THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE No.550 of 2008

ORDER:

This Criminal Revision Case is filed by the revision petitoner/A2 against the judgment in Crl.A.No.89/2007, dated 01.04.2008 on the file of the Principal Sessions Judge, Nalgonda, by and under which, the conviction and sentence as imposed by the trial Court against the petitioner/A2 was confirmed.

Heard the learned counsel appearing for the revision petitioner/A2 and the learned Additional Public Prosecutor, representing the State.

The case of the prosecution is that the non-petitioner/A1-K.Srinivas Rao was an Attender in Collector's Bungalow, Nalgonda and he used to observe the office routine work and issuing of cheques in Collector's camp office, Nalgonda. The petitioner/A2 was Clerk-cum-Cashier in Indian Bank, Nalgonda. Both A1 & A2 are friends. The non-petitioner/A1 committed theft of blank cheque bearing No.752240 from the office cheque book on 25.03.1999 and forged the signature of the District Collector, Nalgonda, Smt.Nilam Sahaney and forged the signature of PW 7-M.Jagan Mohan, PD DRDA and handed over the said cheque to the petitioner/A2. The petitioner/A2 filled up the blanks and properly made figure of Rs.1,50,000/- on the said cheque and presented the same for encashment at Canara Bank, Nalgonda vide S.B.A/c.14322. PW 6-A.Thirumala Rao, Clerk of Canara Bank, Nalgonda received the said cheque, entered the same in the ledger and sent to PW 2-N.Naveen, Supervisor of Canara Bank, Nalgonda for routine transaction. After verifying the cheque, PW 2 suspected the signature of PW 7 as forged and he contacted PW 8-P.Adavaiah, Senior Manager of Canara Bank and in turn PW 8 contacted PW 3-Smt.Annapurna, Accountant in DRDA and she replied that no such cheque was issued. Then PW 8 lodged a complaint to police, which was registered as a case in Cr.No.51/1999 of Nalgonda I Town P.S. for the offences under Sections 420, 471, 381 and 468 IPC. After completion of investigation, police filed charge sheet in CC.No.412/2001 on the file of the Special Judicial First Class Magistrate (for Prohibition & Excise Offences), Nalgonda.

On appearance of the accused before the trial Court, they were examined under section 239 Cr.P.C, and the charges under section 420 and 467 IPC have been framed against them, for which they pleaded not guilty.

During course of trail, the prosecution examined PWs 1 to 10 and got marked Exs.P1 to P18. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C putting all incriminating material available against them. Accused denied the material evidence and no evidence was adduced on their behalf.

On appreciation of oral and documentary evidence, the trial Court found the non-petitioner/A1 guilty of the offence under Section 420 IPC, convicted and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/- in default, to undergo simple imprisonment for three months. The trial Court found petitioner/A2 guilty of the offences under Section 420 and 467 IPC, convicted and sentenced the petitioner/A2 to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/- for each offence, in default to suffer simple imprisonment for three months for each offence, and it is ordered that the sentence under Sections 420 and 467 IPC shall run concurrently.

Challenging the conviction and sentence passed by the trial Court, A1 & A2 filed individual appeals vide Crl.A.Nos.91 & 89 of 2007 before the lower appellate Court. The learned Sessions Judge heard both the appeals together and on re-appreciation of oral and documentary evidence, vide a common judgment dated 01.04.2008 dismissed both appeals filed by A1 & A2, while confirming the conviction and sentence recorded by the trial Court against A1 & A2. Aggrieved by the same the petitioner/A2 alone filed the present criminal revision case.

The point that arises for consideration in this revision is whether the conviction and sentence imposed by the Courts below against the revision petitioner/A2 is sustainable, or whether it needs interference.

