

U.P. Union Bank Ltd. (In Liq.) And Ali ... vs Akhtar Hussain And Anr. on 30 April, 1952

Equivalent citations: AIR1952ALL848, [1952]22COMPCAS318(ALL), AIR 1952 ALLAHABAD 848

JUDGMENT

Malik, C.J.

1. The U. P. Union Bank Ltd. having its Head Office at Utraula was compulsorily wound up under the Indian Companies Act by an order of this Court dated 16-12-1949. The application for winding up had been filed on 13-9-1949.

2. One Ali Ahmad Jaffri had deposited a sum of Rs. 10,000 as a fixed deposit in the Delhi Branch of the Bank. The fixed deposit matured on 1-3-1948. On maturity, however, Ali Ahmad Jaffri did not get the amount paid to him and, after several attempts for its realization had failed, he came to the Head Office at Utraula and approached Akhtar Husain Eizvi who was the General Manager of the Bank and his brother Mehdi Hasan who was the Chief Secretary. The General Manager and the Chief Secretary', it is said, assured Ali Ahmad Jaffri that payment would be made, and ultimately on 11-7-1949 they issued thirteen demand drafts on the Allahabad Branch of the Bank. When Ali Ahmad Jaffri presented these drafts at the Allahabad Branch the Branch was not able to pay the amount and asked Ali Ahmad Jaffri to come again. It was after 1-8-1949 that three of the demand drafts were met but the other ten remained unpaid.

3. On 8-11-1949 AH Ahmad Jaffri filed a complaint in the Court of the City Magistrate at Allahabad which was thereafter transferred to the court of the Special Magistrate against Akhtar Husain Rizvi and Mehdi Hasan under Sections 406 and 420, Penal Code. The complaint was that they had dishonestly misappropriated his money and thereby committed an offence under Section 406 and that they had further fraudulently or dishonestly induced him to part with money or agree to the retention of his money and had thereby committed an offence under Section 420, Penal Code.

On behalf of the accused an objection was taken that by reason of Section 3 of the Ordinance No. XXIII, of 1949, published in the Gazette of India Extraordinary, dated 19-9-1949, the case stood transferred to the High Court which was seized of the winding up case and the learned Magistrate had no jurisdiction. A reference was made by the Magistrate to this Court, and the learned Company Judge on 25-10-1950, referred the matter to a Bench for decision. The point for decision, therefore, is whether the complaint which was filed before the City Magistrate on 8-11-1949 during the pendency of the winding up proceedings in this Court which had commenced on 13-9-1949, stood transferred to this Court under Section 3 of the Ordinance which has now been replaced by the

Banking Companies (Amendment) Act No. XX of 1950.

Section 3 of the Ordinance which is now Section 11 of the Act is as follows :

"Where any proceeding for the winding up of a banking company or any other proceeding, whether civil or criminal, which has arisen out of or in the course of such winding up, is pending in any Court immediately before the commencement of this Act, it shall stand transferred on such commencement to the Court which would have had jurisdiction to entertain such proceeding if this Act had been in force on the date on which the proceeding commenced."

The material words, therefore, for interpretation are "any proceeding . . . which has arisen out of or in the course of such winding up" and the words "to the Court which would have had jurisdiction to entertain such proceeding if this Act had been in force on the date on which the proceeding commenced."

Under the Banking Companies Ordinance and the Amending Act, Section 45 (c) was added to the Act, the relevant portion of which is as follows :

"Notwithstanding anything to the contrary contained in the Companies Act, 1913 (VII of 1913), the Code of Criminal Procedure, 1898 (Act V of 1898) or in any other law for the time being in force, the Court may, if it thinks fit, take cognizance of and try in a summary way any offence alleged to have been committed by any person who has taken part in the formation or promotion of the banking company which is being wound up or any past or present director, manager or officer thereof :

Provided that the offence is one punishable under the 'Indian Companies Act, 1913 (VII of 1913), with imprisonment for a term which does not exceed two years, or with fine which does not exceed one thousand rupees."

4. A Court winding up a banking concern has jurisdiction only in those cases which are punishable under the Indian Companies Act and in which the sentence does not exceed two years or fine does not exceed Rs. 1000. In other cases the Court winding up the Company will have no jurisdiction and the trial will have to be in the Court which had jurisdiction to take cognizance of the offence. This being the clear provision as regards cases which arise after the coming into force of the Ordinance and the Act, there is no reason why the transitory provision contained in Section 3 of the Ordinance and Section 11 of the Act should be deemed to have any wider significance.

Even apart from this consideration the words "which has arisen out of or in the course of such winding up" can only refer to offences which a winding up Court would take cognizance of in the course of the winding up proceedings which would be only offences punishable under the Indian Companies Act as provided for in Section 45 (c) of the said Act. The complaint that is filed is not a matter in which the Official Liquidator is at all interested. The complaint is by a private person Ali Ahmad Jaffri that he had been cheated or deceived and had thus been made to part with a large sum

of money. In the winding up proceedings the Official Liquidator cannot take any steps against Akhtar Husain Rizvi or Mehdi Hasan for what they are alleged to have done against Ali Ahmad Jaffri, the complainant.

5. The answer to the reference, therefore, is that the case pending in the Court of the Special Magistrate against Akhtar Husain Eizvi and Mehdi Hasan on a complaint filed by Ali Ahmad Jaffri under Sections 406 and 420, Penal Code does not stand transferred to this Court under Section 3 of the Ordinance or Section 11 of the Amending Act.

6 . The reference is therefore, rejected.