that while functioning as an Officer of a statutory bank, the Branch Manager had allowed his wife to interfere with the clients of

the bank and matter thus had assumed a question, whether there was any principle of malice in law or malice in fact attracted. The Court, on the

said date, also ordered as follows:

We have ascertained, however, the amount which, according to the bank"s calculation, is payable to credit limit by the appellant and it works out

to an amount somewhere around Rs. 3,59,000/-. On condition that the appellant shall pay the said amount of Rs.3.59,000/- in one lumpsum and

deposit the same in the bank, we order hereby that the bank shall, on deposit of the said amount, withdraw its lock from the business premises of

the appellant forthwith. Put up for further hearing after Sankranti vacation.

3. When the matter came up for further hearing of the stay application, the Court after hearing the learned Counsel for the parties passed the

following order on 22-1-1996:

As we have indicated earlier, we would not have interfered in the instant proceeding but for the information that the concerned branch manager of

the bank has allegedly allowed his wife to have business with the clients of the bank and as alleged, prevailed upon the appellant herein to part with

a sum of money with his wife not from the account in the bank but from some other source. We have, however, taken notice of the interest of the

bank and it seems inappropriate to permit the appellant to continue its business with the bank in question. We have accordingly sought a statement

at the Bar on behalf of the appellant that it shall liquidate all the debt of the bank in instalments within a specified period of time. Learned Counsel

for the appellant has stated that appellant shall clear the debt within a period of one and half years in four equal instalments beginning from the

month of April, 1996.

We have good reasons to accept the above offer and accordingly order that the appellant shall pay the first instalment in April, 1996, the second

instalment within five months of the payment of the first instalment, the third within five months of the payment of the second instalment and fourth

within five months of the payment of the third instalment and clear accordingly all the dues of the bank. The appellant shall have no further

transactions with the bank in the Current Account concerned, which again shall be closed finally on the payment of the last instalment.

We have felt concerned about the conduct of the Branch Manager. He has filed an affidavit before us in which he has admitted to have known

about the business of his wife and also that she entered into a transaction with the appellant herein. He has, however, denied to have in any manner

influenced the appellant herein to enter into a transaction with his wife and has stated that when he was asked to advance money from the account

in question, he declined to do so as it concerned his wife. Since we have not heard him further, we do not propose to make any specific order in

respect of the transaction, which the appellant has alleged, with the wife of the Branch Manager. We expected the Regional Manager, however, to

take notice of the information and see if any such incidents were taking place in one of the banks under his control, that proper action was taken

against the erring officials. He has filed an affidavit, however, stating that he has called upon the Branch Manager to explain and that this is all which

can be done in respect of such transaction. We cannot approve, however, of such an approach of the Regional Manager as we cannot approve of

the conduct of the branch manager, if allegations are true. We have, however, no mechanism to test the correctness or otherwise of the allegations

against the branch manager except to ask for a report from some independent and impartial agency. We are inclined for the said reason in the

instant case to alert the Ombudsman of the banks in India so that he may elicit all informations and recommend suitable action and advise how to

stop such activities of the bank officials. We accordingly direct him to institute an enquiry into the conduct of the business of the branch of the bank

in question and the conduct of the branch manager in particular as respects the business of his wife with the clients of the bank and prepare a

report and if necessary pass suitable orders and submit a copy of the report and the order passed by him in the instant proceedings.

The appeal shall be deemed to have been finally disposed of after the above-mentioned two directions - one to the appellant and the other to the

Ombudsman of the banks - are complied with.

4. The above undertaking, however, the 1st respondent had given with no intention other than to mislead the Court and further orders in the

proceedings would show that after taking adjournments and without complying with the above direction, the 1st respondent with the surety who is

no other than his own brother escaped from the law, in respect of which, detailed orders were passed in the instant proceeding on different dates

by the Court for their apprehension. Pursuant to the orders of the Court, the two contemnors were finally traced in the State of Gujarat and were

brought to law in custody and since then they have been lodged in Civil Prison. Court's efforts, however, to release the bank's money has been

frustrated by various acts which respondents had done clandestinely and the only informations, a thorough investigation of the Detective

Department of the Police of the City, is available in the latest report dated 19-7-1997 which reads as follows:

IN THE COURT OF THE HON"BLE HIGH COURT OF JUDICATURE:

ANDHRA PRADESH AT HYDERABAD

Honoured Sir,

Sub: Order dated 17-6-1997 of the Hon"ble High Court of Judicature, A.P., Hyderabad between State Bank of Hyderabad, Bollaram Branch

and Mr. Anil Kumar Surana and Ashok Kumar Surana R/o Kamalanagar, Kushaiguda, Hyderabad-Submission of report-Regarding.

