**SUPREME COURT OF INDIA**

Abdul Karim Madar Sahab

Vs.

State of Mysore

Crl.A.No.109 of 1972

(S. Murtaza Fazl Ali and A. D. Koshal, JJ.)

20.02.1979

**JUDGEMENT**

**FAZAL ALI, J.:-**

1. This appeal by special leave is directed against the judgment of the Mysore High Court dated 1-12-1971. The appellant was charged of various offences before the trial Court but acquitted of all of them including a charge under S. 471, I. P. C. The High Court in appeal against the order of acquittal passed by the trial Court maintained the acquittal on other charges but reversed the acquittal so far as the charge under S. 471 was concerned and convicted the appellant under S. 471. The facts of the case have been set out in the judgment of the High Court and we need not reiterate them here. In fact the case lies within a very narrow compass. The accused who started as a Clerk of the complainant working in a Bank rose to the position of a Manager. The case of the prosecution was that the complainant P. W. 7 had entrusted a cheque book with Serial Nos. 151 to 194 to the appellant. All the cheques contained in the cheque book had been signed by him except Serial Nos. 172 and 174. Subsequently, it transpired that the appellant forged one of the cheques by drawing it in his name and putting the figures Rs. 50,000/- and presented the said cheque before the Syndicate Bank. When the complainant came to know of this fact he filed a complaint against the appellant.

2. The defence of the appellant was that apart from working in the Bank of the complainant the appellant had his other properties including a steel factory and the complainant had given him the cheque for Rs. 50,000/- in connection with one of the business transactions regarding sale of a steel almirah. The trial Court disbelieved the case of entrustment as made out by the complainant which really formed the sheet-anchor of the prosecution case. This finding of the trial Court has been endorsed by the High Court. The trial Court further acquitted the appellant of the charge of committing any forgery with respect to the cheque in question. This finding of the trial Court was also upheld by the High Court which observes thus:

"The rest of the charges framed against the accused are not established by the prosecution."

3. The only charge on which the High Court relied was that the appellant should be convicted under Sec. 471. Having found that the prosecution had failed to prove the entrustment of the cheque book to the appellant or the forgery of the cheque in question, the High Court failed to consider the serious question as to whether the ingredients of an offence under S. 471 could be proved. Instead of addressing itself to this question the onus of which was entirely on the prosecution the High Court misdirected itself by approaching the case as if it were a Civil suit and placing onus on the accused explain under what circumstances he had asked for a cheque for Rs. 50,000/-. On the prosecution case the cheque should have come into the possession of the appellant only in three circumstances:

(1) That the cheque book was entrusted to the appellant,

(2) That the appellant stole away cheque book or cheque in question from the possession of the complainant, and

(3) That the cheque was given to the appellant by the complainant himself after making out the cheque for a sum of Rs. 50,000/- and signing it.

4. On the findings of the Courts below the first two circumstances are completely excluded. In these circumstances the possession of the cheque with the accused can only be traced to its having been given to him by the complainant. This being the position the question of the cheque being a forged document does not arise whatever the explanation given by the accused. It was not open to the High Court to have drawn an adverse inference against the defence merely because the High Court thought that the explanation given by the accused was not convincing. Moreover, there is another important circumstance which throws a series doubt on the prosecution story. The appellant was a Manager of the Bank of the complainant upto early 1968 and he was, therefore, fully aware of the

nature of the account of the complainant or the total credit that he would have in the Bank. From the statement of accounts produced by the prosecution it appears that right from 11-3-1967 to 14-8-1967 the complainant never had a credit of more Rs. 14,471/-. The accused before forging the cheque of Rs. 50,000/- knew that such amount as Rs. 50,000/- could not be cashed by the Bank because the complainant had no such account with the said Bank and the cheque was likely to bounce. This would naturally put him on the guard from committing any forgery at all. This clearly shows that the cheuqe must have been given to him by the complainant himself, and the complainant retract from his position fro some reason or the other. In these circumstances, therefore, there is no evidence at all to show that the accused knew or had reason to believe that the cheque was a forged document and with this requisite knowledge he had used the cheque. The trial Court was right in acquitting the appellant of the charge under S. 471, I. P. C. Also. For these reasons, therefore, we are unable to agree with the view taken by the High Court. We, therefore, allow this appeal, set aside the judgment of the High Court and acquit the appellant of the charged framed against him. The appellant is discharged from his bail bonds.

Appeal allowed.