Punjab National Bank and others

Vs

Surendra Prasad Sinha

Criminal Appeal No.254 of 1992

(K. Ramaswamy, B. P. Jeevan Reddy JJ

20.04.1992

JUDGEMENT

K. RAMASWAMY, J.:-

1. Special leave granted.

2. Though the respondent was served on July 29, 1991, neither appeared in person, nor through counsel. The facts set out in the complaint eloquently manifests on its face a clear abuse of the process of the Court to harass the appellants. The respondents, an Advocate and Standing Counsel for the first appellant filed a private complaint in the Court of Addl. Chief Judicial Magistrate, Katni in C.C. No. 933/91 for offences under S. 409 and Ss. 109/114, I.P.C. The facts stated in the complaint run thus:

> The first appellant's branch at Katni gave a loan of Rs. 15,000/- to one Sriman Narain Dubey on May 5, 1984 and the respondent and his wife Annapoorna stood as guarantors, executed Annexure 'P' "security bond" and handed over Fixed Deposit Receipt for a sum of Rs. 24,000 / -, which would mature on November 1, 1988. At maturity its value would be at Rupees 41,292/-. The principal debtor committed default in payment of the debt. On maturity, the Branch Manager, 5th appellant, Sri V. K. Dubey, adjusted a sum of Rs. 27,037.60 due and payable by the principal debtor as on December, 1988 and the balance sum of Rupees 14,254.40 was credited to the Saving Banks Account of the respondent. The respondent alleged that the debt became barred by limitation as on May 5, 1987. The liability of the respondent being coextensive with that of the principal debtor, his liability also stood extinguished as on May 5, 1987. Without taking any action to recover the amount from the principal debtor within the period of limitation, on January 14, 1989, Sri D. K. Dubey, the Branch Manager, intimated that only Rupees 14,254.40 was credited to his Saving Bank Account No. 3763. The entire amount at maturity, namely Rupees 41,292/- ought to have been credited to his account and despite repeated demands made by the respondent it was not credited. Thereby the appellants criminally embezzled the said amount. The first appellant with a dishonest interest (intent) to save themselves from the financial obligation neglected to recover the amount from the principal debtor and allowed the claim to be barred limitation and embezzled the amount entrusted by the respondent. The appellants 2 to 6 abeted the commission of the crime in converting the amount of Rs. 27,037.40 to its own use in violation of the specific

direction of the respondent. Thus they committed the offences punishable under S. 409 and Ss. 109 and 114, I.P.C.

3. The security bond, admittedly, executed by the respondent reads the material parts thus: "We confirm having handed over to you by way of security against your branch office Katni F.D. Account No. 77/ 83 dated November 1, 1983 for Rs. 24,000/ - in the event of renewal of the said Fixed Deposit Receipt as security for the above loan." "We confirm..... the F.D.R. will continue to remain with the bank as security here." "The amount due and other charges, if any, be adjusted and appropriated by you from the proceeds of the said F.D.R. at any time before, on or its maturity at your discretion, unless the loan is otherwise fully adjusted from the dues on demand in writing made by you...." "We give the bank right to credit the balance to our saving banks account or any other amount and adjust the amount due from the borrowers out of the same." "We authorise you and confirm that the F.D.R. pledged a security for the said loan shall also be security including the surplus proceeds thereof for any other liability and the obligation of person and further in favour of the bank and the bank shall be entitled to retain/ realise/ utilise/ appropriate the same without reference to us."

4. Admittedly, as the principal debtor did not repay the debt. The bank as creditor adjusted at maturity of the F.D.R., the outstanding debt due to the bank in terms of the contract and the balance sum was credited to the Saving Banks Account of the respondent. The rules of limitation are not meant to destroy the rights of the parties. S. 3 of the Limitation Act 36.of 1963, for short "the Act" only bars the remedy, but does not destroy the right which the remedy relates to. The right to the debt continues to exist notwithstanding the remedy is barred by the limitation. Only exception in which the remedy also becomes barred by limitation if the right is destroyed. For example under S. 27 of the Act a suit for possession of any property becoming barred by limitation if the right to property itself is destroyed. Except in such cases which are specially provided under the right to which remedy relates in other case the right subsists. Though the right to enforce the debt by judicial process is barred under S. 3 read with the relevant Article in the Schedule, the right to debt remains. The time barred debt does not cease to exist by reason of S. 3. That right can be exercised in any other manner than by means of a suit. The debt is not extinguished, but the remedy to enforce the liability is destroyed. What S. 3 refers is only to the remedy but not to the right of the creditors. Such debt continues to subsist so long as it is not paid. It is not obligatory to file a suit to recover the debt. It is settled law that the creditor would be entitled to adjust, from the payment of a sum by a debtor, towards the time barred debt. It is also equally settled law that the creditor when he is in possession of an adequate security, the debt due could be adjusted from the security in his possession and custody. Undoubtedly the respondent principal and his wife stood guarantors to the debtor, jointly executed the security bond and entrusted the F.D.R. as security to adjust the outstanding debt from it at maturity. Therefore, though the remedy to recover the debt from the principal debtor is barred by limitation, the liability still subsists. In terms of the contract the bank is entitled to appropriate the debt due and credit the balance amount to the saving bank account of the respondent. Thereby the appellant did not act in violation of any law, nor converted the amount entrusted to them dishonestly for any purpose. Action in terms of the contract express or implied is a negation of criminal breach of trust defined in S. 405 and punishable under S. 409, I.P.C. It is neither dishonest, nor misappropriation. The bank had in its possession the fixed deposit receipt as guarantee for due payment of the debt and the bank appropriated the amount towards the debt due and payable by the principal debtor. Further, the F. D. R. was not entrusted during the course of the business of the first appellant as a Banker of the respondent but in the capacity as guarantor. The complaint does not make out any case much less prima facie case, a condition precedent to set criminal law in motion. The Magistrate without adverting whether the allegation in the complaint

prima facie makes out an offence charged for, obviously, in a mechanical manner, issued the process against all the appellants. The High Court committed grave error in declining to quash the complaint on the finding that the bank acted prima facie high handedly.

5. It is also salutary to note that judicial process should not be an instrument of oppression or needless harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At that stage the Court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and laid complaint against all the appellants without any prima facie case to harass them for vendetta.

6. The appeal is accordingly allowed and the complaint is quashed. Appeal allowed.

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