The incident proper can be divided into two parts for the purpose of evaluating the material on record. The non-petitioner/A.1 and the petitioner/A.2 were charge sheeted alleging that while A.1 was working as an Attender in the bungalow of the District Collector at Nalgonda, A.2 was working as a Cashier-cum-Clerk in Indian Bank at Nalgonda. They are said to be friends. An account of MPLAD Funds will be maintained and the payments there for will be made through cheques. The cheque book pertaining to that account was in the custody of the Project Director, DRDA, Nalgonda. PW.3 was working as an Accountant in the said Office. The procedure is that if any payment is to be made from out of the funds, a cheque will be issued by the Project Director and if it exceeds Rs.50,000/-, the cheque need to be signed by the District Collector also. For the said purpose, the cheque will be prepared by the Accountant-PW.3 and will be sent to the District Collector and after it is signed, the same will be issued to the party concerned which will be generally not issued in the name of individual persons. The account is maintained by the Canara Bank at Nalgonda. The allegation is that the non-petitioner/A.1 being the Attender in the Collector's bungalow has committed theft of a leaf of the cheque book of the account bearing No.14322/MPLAD Funds and forged the signature of the Project Director – Jagan Mohan (PW.7) and also the District Collector – Neelam Sahani (not examined) and gave it to his friend A.2 who has filled up the name and amount of Rs.1,50,000/- and presented the said cheque in the

Canara Bank for payment across the counter. The bank officials who were examined as PWs.1, 2, 6 and 8 developed suspicion about the cheque being genuine and cross-checked it from the Office of the Project Director and it was confirmed that it is a cheque not issued by the Project Director and that it was a forged cheque. A.2 was handed over to the police and he is said to have confessed that the said cheque was given to him by the non-petitioner/A.1. The Scientific Officer, Forensic Science Laboratory (PW.9) has examined the disputed cheque and confirmed that it is a forged cheque.

Insofar as the non-petitioner/A.1 is concerned, it is alleged that it is he who has stealthily taken away a cheque leaf from the cheque book and forged the signature of the Project Director-PW.7 and the District Collector and gave it to A.2. The second part of the transaction is that A.2 having written his name on the cheque filled up the amount, put his own signature on the reverse of the cheque and presented the same for encashment.

Both the Courts below have found the non-petitioner/A.1 guilty of an offence punishable under Section 420 IPC., and the petitioner/A.2 was found guilty of the offences punishable under Sections 420 and 468 IPC., and sentenced them as stated above. It is not known as to whether the non-petitioner/A.1 has challenged his conviction and sentence but the petitioner/A.2 is before the Court questioning the correctness of the conviction and sentence. Therefore, the case of the prosecution so far as it in respect of the allegation of the forgery and theft of a cheque leaf against A.1 is concerned need not be discussed at length. What is, however, required to be seen is as to whether it is A.2 who presented the cheque which is marked as Ex.P.1 knowing it to be a forged and fabricated instrument with an intention to cheat and defraud the State exchequer. At the outset, it may be stated that even if what is alleged is proved, the petitioner/A.2 cannot be said to be the person who has forged the signature so as to attract the provisions of Section 468 IPC., but, however, he can be said to have committed an offence which is punishable under Section 471 IPC.

Sections 468 and 471 IPC., read as under:-

Section 468. Forgery for purpose of cheating:-

> Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 471. Using as genuine a forged document or electronic record:-

> Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record shall be punished in the same manner as if he had forged such document or electronic record.

The contention of the learned Counsel appearing for the petitioner/A.2 is that the prosecution did not place on record cogent and reliable evidence to connect A.2 with the offences of presenting a forged cheque before the bank for encashment and that it is he who has filled up the contents. It is further submitted that the name of the petitioner/A.2 is K.Vijaya Sunder but whereas the cheque is payable to K.Vijay. It is further submitted that as per the practice which is admitted by the bank officials when the signature on the cheques was found to be not tallying, they are required to return the cheque without honouring it but they cannot lodge a complaint which in fact has to be done by the person whose signature is alleged to have been forged. It is also submitted that when the evidence of the bank officials is consistent to the effect that the cheque Ex.P.1 was presented by A.2 at about 11.00 a.m., he was made to sit in the bank till 01.30 p.m., or 02.00 p.m., and when the police officials arrived, he was handed over to the police but whereas the Investigating Officer – PW.10 asserts that he arrested A.1 and A.2 in the evening at 07.00 p.m. All the above events are said to have taken place on 25-03-1999. The cheque number in question is 752240.

