

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

Criminal Revision Petition.10 of 2012

The Tripura State Co-operative Bank Ltd.,
Represented by its Branch Manager,
Melaghar Branch, Sonamura, West Tripura.

..... *Petitioner.*

-Vs -

1. Sri Sukumar Das,
S/o Late Chitta Ranjan Das,
Resident of Malancha Niwas,
Govt. Qtr. Complex Block - 5/Type-III/13,
P.O : Kunjaban - 799006, P.S - East Agartala,
District - West Tripura.
2. The State of Tripura
(To be represented by the Public Prosecutor,
Tripura, Agartala).

..... *Respondent.*

_B_E_F_O_R_E_

THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioner : Mr. K N Bhattacharji, Advocate,
Mr. P K Pal, Advocate.

For
Respondent No.1 : Mr. Somik Deb, Advocate,
Respondent No.2 : Mr. I Banik, Advocate,
Ms. B Debbarma, Advocate.
Mr. A Ghosh, Public Prosecutor.

Date of hearing & judgment : 19.6.2015.

Whether fit for reporting :

Yes	No
✓	

JUDGMENT & ORDER

This revision petition by the Tripura State Co-operative Bank Ltd. is directed against the judgment dated 30th November, 2010 passed by the learned Additional Sessions Judge, Sonamura,

West Tripura in Criminal Appeal No.5(2) of 2009 whereby he dismissed the appeal filed by the State of Tripura and upheld the judgment of the Sub-Divisional Judicial Magistrate, Sonamura, West Tripura acquitting the accused Sukumar Das of having committed offences punishable under Sections 468/471/477A/420 and 380 I.P.C.

2. Briefly stated the gist of the case is that the accused Sukumar Das was earlier Branch Manager of the Tripura State Co-operative Bank Ltd., Melaghar Branch. He was, therefore, posted as Assistant Development Officer(ADO) at Agartala.

3. The stand of the prosecution is that as Assistant Development Officer he was supervising many Branches including the Melaghar Branch. According to the prosecution, on 2.4.2002 Sukumar Das opened a savings bank account bearing No.6443 in the name of one Eunus Miah. He only deposited Rs.200/- at that time. It is the admitted case of the prosecution that the procedure prescribed by law and the regulations of the Bank with regard to identification of the account holder, verification of his status was not followed. According to the Bank, the accused being a senior officer influenced the officials of the Bank in opening the account without following such procedure.

4. The further case of the Bank is that on 13.4.2002 i.e. only 11 days later, the accused again came to the Bank and

compelled the staff of the Bank to make an entry crediting an amount of Rs.1,60,000/- in the account of Eunus Miah bearing No.6443 without the deposit of any amount and only on the assurance that he would be transferring this amount to this account immediately. Thereafter, on the same day Sukumar Das presented a withdrawal slip and withdrew this amount of Rs.1,60,000/- and then deposited the same in the account of one Sunil Barman bearing S.B A/C No.5484 by deposit challan. It is alleged that this amount of Rs.1,60,000/- was permitted to be withdrawn on the basis of withdrawal slip without ensuring the presence of Eunus Miah only because the accused used his position and power against the lowly placed officials in the branch office.

5. The prosecution case further is that on 17.4.2002 the accused Sukumar Das presented a withdrawal slip allegedly signed by Sunil Barman and withdrew the amount of Rs.1,60,000/- from the account of Sunil Barman and again he was permitted to withdraw this amount without following the rules because of the pressure exerted by him. It is also alleged that on 12.5.2002 which was a holiday being Sunday Sukumar Das took the keys of the Bank from Manik Lal Sharma a sub-staff official of the Bank, entered into the Bank and took away the specimen signature card and ledger pages of the S.B A/C No.6443 opened in the name of Eunus Miah. On the basis of these allegations the police investigated the matter. After

investigation Charge Sheet was filed and the trial Court framed charges under the aforesaid Sections against the accused.

6. After trial the accused was acquitted and the main ground for acquittal was that the prosecution had failed to get the application for opening the savings bank account in the name of Eunus Miah and the withdrawal slips and other relevant documents examined from a handwriting expert to prove that these documents had been written by the accused. An appeal against the said judgment was filed by the State before the learned Sessions Judge, Sonamura, West Tripura who transferred it to the Additional Sessions Judge who has by the impugned order upheld the order of acquittal. Hence this revision petition by the Bank which was the informant/complainant in the case.