Ref: Contempt Case No. 1213 of 1996, dated 17-6-1997 of Hon"ble High Court of Judicature, A.P., Hyderabad.

In pursuance of the orders vide reference cited and as per the endorsement of DG & IGP, A.P., Hyderabad, entrusting the compliance of the

order of the Hon"ble High Court to me, I have caused enquiries with the assistance of Sri Shaik Sharifuddin, Inspector of Police, D.D., (CCS),

Hyderabad; Sri A. Narayana, Inspector of Police, Kushaiguda PS; Sri M. Narender Reddy, S.I. of Police, Kushaiguda PS; Sri Karan Kumar

Singh, S.I. of Police, S.R. Nagar PS; Sri Mohd. Tajuddin, S.I. of Police, Mahankali PS; Sri Riyasat Ali Khan, S.I., CCS; Sri V. Narasimha Rao,

S.I., CCS and along with staff, and caused enquiries about the properties and assets of the respondents (1) Mr. Anil Kumar Surana, Proprietor,

his brother (2) Mr. Ashok Kumar Surana and their wives, children and other dependants and seized the following properties:

I. The properties stored in Surana"s Rawath Super Bazar situated at Plot No. 40, Kamalanagar, Kushaiguda limits (ECIL X Roads) belong to the

respondents who were running the business as tenants. The properties and furniture were seized under a cover of panchanama in the presence of

the panchayatdars on 12-7-97, 13-7-97 and 14-7-97, all worth about Rs. 5,47,450-80, estimated at selling prices. All the above articles including

furniture are kept in the premises of the above mentioned Super Bazar and it is locked and sealed and handed over to the S.H.O., Kushaiguda

P.S., for safe custody by posting regular guard. The keys of the said Super Bazar are concealed in a sealed cover duly attested by the mediators

and the same is sent to the Hon"ble Court along with original panchanamas dt.12-7-97, 13-7-97 and 14-7-97 containing seventy pages.

II. The utensils, domestic appliances and the furniture belonging to the respondents were seized at their residence at Flat No. H-236, Vidhata

Apartments, Thirkam Nagar Street, Surat, Gujarat State, by S.I. Sri Karan Kumar Singh, the total value of such seized property is worth about

Rs. 57,000/-. The said property was brought to Hyderabad by road and they were kept in premises No. 40, Surana"s Rawath Super Bazar,

Kamalanagar, Kushaiguda limits (ECIL X Roads) and handed over to the S.H.O. Kushaiguda for safe custody. (Original panchanama drafted at

Surat on 10-7-97 is enclosed herewith).

III. Stainless Steel and other articles, furniture belonging to the respondents (but kept in the name of their mother in whose name the business was

being conducted), seized at shop No. 3-3-841, General Bazar, Secunderabad all worth about Rs. 71,500/- (Rupees Seventy one thousand five

hundred only), under a cover of panchanama conducted by S.I. Sri Md. Tajuddin of Mahankali PS on 17-7-1997. Of the above seizure, the

stainless steel articles worth Rs. 21,500/- are kept in the premises No. 3-3-807, General Bazar, Secunderabad duly locked and sealed. The keys

are sent herewith in a sealed cover to the Hon"ble Court. The show cases and other fittings belonging to the mother of the respondents worth Rs.

50,000/- which were fixed in the shop No. 3-3-841 are kept in the same shop as they cannot be moved and handed over to the shop owner Sri

K. Narasimha Rao with instructions not to disturb them and obtained his signature. (Original panchanama dt.17-7-1997 is enclosed herewith).

IV. Stainless steel articles and other articles belonging to the respondents seized at shop No. 3-3-76 and 77, Kurma Basthai, Secunderabad under

a cover of panchanama conducted by Sri Mohd. Tajuddin, S.I., Mahankali P.S., dt. 16-7-97, all worth about Rs. 1,00,257/-, which is under

occupation of Smt. Sardar Bai, mother of the respondents. The above articles are seized and kept in the same premises and duly locked and the

keys are kept in a sealed cover and are sent herewith to the Hon"ble High Court. (Original panchanama dt.16-7-97 is enclosed herewith).

V. Stainless steel and other articles belonging to the respondents seized at shop No. 3-3-759, Kurma Basthi, Secunderabad all worth Rs.

45,215/-, under a cover of panchanama conducted by Sri Md. Tajuddin, S.I., Mahankali PS, dt.18-7-97, which is under occupation of Dilip

Kumar Jain, Co-brother of Anil Kumar Surana. The above articles belong to the respondents, which were lifted away by Dilip Kumar Jain from

Shop No. 3-3-841. The above articles are seized and kept in the custody of Mahankali PS under the charge of Sri Md. Tajuddin, S.I.,

Mahanakali PS (Original panchanama dt.18-7-1997 is enclosed herewith, containing three pages).

