

Vaibhav Bajaj vs The State Govt Of Nct Of Delhi Through The ... on 17 January, 2023

Author: Yogesh Khanna

Bench: Yogesh Khanna

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 3071/2021 & CRL M.A. No.19131/2021
VAIBHAV BAJAJ

Through: Ms.Seema Gupta, Advocate.
versus

THE STATE GOVT OF NCT OF DELHI THROUGH THE
COMMISSIONER OF POLICE & ORS.

Through: Mr.Yudhvair Singh Chauhan,
the State with Insp.Sun
P.V.West.
Mr.Inderbir Singh Alag,
Advocate with Mr.Gaurav
Advocate for complainant

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA
ORDER

% 17.01.2023

1. This petition is filed by the petitioner for quashing of FIR No.861/2015 registered at Police Station Mianwali Nagar, West District, Delhi under Section 420/468/381/471 IPC and further proceedings emanating therefrom. The aforesaid FIR was registered on the complaint of Sh. Roshan Rohilla i.e. respondent No.2/complainant being the proprietor of M/s. Balaji Pumps International who had obtained ODP Limit from Peeragarhi Branch, New Delhi of Punjab and Sind Bank/employer of the petitioner. The petitioner had joined the services of the Punjab and Sind Bank in the year 2012 as a Probationary Officer at its Branch at Peeragarhi, New Delhi.

2. The said ODP Limit was renewed and enhanced from time to time including on 01.09.2012 to the tune of Rs.65 Lakhs which was secured with equitable mortgage of the immovable property bearing No. B1-A/51-A, Janakpuri, New Delhi in the name of Smt. Anita Rohila, the wife of the complainant/respondent No.2. The bank accounts and transactions of the said firm M/s. Balaji Pumps International of the complainant/respondent No.2 were being supervised and maintained by him and his employee/ Manager namely Rakesh Kaushik, the respondent No.3 herein. The said respondent No.3 was also one of the guarantors in the aforesaid loan account.

3. Vide Office Order dated 09.10.2012, the petitioner was assigned the bank duties as all works related to counter and public dealing inclusive of maintenance of passbook, statement of account, making dormant and inoperative accounts to operative, letter of thanks to the customer to be sent and follow up, only then issue of passbook.

4. During 2012-2013, the dispute arose between the respondent No.2 and 3 with respect to certain cheques which were alleged to have been forged by respondent No.3, employee/Manager of respondent No.2 and got cleared/passed by Punjab and Sind Bank at its Peeragarhi Branch, Delhi. As a result, the respondent No.2 had filed criminal complaint against respondent No.3 before the Court of learned MM Tis Hazari Courts, Delhi resulting into registration of FIR No.861/2015 on 24.12.2015 with P.S. Mianwali Nagar (now known as P.S. Paschim Vihar West) Delhi. As such investigation ensued and charge-sheet was filed against the respondent No.3.

5. In the meantime, the loan account of the respondent No.2 was declared as NPA with the Punjab & Sind Bank at its Peeragarhi Branch, Delhi on 30.09.2015 as per RBI norms. Thereafter, the said bank i.e. Punjab and Sind Bank through it's the then authorized officer had initiated the proceedings under SARFAESI Act against the respondents No.2 & 3 and other guarantors/mortgagor.

6. It further transpired due to alleged dispute between the complainant i.e. respondent No.2 and his Manager i.e. respondent No.3 who happens to be guarantor also, the FIR bearing No.861/2015 under Sections 420/468/471 IPC was lodged by the respondent No.2 against respondent No.3 with respect to certain cheques as allegedly got cleared by the respondent No.3 with the alleged signatures of the respondent No.2. As such, there was some alleged dispute of Rs.10 lakhs pertaining to the account of M/s. Balaji Pumps International on the basis of allegedly forged signatures of the respondent No.2 by the respondent No.3. In the said FIR there was no allegation of any involvement of the bank officials of the said bank. Further the FSL reports obtained by the Investigation Officer in the matter, were pertaining to the signatures allegedly forged by the respondent No.3 and there was no allegation of any alleged forgery against the petitioner or any other bank officials.

7. The respondent No.2 viz the complainant had approached the bank for settlement in the month of October, 2017, thereby asking the bank officials to settle his loan account at a throw away amount whereas the outstanding liability was more than Rs.80 Lakhs which was not acceptable to the bank officials.

8. In the meantime, the Punjab & Sind Bank had initiated the recovery proceedings vide OA No.1241/2018 titled as Punjab & Sind Bank Vs. Balaji Pumps International before learned DRT-Delhi against respondent No.2/complainant, mortgagor and other guarantors including his Manager, respondent No.3.