7. A preliminary objection has been raised by Mr. Somik Deb learned counsel for the accused that this revision is not maintainable because of the fact that the Bank which had a right to file an appeal against the order of acquittal passed by the trial Court had not filed any appeal and, therefore, in terms of Section 401(4) this revision is not maintainable.

Section 401(4) of Cr.P.C reads as follows :

“401(4) Where under this Code and appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.”

The apparent intention of aforesaid Section is that if the remedy of filing an appeal is available then the Court would not entertain a revision petition. The question is whether such remedy was actually available and not availed of by the Bank.

8. According to Mr. Somik Deb, since the Bank did not prefer an appeal against the order of acquittal passed by the trial Court it is deemed to have not filed an appeal and, therefore, this revision is not maintainable. I am not at all in agreement with this submission. An appeal against the order of acquittal passed by the trial Court was filed by the State. There is material on record that this appeal was supported by the Bank. It was represented by its counsel before the lower Appellate Court. The purpose of Section 401 is that if there is an alternative remedy of appeal then the revision should not be entertained but if an appeal has been filed whether by one party or the other then that appeal will enure for the benefit of all the affected parties whose interest is similar. I am not convinced that if the State has filed an appeal a private party or informant can still file an appeal and I am not going into this question in this case. Assuming for the sake of argument that the informant or a complainant has a right to file a separate appeal regardless of the fact that the State has filed an appeal or not then also if the State files an appeal a party may decide not to file an appeal because what order it wants to challenge has already been

challenged by the State and the interest of the State and the complainant is identical.

9. Mr. Deb has relied upon two judgments; (i) ***AIR 1963 PUNJAB 170, Kishan Singh Munsha Singh Vs. State of Punjab (Punjab High Court)*** and (ii) ***1974 CRI.L.J.1170 State of Kerala Vs. Neelkantan Damodaran and another (Kerala High Court)***. There can be no quarrel with the propositions laid down in those cases that when the remedy of appeal is available then a revision petition does not lie. The remedy of appeal was available against the order of the trial Court. The remedy was availed of by the State. Once the State had availed of the remedy the Bank was not bound to file an appeal. There is no point of filing two appeals one by the complainant and one by the State.

10. Normally a complainant never files an appeal. A complainant only files the appeal when the State does not do so. Normally, in our system of criminal jurisprudence the complainant or the informant has no right to prosecute the matter. At best the informant of the victim can appoint a counsel to assist the public prosecutor and there also the powers of lawyer assisting are very limited. In this view of the matter, I am clearly of the view that when the State had filed an appeal it was not necessary for the Bank to file an appeal. After the appellate order the State has chosen not to file an appeal or a revision and therefore, the revision on behalf of the Bank is maintainable.

11. Having held so, one must at the outset mention that the powers under Section 401 Cr.P.C are extremely limited. These are not appellate powers. The powers under Section 401 can only be exercised where the orders of the Courts below are either illegal or perverse. These powers cannot be exercised merely because the High Court wants to take a different view from that of the Courts below. It is also well settled law that there is a presumption of innocence attached to every accused. This presumption of truth gets enhanced when he is acquitted by one Court and it gets doubly enhanced if the order of acquittal is confirmed by the appellate Court. It is in the context of these limited powers that this Court has to decide the case.

12. Mr. K N Bhattacharjee, learned counsel appearing on behalf of the Bank, urged that all the officials acted under the influence of the accused and all the illegal acts were done due to pressure exerted by the accused and, therefore, the accused is guilty and was wrongly acquitted by the Courts below. Mr. Bhattacharjee has taken me through the entire judgment of the Court below and I have also gone through the evidence of the witnesses. I shall now take up each of the allegations against the accused separately.

13. The first relates to the opening of a Bank account in the name of Eunus Miah. It is the admitted case of the Bank itself that no account can be opened unless the person who has to open

the account is personally present. His identity proof must also be given and there are certain documents which alone can be used for this purpose such as a passport, a voter identification card, ration card etc. Admittedly, in this case PW.1 Sri Gopal Chowdhury the Branch Manager opened the Bank account of Eunos Miah at the request of Sukumar Das. An account is opened only with the permission of the Branch Manager. Gopal Chowdhury was the Branch Manager who took over the Melaghar Branch after Sukumar Das had been transferred. He does not say that he was pressurized by Sukumar Das. He only says that he was requested by Sukumar Das. There is a lot of difference between '*pressure*' and '*request*'. None of the Bank officials who have appeared in the witness box have given any plausible explanation as to why they opened the Bank account in favour of Eunos Miah when Eunos Miah was not present and no proof of identification of Eunos Miah was produced by Sukumar Das.