VI. On 27-2-1996, Inspector of Police, Kushaiguda PS has seized One Vespa bearing No. ATY-5895, and one Sunny Scooter bearing No. AP-

10/E 4042 all worth about Rs. 10,000/-, and they are in the custody of Kushaiguda Police. (Original panchanama dated 27-2-96 is enclosed

herewith, containing three pages).

VII. On 19-7-1997 Sri V. Narasimha Rao, S.I. of Police, CCS has seized one pair of silver anklets weighing about (45) grams worth about Rs.

315/- from the person of Smt. Arati w/o Ashok Kumar Surana, R/o HNo. 1-7-202/1, Kamalanagar, ECIL Cross Roads, R.R. Dist. under a

cover of panchanama. The said property along with original panchanama are sent herewith to the Hon"ble High Court.

VIII. On 19-7-97 Sri V. Narasimha Rao, S.I. of Police, CCS conducted search at the premises No. 7-2-394, Pot Market, Secunderabad, where

Smt. Vimala, wife of Anil Kumar Surana and her children are living and found nothing except wearing apparels in the house nor on persons which

belong to the respondent No. 1, his wife and children and as such no seizure was effected. (Search proceedings enclosed here with).

IX. House No. 623 (two room tenement), Sardar Bazar, Bollaram, is standing in the name of late Sri R. Hem Raj, Grand-father of the

respondents and has been under the physical possession of the respondent. The value of the said house is about Rs. 40,000/- excluding the land

cost as the land belongs to the Defence Department vested with the Contonment Board, Secunderabad and was seized under a cover of

panchanama conducted by Sri M. Narender Reddy, S.I., Kushaiguda PS and handed over to the SHO, Bollaram PS for safe custody. (Original

panchanama dt. 12-7-97 is enclosed herewith, containing three pages) and the letters of Executive Officer, Secunderabad Contonment dt.9-7-97

and 11-7-97.

X. House No. 637 (three room tenement), Sadar Bazar, Bollaram, is standing in the name of late Sri R. Hem Raj, grand-father of the respondents

and has been under the use of the respondents. The value of the said house is Rs. 35,000/-, excluding the land cost as the land belongs to the

Defence vested with the Contonment Board, Secunderabad. The said house is seized under a cover of panchanama conducted by Sri M.

Narender Reddy, S.I. of Police, Kushaiguda PS and handed over to S.H.O. Bollaram PS for safe custody. (Original panchanama dt.12-7-97) is

enclosed herewith, containing three pages).

APPROXIMATE VALUE OF THE PROPERTIES SEIZED AS MENTIONED ABOVE:

Movable properties Value

(1) Surana's Rawath Super Bazar at

premises No. Plot No. 40, Kamalanagar,

ECIL X Roads, Kushiaguda. Rs. 5,47,450-80

(2) Property seized at Surat, Plot Nfo.236,

Vidhata Apartments, Surat and kept at

Plot No. 40, Kamalanagar, ECIL X Roads,

Kushaiguda for safe custody. Rs. 57,000-00

(3) Property seized at shop No. 3-3-841,

General Bazar, Secunderabad. Rs. 71,500-00

(4) Property seized at shop No. 3-3-76 and

77, Kurma Basthi, Secunderabad Rs. 1,00,257-00

(5) Property seized at shop No. 3-3-759,

Kurma Basthi, Secunderabad. Rs. 45,215-00

(6) Property seized on 27-2-96 by Insp.,

Kushaiguda PS. Rs. 10,000-00

(7) Property seized on 19-7-97 from the

person of Smt. Arati Surana. Rs. 315-00

Rs. 8,31,737-80

IMMOVABLE PROPERTIE

1. House No. 623, Sadar Bazar, Bollaram. : Rs. 40,000-00

2. House No. 637, Sadar Bazar, Bollaram. : Rs. 35,000-00

Grand Total : Rs. 9,06,737-80

At the time of giving undertaking to the Hon"ble High Court the properties assessed as per the statement available in the State Bank of Hyderabad

is Rs. 30,41,120-20. But as on 14-7-97 when the inventory was taken for effecting seizure the value of the property is found to be Rs. 5,47,450-

80. The property was sold away to innumerable customers and as they are consumable articles it is not possible to trace the consumers and to

recover the same, however the properties which are diverted to different business like stainless steel articles are recovered from the premises No.

3-3-841, General Bazar, Secunderabad, No. 3-3-76 and 77, General Bazar, Secunderabad and in shop No. 3-3-759, Kurma Basthi and seized

them.