9. Admittedly, the bank officials of the Punjab & Sind Bank had cooperated with the respondent No.2 as well as with the concerned Investigating Officer by supplying the copies of account opening forms as well as alleged cheques in dispute upon requisition. Meanwhile, the respondent No.2 had asked the bank officials of the Punjab & Sind Bank to compromise and settle the matter with him qua his loan account pertaining to M/s. Balaji Pumps International at a very lower amount but the

same was not accepted by the higher authorities of Punjab & Sind Bank at that time.

10. In order to put pressure on his creditor bank, to settle his NPA account at a nominal amount and to withdraw the recovery proceedings pending in the DRT-I, Delhi, the respondent No.2 allegedly got the police to file a supplementary chargesheet against the petitioner herein, an employee of Punjab & Sind Bank by making him a co-accused in the case. As such the petitioner was summoned to join investigation by the Investigating Officer concerned vide his notice dated 19.08.2019. Moreover, queries/documents were asked from Punjab & Sind Bank, employer of the petitioner which were duly replied by the Punjab & Sind Bank under the signatures of its Zonal Manager vide reply dated 21.08.2019 wherein it was categorically stated the petitioner was not authorized to pass any cheque as he was not assigned any authorization related duty. It was further intimated to the Investigating Officer the concerned authorizing official namely Sh. Parminder Singh had already expired on 22.10.2016 for which death certificate was also provided to him. As such it was further categorically stated the petitioner had not violated any duties/guidelines issued to him as per office order dated 09.10.2012.

11. The supplementary charge sheet dated 09.09.2019 was filed against the petitioner in the learned Court of MM-08, District West Delhi, and petitioner was summoned in the Trial Court vide order dated 21.12.2019 and was admitted to bail on 01.02.2020. Thereafter lockdown was imposed all over India on account of Covid-19 Pandemic. As such the matter was continued to be adjourned before the learned Trial Court, Tis Hazari Courts Delhi. However, the respondent No.2 had approached the employer of the petitioner for one time settlement of his NPA account in the month of February, 2021 and gave an offer letter dated 10.02.2021 for OTS of Rs.69 Lakhs which was accepted by Punjab & Sind Bank vide its OTS conveying sanction dated 12.02.2021. As per the terms of the OTS dated 12.02.2021, which was accepted by the respondent No.2 on 15.02.2021, the respondent No.2 was required to withdraw all proceedings, including criminal proceedings, if any initiated against the bank/bank officials which might be pending in any court of law or before any judicial forum.

12. The respondent No.2/complainant rather had intimated to SHO P.S. Mianwali Nagar, New Delhi vide his letter dated 15.02.2021 for withdrawal of his complaint case FIR and to assist/cooperate with the petitioner in quashing the FIR No.861/2015 P.S. Mianwali Nagar.

13. The respondent No.2 had paid the entire OTS amount of Rs.69 Lakhs to Punjab & Sind Bank, employer of the petitioner and Punjab & Sind Bank had issued No Dues Certificate dated 19.02.2021 to the respondent No.2/complainant. Thereafter Punjab & Sind Bank had withdrawn its recovery proceedings in OA No.1241/2018 titled as Punjab & Sind Bank Vs. M/s. Balaji Pumps International from the learned DRT-I, Delhi on 06.03.2021.

14. However, the criminal proceedings have been continuing against the petitioner before the Court of learned MM-08, (West Delhi) Tis Hazari Courts, Delhi as the respondent No.2/complainant has refused to cooperate in filing the present petition for quashing of FIR despite compromising the matter with the employer of the petitioner and giving his categorical acceptance for withdrawal of all proceedings if any against the bank and the bank official. As such the petitioner has been left with no other remedy, hence this petition.

15. Admittedly, the petitioner has a limited role to play, he being a bank employee viz as a probationary officer. The letter dated 21.08.2019 of the bank given to the Investigating Officer reads as under :

To, Station House Officer Police Station Paschim Vihar West New Delhi Sir, REG: Notice to join Investigation This is with reference to your office letter dated 19/8/2019 under the signature of SI Pradeep Kumar, Investigating Officer, No D 5398 whereby he directed Mr Vaibhav Bajaj, our Bank's Officer posted at Branch Office Punjabi Bagh to appear before him on 19/08/2019 at 5.00 pm at Police station Paschim Vihar West in case of FIR No. 861/2015 dt 24.12.2015. In this regard, it is submitted that Mr Vaibhav Bajaj joined the bank service as Probationary Officer at Bank's Branch Office Peera Garhi on 16/08/2012. In any bank's branch, day to day work/public dealing commence as per directions of Branch Incharge. For this purpose, an Office Order is issued to all the staff members whereby the work/duties are allocated amongst all the staff members for smooth functioning of the branch.