14. Things become worse after this. According to the Bank, on 13.4.2002 Sukumar Das presented a deposit voucher for Rs.1,60,000/- to be deposited in the account of the said Eunos Miah. This was presented to Dipali Mandal who was working as Cashier in the Bank. According to her, no money was deposited but Sukumar Das pressurized her to make a credit entry of Rs.1,60,000/- in the account of Eunos Miah. It is alleged that she did this. It is indeed surprising that officials of a Bank would make an entry crediting a

huge amount of Rs.1,60,000/- in any account without the money being transferred to that account or being deposited in cash. This story cannot be believed. Moreover, it cannot be believed that the Bank officials would be so naïve that not only would they make an entry of Rs.1,60,000/- without this money being deposited or transferred to that account but would do so in an account which had been opened under pressure 9 days earlier and for which the accused had not provided the documents which according to this witness he had promised to provide. Even if the first part of the story was to be believed that Sukumar Das opened the Bank account and pressurized the bank officials to open the Bank account without all the relevant documents and they had done this because he had promised to bring the documents within a day or two, it cannot be believed that they permitted the account to be operated and also credited Rs.1,60,000/- to the account without even ensuring that the identity of Eunus Miah was established.

15. Matters got worse thereafter. On the same day, when this fraudulent transaction of Rs.1,60,000/- was done and an absolutely fraudulent entry was made in the books of the Bank showing that Rs.1,60,000/- had been credited to the account of Eunus Miah, this amount was allegedly permitted to be encashed by the accused on the basis of a withdrawal slip allegedly signed by Eunus Miah. These are Bank officials and not 2 or 3 year old children. These Branch Managers and Cashiers drawing heavy

salaries are expected to know what are the rules of the Bank. Can anybody believe that in a fraudulent account, a bank official under pressure made a fraudulent entry at the instance of the accused who was their boss and further permitted the boss to fraudulently withdraw Rs.1,60,000/-.

16. Matters did not end here. The amount of Rs.1,60,000/- was deposited in the account of Mr. Sunil Barman having S B A/C No.5484. Thereafter on 17.4.2002 i.e. only 4 days later the accused allegedly again came to the Bank and presented a withdrawal slip which was purportedly signed by Mr. Sunil Barman. Admittedly, Sunil Barman was not present in the Bank. According to the witnesses, who were the Bank officials, when they asked the accused where Sunil Barman was, he told them that he was just outside the Bank and again under his influence they handed over the money to the accused.

17. Therefore, what has happened is that a fraudulent Bank account has been opened in the name of Eunus Miah without following the procedure of the Bank at all. Out of thin air like a magician the Bank officials credited Rs.1,60,000/- to this account allegedly on the asking of the accused. No money is actually deposited or transferred to the Bank and the Bank officials would have this Court to believe that they innocently handed over the money in cash to the accused on the same day itself. Thereafter, this money was transferred to the account of Sunil Barman and

withdrawn again without the presence of Sunil Barman. None of the important documents such as the account opening form, the deposit slip of Rs.200/-, the deposit form of Rs.1,60,000/- or the withdrawal form of Rs.1,60,000/- on 13.2.2004 or the deposit and withdrawal slip in the name of Sunil Barman had been sent to the handwriting expert to prove that these were actually in the handwriting of the accused.

18. The entire case of the prosecution rests on the testimony of 3 or 4 officials of the Bank who, according to their own evidence, have broken every rule in the Rule Book in each and every transaction reflected hereinabove. Both the Courts below were fully justified in not relying upon the statements of these witnesses. These are self-serving statements. If the Bank really had the intention to prosecute the case and take it to its logical conclusion the complaint should have been filed against all the officials because the accused alone could not have committed this offence and this offence could not have been committed without the active connivance of the Branch Manager and Cashier of the Melaghar Branch of the Bank.

19. Yesterday, after I heard the matter for a length the Bank was directed to produce the record to show what action it has taken against the erring official. The only material placed on record by Mr. Bhattacharjee is that show cause notices were issued to these officials on 20th August, 2002 and thereafter they submitted their

replies to the show cause notices but after that no action was taken. Some must have retired by now and must have been paid their gratuity and pension also.

20. In these circumstances I am clearly of the view that this is not the fit case for invoking the revisional jurisdiction of this Court. The benefit of doubt has to be given to the accused. He may or may not have committed the crime. Even if he had committed the crime, the same could not have been committed without the connivance of the Branch Manager and the Cashier.

Therefore, I find no merit in the petition which is, accordingly, dismissed. Send down the LCRs forthwith.

CHIEF JUSTICE

Sukhendu