

A. L. Panian Shanmugam and Others

Vs

State of Andhra Pradesh

Criminal Appeal No. 369 of 1990 (In SLP (CrI.) No. 97 of 1990)

(A. M. Ahmadi, V. Ramswami II, K. Jayachandra Reddy JJ)

12.07.1990

ORDER

1. Special leave granted

2. We have heard the learned counsel for the appellants as well as the respondent. We have also perused the complaint (FIR) lodged by the Branch Manager of Vijaya Bank on September 20, 1987 and the charge framed by the learned Additional Munsif Magistrate, Guntur in Criminal Case No. 64 of 1989.

3. In the FIR the facts stated are that M/s. Kolla Venkata Subba Rao of Ganapavaram tendered two bills for collection of April 28, 1986 covering lorry receipt No. 74222 and 74223 dated April 27, 1986 of High way Transport Corporation evidencing dispatch of 50 bale of cotton under each lorry receipt of the value of Rs. 1,06,268 and Rs. 1,27,144 drawn on M/s. Mahalakshmi Textile Mills Ltd. Pasumalai Madurai Subsequently on May 7, 1986 at the request of the consignor the bank purchased the said two document for valuable consideration and sent the same to its Madurai Branch for collection. As the collection could not be effected with normal time the Madurai Branch was contused and on inquiries it was found that there was no such transport company in Madurai M/s Mahalaxmi Textile Mills Ltd. had in the meantime written a letter to the consignor dated August 12, 1986 undertaking to clear all pending bills one after another by the end of September 1986. However the said mill company could not clear the bills whereupon the bank was unable to recover its dues. The Branch Manager of the bank at Guntur thereupon lodged a FIR dated July 20, 1987 alleging that the bank was defrauded by the transport company and the mill company acting in collusion. The entry in the Station Diary made pursuant to the said FIR was to the effect that on April 28, 1986 the consignor who was carrying on cotton business at Ganapavaram produced false document before the complainant and collected the aforesaid amount of Rs. 1,06,268 and Rs. 1,27,144 in respect of the cotton bale dispatched through the Highway Transport Corporation to the mill company at Madurai. As both the consignor and the consignee failed to clear the dues of the bank the complaint in question was lodged.

4. From the facts stated in the above complaint it becomes clear that the consignor alone had approached the bank at Guntur and had obtained the aforesaid amount on the basis of the two lorry receipts evidencing the dispatch of 50 bales of cotton under each receipt to the mill company at Madurai None of the petitioners herein were any way concerned with the transaction between the bank and the consignor. The mill company received the bales in due course of business and took possession thereof as per the instructions contained in the consignors notes Annexures C and D dated April 27, 1986. Under the said two documents the consignor instructed the mill company to arrange to take delivery of the cotton bales and pay the lorry charges of Rs. 3250 to the driver of

each vehicle. It is therefore clear from these two notes Annexure C and D that the mill company was not expected to pay the value of the goods while taking delivery thereof. So far as petitioner 3 is concerned he is the proprietor of National Roadways Corporation. In the FIR there is no reference to him. Petition 4 and 5 are the proprietor and manager respectively of Sri Prakasam Transport Company but there is no specific reference to them also in the FIR lodged by the Branch Manager of the bank.

5. The learned Magistrate framed charges against all the petitioner under Section 406 and 420 IPC. The allegation in the charge is that the consignor dispatched 50 bales of cotton under invoice No. 5 worth Rs. 1,06,268.29 and 50 bales under invoice No. 6 worth Rs. 1,27,144.40 to the mill company on April 27, 1986 through the National Roadways Corporation Madurai. The further allegation is that the petitioner 3 without the knowledge and consent of the consignor sent the said consignments to the mill company through truck No. TDZ 9295 and TDA 9927 respectively on April 27, 1986. The bank had made payment at the instance of the consignor and had forwarded the Hundis to its Madurai branch for clearance but no payment was made by the Mills company and the Hundies were dishonored. It is alleged that petitioners 1 and 2 had written to the consignor that they would make the payment but they would not keep up the promise and thereby committed criminal breach of trust an offence punishable under Section 406 IPC. On the same allegations the second charge has been framed alleging that you petitioners 1 and 2 did not keep up your promise and thereby cheated the bank an offence punishable under Section 420 IPC.

6. From the facts stated in the aforesaid two charges it becomes evident that the amount was collected from the bank by the consignor and none of the petitioners were even remotely privy to that deal. Petitioners 1 and 2 were at Guntur and had made no representation whatsoever to the bank authorities. There is no material to show that petitioner 3 was in any way concerned with the arrangement between the consignor and the bank. His name does not figure in the FIR. In the charge also the only allegation is that he entrusted both the consignments to petitioners 4 and 5 of Sri Prakasam Transport Company without the knowledge and consent of the consignor. There is no material support this allegation because Annexure C and D shows to the contrary inasmuch as there is specific mentioned therein that the consignment are sent through Sri. Prakasam Transport. There is no positive allegation against petition 4 and 5 that they were in league with the other petitioners to defraud the bank. The admitted fact is that the said transport delivered the cotton bales to the mill company and the mill company obtained delivery thereof as per the instructions contained in the consignors notes Annexure C and D. The instruction is merely to arrange to take delivery and pay the lorry charges to the respective drivers of the vehicles. The mill company was not asked to take delivery against payment. i. e. the value of the cotton bales. Mere subsequent promise by petitioner 1 and 2 of the mill company to clear the outstanding by the end of September 1986 and their failure to do so cannot render them liable under Section 406 or 420 IPC. In mercantile transactions consignments are delivered on credit and very often the payment cannot be made on the due date but that does not attract penal consequences. In the instant case also it appears a letter was written by the officer of the mill company to the consignor on August 12, 1986 that they will clear all pending bills one by one and complete payment before the end of September 1986. Failure to keep this promise cannot covert a purely business transaction into one of a penal nature punishable under Section 406 and 420 IPC. In fact the transport company had delivered the goods to the mill company as directed by the notes Annexure C and D dated April 27, 1986. They were in no way concerned with the arrangement between the consignor and the bank. None of the petitioner were in any manner involved in obtaining money from the bank. There was no privity of contract between the bank and the petitioner nor were they in league with the consignor in defrauding the bank of money. The consignor had long standing business relation with the mill company but it appears that

after the textile industry suffered a set back and the mill company was declared relief undertaking under Tamil Nadu Act 21 of 1969 the consignor and the bank manager realised that it was not possible to recover the does from the mill company. The Branch Manager of the bank who had advanced the money to the consignor therefore resorted bank who had advanced the money to the consignor therefore resorted to this method to pressurise the petitioner and to show that he was a victim of fraud. Surprisingly the consignor who has received payment is not charged but is treated as a prosecution witness. We are therefore satisfied beyond any manner of doubt that this a business transaction pure and simple and there is no material on record to show the involvement of the petitioner with the consignor to defraud the bank. The responsibility if at all was solely of the consignor and the petitioner had nothing to do with his transaction with the bank.

7. For the above reason we allow this appeal and quash the charge framed under both the heads against the petitioners and discharge them. We may however make it clear that any observation made hereinabove will not affect the civil liability if any of the mill company or any of the petitioners in respect of the cotton bales in question.

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