

RAM GOPAL

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v.

CENTRAL BUREAU OF INVESTIGATION, DEHRADUN

(Criminal Appeal No. 1085 of 2019 etc.)

JULY 22, 2019

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**[ASHOK BHUSHAN AND NAVIN SINHA, JJ.]**

*Penal Code, 1860:*

*ss.120-B, 420, 467, 468, 471, 477-A and 201 r/w ss. 13(1)(d) and 13(2) of Prevention of Corruption Act, 1988 – Conviction under – Of bank employees – For opening fictitious account, depositing certain amount therein and withdrawal therefrom by seventeen cheques – Propriety of – Held: It is proved that fraud was committed in a systematic manner by persons well acquainted with banking procedures – No defence evidence that the appellants (bank employees) had no access to records of the Bank – Evidence of their involvement is clinching – Conviction upheld.*

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**Dismissing the appeals, the Court**

**HELD :** 1. It is an undisputed fact that a fictitious account was opened without proper verification in accordance with the banking procedures. But that does not appear to have been the subject of investigation and which could have revealed more facts with regard to the nature and manner of the embezzlement that has taken place, including the persons involved in the same. The trial court has rightly observed that in accordance with banking procedures, the opening of the account, the deposits in the same and withdrawals could not have been the handiwork of the appellants alone. But merely because the investigation may not have been of the standard and nature that it ought to have been, cannot enure to the benefit of the appellants in view of the nature of materials and evidence available against them. [Para 6] [665-G-H; 666-A-B]

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2. The validity of the sanction against the appellants for prosecution, who were undisputedly employed as messenger and assistant clerk respectively in the same branch, has been proved

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A **by PW-1 and PW-2. The evidence is sufficient to establish conspiracy. [Para 7] [666-C, E]**

**3. The fraud was committed in a systematic manner by persons well acquainted with banking procedures. The appellants were also the employees of the Bank. There is no defence evidence that they had no access to records of the Bank at any stage to commit the offence attributed to them. On the contrary, the evidence of their involvement is clinching. They also had access to the vouchers and ledgers as part of their normal duties. Even the specimen signature card was made to disappear replaced by a torn paper. Therefore there is no reason to interfere with the conviction of the appellants. [Paras 8 and 9] [666-G-H; 667-A]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1085 of 2019.

D From the Judgment and Order dated 05.09.2017 of the High Court of Judicature at Allahabad in Criminal Appeal No. 1226 of 2013.

With

Criminal Appeal No. 1086 of 2019.

E S. S. Kulshrestha, Sr. Adv., Ajeet Pandey, Danish Zubair Khan, Rameshwar Prasad Goyal, Advs. for the Appellant.

Mukul Singh, Rajat Nair, Arvind Kumar Sharma, Mukesh Kumar Maroria, Advs. for the Respondent.

The Judgment of the Court was delivered by

F **NAVIN SINHA, J.** 1. Leave granted.

2. The appellants assail their conviction under Sections 120-B, 420, 467, 468, 471, 477-A, 201, I.P.C. read with Sections 13(1)(d) and 13(2), Prevention of Corruption Act.

G 3. The Central Bureau of Investigation registered an F.I.R. on 12.04.1994 based on the statement of the Assistant General Manager, State Bank of India, Ghaziabad with regard to the opening of a fictitious Bank account on 13.07.1992 in the name of one Raj Kumar. Soon thereafter by separate forged credit entries between the period 23.07.1992 to 31.10.1992, deposit of Rs.3,22,056.00 was made in the account.

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Subsequently on different dates a sum of Rs.3,22,000.00 was withdrawn by seventeen cheques leaving a balance of Rs.322.85. Originally two clerks of the Bank, Dinesh Kumar Sharma and Smt. Vandana Kundra were named as accused along with other unknown persons. The names of the appellants transpired during investigation leading to the submission of charge sheet against them only, and after conclusion of the trial they were convicted.

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4. Learned counsel for the appellants contended that they have been made scapegoats while the original named accused have been wrongly exonerated during investigation. The sanction for their prosecution was not in accordance with law. There is no evidence that the appellants were instrumental in any manner with regard to opening of the fictitious account. No evidence has been led in support of criminal conspiracy. It was not possible for the appellants to destroy evidence with regard to account opening form, specimen signature of the account holder or make forged credit or debit entries in the ledger. The report of the handwriting expert with regard to the writing and signature on the cheques was a mere expression of an opinion. DW-1 the handwriting expert on behalf of the appellants had doubted the very same handwriting and signatures of the appellants. They are therefore entitled to the benefit of doubt. No action has been taken against the concerned Bank employees responsible for opening of the fictitious account, much less has the prosecution even attempted to investigate and identify such persons. The withdrawals from the fictitious account through bearer cheques were not received by the appellants as acknowledged by PW-3.

5. Learned counsel for the Central Bureau of Investigation submitted that there has been thorough evaluation of evidence, including that of handwriting experts, and the charge against the appellants stands proved.

6. We have considered the submissions on behalf of the parties and gone through the materials on record. It is an undisputed fact that a fictitious account was opened without proper verification in accordance with the banking procedures. That unfortunately does not appear to have been the subject of investigation and which could have revealed more facts with regard to the nature and manner of the embezzlement

- A that has taken place, including the persons involved in the same. The trial court has rightly observed that in accordance with banking procedures, the opening of the account, the deposits in the same and withdrawals could not have been the handiwork of the appellants alone. But merely because the investigation may not have been of the standard and nature that it ought to have been cannot enure to the benefit of the appellants in view of the nature of materials and evidence available against them.

- 7. The validity of the sanction against the appellants for prosecution, who were undisputedly employed as messenger and assistant clerk respectively in the same branch, has been proved by PW-1 and PW-2.
- C The Sub. Inspector, Central Bureau of Investigation PW-23, proved that the appellants had given their specimen writing and signatures during investigation. The Principal Scientific Officer, C.F.S.L., PW-18 deposed that the account opening form of the fictitious account was in the handwriting of appellant Pankaj Kumar Jain impersonating the fictitious account holder Raj Kumar. The receipt of cheque book and pass book from the Bank records, on behalf of the fictitious account holder, were in the handwriting of the appellant Pankaj Kumar Jain. The writing on two of the withdrawal cheques drawn as "self" on the fictitious account purporting to be signed by the said Raj Kumar were in the handwriting of appellant Ram Gopal. The signature on all the 17 forged cheques for withdrawal by "self" were in the handwriting of appellant Pankaj Kumar Jain impersonating the fictitious account holder. These in our opinion were sufficient to establish conspiracy. The hand writing expert DW-1 relied upon by the appellants gave his report based on photocopies of the writing and signatures of the appellants and not on the basis of their specimen signatures. During the course of hearing we asked the counsel for the appellants if they had filed any objection to the report of the handwriting expert relied upon by the prosecution. It was fairly stated that they did not do so.

- 8. The fraud was committed in a systematic manner by persons well acquainted with banking procedures. The appellants were also the employees of the Bank. There is no defence evidence that they had no access to records of the Bank at any stage to commit the offence attributed to them. On the contrary, the evidence of their involvement is clinching. They also had access to the vouchers and ledgers as part of

their normal duties. Even the specimen signature card was made to A disappear replaced by a torn paper.

9. We therefore find no reason to interfere with the conviction of the appellants. The appeals are dismissed.

Kalpana K. Tripathy

Appeals dismissed.