In the case of Mr. Vaibhav Bajaj also, he was supposed to perform his duties as per office order dated 09/10/2012 issued by the then Branch Incharge, Branch Office Peera Garhi videwhich he was supposed to perform the duties as follows :- "All work related to counter & public dealing inclusive of maintenance of pass book, statement, making of Dormant & Inoperative Accounts to Operative, Letter of Thanks to the customer to be . sent & follow up. Only then issue of passbook".

In light of this Office Order (copy enclosed), it is pertinent to mention that Mr. Vaibhav Bajaj was not authorized to pass any cheques and he was not assigned any authorization related duties. So, Mr. Vaibhav Bajaj had no role in passing or authorization of cheques at that time. As he has not violated any duties/guidelines issued to him as per Branch Office Peera Garhi, New Delhi Office Order dated 09/10/2012, you are requested to exonerate Mr Vaibhav Bajaj our Bank Officer from this case. Thanking You, Yours faithfully, Sd/-

16. However, in supplementary chargesheet role ascribed to the present petitioner was as under:-

" Thereafter Mr Vaibhav Bajaj was interrogated and a notice was given to bank officials regarding duty performed by the accused Vaibhav Bajaj and it was replied by the bank officials that all work related counter & public dealing inclusive of maintenance .of pass book, statement, making of -Dormant & Inoperative Accounts to Operative, Letter of thanks to the customer to be sent &I follow up. Only, then issue of passbook." And it was also replied by the bank officials that Mr Vaibhav Bajaj was not authorized to pass any cheque and he was not assigned any authorization related duty.

As per till date investigation it is apparent that accused Vaibhav bajaj S/o Manmohan Bajaj R/o WZ 482-A Rishi Nagar, Rani Bagh, Delhi,(Probation Officer) along with co

accused Parmirder Singh(Bank Officer) hatched conspiracy with Accused Rakesh Kaushik and passed the forged cheque No 811733 dated 13/10/2012 amounting 19,00,000/- (Rupees Ten Lac Only) Accused Parminder Singh has been died. Hence, Accused Vaibhav Bajaj is Charge sheet U/s 420/468/471/120B/34 IPC by putting him column No 12. Hence Supplementary chargesheet U/s 420/468/471/120B/34 IPC is being forwarded to Ld. trial Court for judicial trial."

17. Now, letter dated 15.02.2021 issued by respondent no.2 is as under:

TO THE SHO PS MIANWALI NAGAR NEW DELHI SUBJECT: WITHDRAWAL OF FIR BEARING NO. 861/2015 REGISTERED WITH PS MIANWALI NAGAR Sir, It is proposed that after the execution of the final settlement of my OD Account 22294 in the name of Balaji Pumps International, I will withdraw the Complaint Case FIR and further will assist/cooperate Mr. Vaibhav Bajaj in Quashing of the FIR bearing No. 861/2015 PS Mianwali Nagar. Regards Sd/-

18. Admittedly, the Bank had withdrawn OA No.1241/2018 vide order dated 06.03.2021 which read as under :

2. The applicant bank has filed an affidavit of submitted that during the pendency of present OA, matter has been amicably settled between the parties and in terms of settlement, the applicant bank has already received the entire payment of Rs.69.00 lacs towards full and final settlement of the dues of applicant bank. Ld. counsel for the applicant bank also prays for withdrawal of the present OA as fully satisfied.

3. In view of the submissions made by the Ld. counsel for applicant bank, OA No.1241/2018 is hereby dismissed as withdrawn. File be consigned to records.

19. Thus, per letter issued by the Bank it is clear the authorisation for clearance was not given by this applicant and he had not violated any of his duties/guidelines of the bank. Moreso, after seeking OTS the respondent No.2 agreed to get the FIR quashed against this petitioner per his own letter dated 15.02.2021, hence now cannot contest this petition.

20. Moreso, the petitioner has been roped in the present FIR on account of an alleged conspiracy and the best evidence available with the State is the disclosure statement of Rakesh Kaushik, the co-accused with whom the petitioner allegedly conspired. A bare perusal of disclosure statement of respondent No.2 would show it was an independent act of respondent No.3 and never in his disclosure he alleged any conspiracy with the petitioner herein.

21. Thus, I am of the considered view the summoning of the petitioner under Section 120B IPC or as a matter of fact under Section 409 IPC was wholly uncalled for. Even for the sake of arguments we say the petitioner allegedly exceeded his jurisdiction/duty viz was not authorised to pass any cheque, but in any case passing of the same would have concerned only the bank authorities thus in the absence of any other material, the facts stated above do not prima facie show any malicious or

criminal intention of petitioner to cover his acts under the IPC. At best, it may a negligent act, but in no circumstances he shared any conspiracy with respondent No.3.

22. Thus the impugned order of cognizance qua the petitioner dated 21.12.2019 is bad and is set aside.

23. With these observations the petition stands disposed of along with pending application(s). Order dasti.

YOGESH KHANNA, J.

JANUARY 17, 2023 DU