

(1997) 01 BOM CK 0080

Bombay High Court

Case No: Criminal Writ Petition No. 933 of 1989

C.O. Verghese

APPELLANT

Vs

V.M.K. Singhi and another

RESPONDENT

Date of Decision: Jan. 21, 1997

Acts Referred:

- Penal Code, 1860 (IPC) - Section 405, 409, 463, 464, 467

Citation: (1997) 2 BomCR 519 : (1997) BomCR(Cri) 425 : (1997) CriLJ 3282 : (1997) 2 MhLj 243

Hon'ble Judges: D.G. Deshpande, J

Bench: Single Bench

Advocate: H.H. Ponda, for the Appellant; V.T. Tulpule, Public Prosecutor and Shirish Gupte, instructed by M/s. Bilawala and Co., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. Heard Mr. Ponda, learned Advocate for the petitioner and Mr. Gupte, learned Advocate for the respondent No. 1. The petitioner has challenged the order of issuing process passed by the Metropolitan Magistrate, 33rd Court, Ballard Pier, Bombay in Criminal Case No. 17/S of 1989.

2. The petitioner-accused was an employee of the State Bank of Indore. At the relevant time he was in-charge of Foreign Exchange Department. It was the duty of the accused to look after the transaction pertaining to Import-Export, verification of concerned documents, remittances to the constituents, checking of Letters of Credit and attending to other transactions and functions, incidental to the Foreign Exchange business of the Bank.

3. In the complaint that was filed by the respondent No. 1 who was an officer of the State Bank of Indore, in his capacity as an Officer of the Bank before the Magistrate, it is alleged that the accused in his capacity as an officer of the Bank received in the

month of April/May 1984 three Import bills for collection aggregating to the US Dollars 5,68,584/- equivalent to Rupees 62,96,611.30 P. from the Syndicate Bank, London. These bills were drawn by M/s. Ukemifer, London, on M/s. Ethico Drugs and Chemicals Manufacturing Co. These bills had been duly entered in the Branch FIBC register against No. 9 of 1984 dated 14th March, 1984 and 20 of 1984. These original documents were entrusted to the petitioner by the Bank in the normal course of business for the purposes of -

(a) that the documents covered under the above mentioned bills were to be delivered against acceptance. The drawee was thereby required to make the payment to the Bank in exchange for the documents in question. As per Banking Rules and functions pertaining to such transaction the petitioner was not to part with the documents unless against the same was made.

(b) in the event of non-acceptance/non-payment the Bank was to advise the Syndicate Bank, London, giving the reasons for the non-acceptance/non-payment.

(c) the proceeds were to be remitted by Telegraphic Telex transfers on due dates to the Syndicate Bank Account with the Continental Bank International, New York, Account No. 214040-01-577117-00-7 under cable advice.

4. Thereafter, it is alleged by the complainant, that as per the records of the branch the accused personally prepared a telex message on 7th May, 1984 knowing the same to be false addressed to the State Bank of India, London advising them to pay the aforesaid amount to Syndicate Bank, London in payment of the bills in question. This message given by the accused resulted in transfer of the aforesaid amount in US Dollars from State Bank of India, London to the Syndicate Bank, London. According to the complainant this sending of telex message by the accused was firstly a fraudulent act on the part of the accused, secondly it was forgery of documents and thirdly it was criminal breach of trust as the Bank suffered loss on account of this action.

5. According to the complainant, by the aforesaid telex the accused caused loss to the complainant-bank before the proceeds of the said bills were received by the branch of the complainant, further as per the complainant it was a condition precedent that the amount must be received prior to sending the message either in the form of telex or in any form and this according to the complainant was in collusion with the drawee and accused parted with the documents without receiving the payment from the drawee.

6. For this incident of May 1984 the complainant filed a complaint against the accused in 1989 before the Metropolitan Magistrate, who, as quoted above, issued process against the accused under Sections 409, 467 r.w. 471 of the I.P.C. It is this order challenged by the accused by the present petition.

7. I heard Mr. Ponda and Mr. Gupte at length. Mr. Ponda contended that firstly no offence under any of the sections was made out by the complainant in their complaint, secondly, the complaint was belated and there was gross delay of five years, in filing the complaint, which itself required to be rejected. Thirdly, according to Mr. Ponda the complaint was motivated because even though the accused had sent the abovementioned telex message, the branch of the complainant Bank received its full amount along with interest within one month and as such there was no cause for the bank to file the complaint against the accused. Mr. Ponda also contended that for this incident quoted in the complaint the employer-bank had initiated departmental proceedings against the accused in which the accused was initially suspended and thereafter terminated from service on 10-1-1985 and since the accused has accepted this punishment of termination without any challenge to it in Court, this prosecution of the accused by filing the complaint of the above nature that too after lapse of five years of the date of the so called offence was a motivated act of the Bank.

8. On the other hand, according to Mr. Gupte even if there was apparent delay of five years in filing the complaint, the same was not fatal inasmuch as the complaint was filed within the prescribed period of limitation. He also contended that reasonable time was taken by the complainant in filing the complaint because the bank had to obtain sanction from the Head Office, had to collect documents from London and other places out of India. Secondly, according to Mr. Gupte, if the complaint makes out prima facie case in respect of all the offences alleged namely offence u/s 409, 467 r.w. 471 of the I.P.C., then the same could not be rejected only on the ground of delay.

9. In view of the submission made by both the learned counsel, it is necessary to find out whether the complainant succeeded in making out prima facie case against the accused in respect of the offences under Sections 409, 467 of the IPC. Offence u/s 467 of the IPC is of forgery of valuable securities. According to that section whoever forges a document which purports to be valuable or which purports to give authority to any person to make any or transfer any valuable security shall be punishable with imprisonment for life etc. Forgery is defined u/s 467 of the IPC as under :-

"Whoever forges a document which purports to be a valuable security, or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable or property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

10. This section followed by Section 464 which defines the words of "Making a false document" as under :-

First. - Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed; or

Secondly. - Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly. - Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or the nature of the alteration.