While applying for the loan in S.B.H., Bollaram Branch, the respondent furnished one document i.e., irrevocable power of attorney in respect of

four acres and twenty guntas in Survey No. 18, situated at Ahmedguda, Kushaiguda. The said document is fictitious one created by the

respondents fraudulently to secure loan from the Bank. The owners of the land Sri Jawaji Balaiah and late Sri Jawaji Yadaiah have sold away to

different persons in 1983. Further, J. Yadaiah died on 29-8-92, whereas the document was executed on 26-7-1994 with the signatures of Balaiah

and Yadaiah in English. It is ascertained that both are illiterates and could not sign in English. In respect of the above property, a valuation

certificate was issued by M/s. Rao Associates, in which, it is mentioned that the owners have obtained sanction for lay-out of plots vide permit No.

260/20 dt.20-1-1994 issued by the Special Officer, Kapra Municipality. But, the above fact was denied by the Commissioner, Kapra

Municipality, through his letter dt.17-7-1997. (Letter is enclosed herewith). In the light of the above facts, the document (GPA) submitted in the

Bank as collateral guarantee is suspected to be a fictitious one which suggest that the respondents have no title or ownership over the land.

The respondent mentioned in one of the statements of assets submitted to the S.B.H., Bollaram Branch that he possesses one open land to the

extent of 1980 Sq. Yds. in Survey No. 481, Road No. 12, Banjara Hills worth Rs. 25,00,000/- (Twenty Five Lakhs). But, the enquiry revealed

that there is no such survey No. 481 in Angara Hills, Shaikpet. Therefore, the statement given by the respondent is not true.

Hence this report is submitted to the Hon"ble High Court in compliance with the orders dt.17-6-1997.

Sd. K. Narasimha Murthy

19-7-97

Dated: 19-7-1997. Dy. Commissioner of Police,

Detective Department-II,

Hyderabad City.

5. The above leaves no manner of doubt that the contemnors have acted in clandestine manner right from the beginning, obtained loans by

executing securities which were non-existent, furnished fictitious collateral guarantees, parted with various properties, only to escape the realisation

of debts from them and thus have shown complete disregard to law and the Order of the Court which they obtained on the basis of the undertaking

as mentioned in the Order of the Court dated 22-1-1996.

6. The above discloses not only an act of wilful disobedience of the undertaking but also serious offences of criminal breach of trust and cheating

the bank of public money and, circumstances as above, do indicate involvement of the then Branch Manager of the Bank. It is a fit case, in our

opinion, thus to hold the contemnors guilty for wilful disobedience of the undertaking aforementioned and thus liable for punishment of Contempt of

Court. We also find sufficient materials in the above report of the Deputy Commissioner of Police, Detective Department-II, Hyderabad City for

lodgment of a criminal case with the C.I.D. against the above named two contemnors and others who are involved in the act of cheating and

criminal breach of trust and other offences.

7. On the question of sentence, we obviously, for the reasons as are traceable in various orders of the Court, cannot take a lenient view. The first

contemnor Anil Kumar Surana for the wilful disobedience and the second contemnor Sri Ashok Kumar Surana for aiding and abetting the above

act of contempt, are liable to be punished severely and the Court for the said reason, will not be inhibited by the exemption of punishment as

indicated in the Contempt of Courts Act, 1971.

8. We accordingly exercise this Court's power under Article 215 of the Constitution of India, convict and sentence the two respondents, namely,

(1) Anil Kumar Surana and (2) Ashok Kumar Surana to undergo imprisonment for a period of two years and further sentence them to pay a fine

equal to the amount of loan which has remained unpaid i.e., Rs. 28,38,367-48 ps. and, in case, the fine amount is not paid within a period of six

(6) months from the date of the order, to undergo further imprisonment for a period of two years. They are accordingly convicted and sentenced to

suffer the imprisonments.

9. The Inspector General of Police, C.I.D., Hyderabad is directed to register a case on the basis of the report of the Deputy Commissioner of

Police, Detective Department-II, Hyderabad City dated 19-7-1997 and function in accordance with law.

10. Contemnors Sri Anil Kumar Surana and Sri Ashok Kumar Surana are accordingly remanded to prison to undergo the above sentences of

imprisonment. The properties which are seized pursuant to the Order of the Court and as indicated in the report aforementioned of the Deputy

Commissioner of Police, Detective Department-II, Hyderabad City shall be appropriated towards the dues of the bank and accordingly all

materials and documents in this behalf shall be handed over to the General Manager, State Bank of Hyderabad, Gunfoundry, Hyderabad.

11. Contempt case is accordingly ordered.