Section 471, under which process was issued against the accused prescribing punishment for "using as genuine a forged document".

11. The question in this case is whether complainant succeeds in making out case under Sections 467, 471 of IPC, on the basis of the telex message as alleged. In this complaint, in this regard it is that accused was in-charge of or was looking after transactions pertaining to verification of import-export documents, remittance of constituents, checking of letters of credit and attending of other transactions and functions incidental to Foreign Exchange business. The accused was as such authorised to send messages regarding Foreign Exchange transactions to different banks but he was not authorised to give messages with directions to release amount before receipt of the bills. According to the complainant, the accused received three import bills for collection from Syndicate Bank, London but before receiving the requisite amount send telex to the State Bank of India, London dishonestly advising them to pay the aforesaid amount to the Syndicate Bank, London. This, in substance, is the case of the complainant against the accused. So far as the offence of forgery under Sections 467 and 471 is concerned Mr. Gupte strenuously urged that looking to the authority of the accused, his action in sending the telex message with direction to release the amount amounted to forgery. I am unable to agree with this submission of Mr. Gupte. When allegations are made regarding a particular offence, a party making such allegations must satisfy the basic requirements of that particular section. Section 463 begins with the words "whoever makes any false document" and the word making "false document" is defined u/s 464 and the gist of this explanation is that the maker of false document

who making the documents in such a way so as to represent to the outsider who are to act on the basis of that representation that he has made, signed, sealed or executed the said document "by authority of a person by whose authority he knows that it was not made, signed, sealed or executed".

12. A reading of Sections 463 and 464 of the I.P.C. will clearly show that if a person writes a document in his own name and with intention that the person receiving the document should accept it as a document coming from himself and not from any third person then he cannot be said to have committed forgery. The accused, in the present case, was authorised to send telex messages in the discharge of his duty, and accordingly he sent the telex message in his own name using his own powers and not in the name of his superiors nor in the name of somebody else in the Bank. He has been duly authorised or empowered to send such a message, clearly, therefore, even from the allegations in the complaint, no offence under Sections 463 and 471 of the IPC is made out against the present accused and the process issued by the Magistrate is liable to be quashed.

13. The second question is whether any case u/s 409 of IPC is made out by the complainant against the accused. In that regard Mr. Gupte relied upon unreported decision of this Court, that is delivered by Justice Variava on 1st October, 1996 in Special Case No. 5 of 1993, Central Bureau of Investigation v. Shri Anil Narichania. On basis of this ruling Mr. Gupte contended that in order to prove and constitute entrustment it is not necessary for the complainant or the prosecution to prove that the accused was in physical charge and custody of the property whether it be money or any other valuable property. According to him the present accused had the power to affect the functions of the Bank and since he has used that power by sending the necessary message resulted in transfer of the huge amount of US Dollars 5,68,584/-. This was a case coming u/s 409 of the IPC because accused had dominion over the property in his capacity as a public servant though the accused may not have been entrusted with the property.

14. For this according to Mr. Gupte, the wording of the Section 409 and that of Sec. 405 which defines criminal breach of trust are clear enough to bring the case u/s 409 of the IPC.

15. However, Mr. Ponda, the learned Advocate for the accused strongly urged that there was inordinate and gross delay of five years in filing the complaint and on that count itself the complaint is liable to be quashed. Mr. Ponda relied upon a decision of this Court reported in [Shyam Lachmandas Ajwani Vs. The State of Maharashtra and another](#), in support of his contention that inordinate delay in prosecution amount to harassment to the accused warranting interference under inherent powers. Admittedly, there is delay of five years in filing the complaint. The offence of criminal breach of trust for which the complaint is filed was allegedly committed by the accused in April-May 1984. It was contended by Mr. Gupte that this delay was inevitable because the papers necessary, were required to be obtained from London

or from out of India and sanction of the authority of the Bank was also required to be obtained. I am not at all satisfied with this explanation. Admittedly, the accused was charge-sheeted in a departmental enquiry held by the Bank, and he has suspended and terminated from service from 10-1-1985, a date which was given by Mr. Ponda was not controverted by Mr. Gupte. If the accused within one year from the offence could be dealt with in a departmental enquiry and terminated from service then everything that was necessary for filing a complaint was available with the bank by January 1985. If at all bank required sanction of any superior then sanction could have been obtained within a month or so, but there is absolutely no satisfactory explanation for the delay of five years for filing a complaint.

16. Considering, therefore, the facts that the account for which accused is charged of criminal breach of trust was received by the bank within one month of April-May 1984 with interest, considering the fact that the complainant was terminated from service on account of aforesaid act within 7/8 months of the offence, filing of the complaint after a gap of five years, prima facie appears to be intentional and only to harass the accused. It is true that period of limitation is prescribed for each kind of offence and since the offence u/s 409 is punishable with life imprisonment or imprisonment which may extend to 10 years, the complaint filed by the complainant was within limitation. But filing a complaint within limitation cannot be itself justified in the peculiar facts and circumstances to file a complaint after five years.

17. For all these reasons I hold that even though the complainant has succeeded in making out the prima facie case u/s 409 only of the IPC the complaint is liable to be quashed on account of delay. I, therefore, pass the following order :-

ORDER

The petition is allowed. The complaint filed by the respondent No. 1 is dismissed. Order of issue of process in Criminal Case No. 17/S of 1989 is quashed.

No order as to costs.

Certified copy expedited.

18. Petition allowed.