The fact that cheque is forged and does not contain the signature of the Project Director PW.7 and the District Collector who is not examined, is proved by not only the evidence of PW.3, the Accountant, and PW.7-the Project Director, but is also established from the evidence of PW.9, who is a Scientific Officer in AP FSL, Hyderabad. It is in her evidence that signature on the cheque Ex.P.1 is not that of the Project Director-PW.7 and the District Collector whose specimen signatures were sent to the expert. It is also established that the signature on the reverse of the cheque Ex.P.1 is that of A.2.

The evidence of PW.1, a Officer of the bank, PW.2 a Supervisor who is supposed to process, verify and pass the cheques and PW.6 the clerk at the counter have consistently deposed that on 25-03-1999 it is A.2 who is known to them he being an employee of another bank came to the branch and presented the cheque Ex.P.1. It is in their evidence that on verification, they found the cheque to be forged and the same fact was confirmed by the Accountant-PW.3 and the Project Director-PW.7. Thereafter, the matter was informed to the Senior Manager – PW.8 who lodged the complaint-Ex.P.2. All the bank officials have been elaborately cross-examined. Nothing concrete is elicited from them for disbelieving their statements that it is A.2 who has presented the cheque Ex.P.1 across the counter in the bank for encashment. They have absolutely nothing against A.2. They only had acquaintance with him but have no reason to implicate A.2 falsely. The evidence of all the bank officials referred to above is cogent, consistent, convincing and inspiring.

Learned Counsel appearing for the petitioner also submits that generally a cheque for a sum of Rs.1,50,000/- will not be presented for encashment across the counter, but learned Counsel however could not place on record any specific provision or rule which prohibits such a practice though it may be followed by bankers.

It is not even suggested to the bank officials that they have any animosity or reasons for implicating the petitioner/A.2 in order to help any other person. What could be gathered from the evidence on record is that A.2 being a Clerk in another nationalized bank and had facial acquaintance with the officials in the Canara Bank has written his name in short viz., K.Vijay instead of K.Vijaya Sunder and presented the same for encashment but the signature on the reverse of Ex.P.1 which is required to be put by a person who presents the bearer cheque for encashment tallies with the admitted signature of A.2 both in the records of the present case and also the specimen signatures of A.2 obtained by the investigating agency.

Both the Courts below have scrutinized their evidence and accepting the same, held that it is A.2 who has presented the cheque Ex.P.1. Upon perusing their testimony, I find myself to be in agreement with the findings of both the Courts below that it is A.2 who has presented the cheque Ex.P.1 in the Canara Bank on 25-03-1999 and that cheque is a forged cheque which is alleged to have been forged by the non-petitioner/A.1.

It is no doubt true that there are certain latches on the part of the investigating agency. Firstly, when it is the consistent testimony of the bank officials that they have detained A.2 in the bank and handed over him over to the police officer at about 01.30 p.m., or 02.00 p.m., but curiously the Investigating Officer – PW.10 deposed that he has apprehended A.1 and A.2 at Clock Tower in the evening at 07.00 p.m. This discrepancy is there no doubt but that will not affect the main fabric of the case namely whether it is A.2 who has presented the cheque Ex.P.1 into the bank knowing it to be a forged instrument. It is also true that the District Collector whose signature is alleged to have been forged has neither been examined by the Investigating Officer during the course of investigation nor during the course of trial. It is also true that usually in such cases, the complaint ought to be given by the persons whose signatures are alleged to have been forged but not the bank officials. However, these aspects also do not affect the case of the prosecution materially so as to give the benefit thereof to the petitioner/A.2. The ocular testimony of PWs.1, 2, 6 and 8 is consistent to the effect that it is A.2 who has presented the cheque Ex.P.1 which was suspected to be and ultimately confirmed that it was a forged cheque.

To the facts proved, the offence that is attracted is Section 471 r/w 511 IPC. According to the prosecution itself, the cheque was forged and fabricated by A.1 and it is A.2 who has presented the same in the bank for encashment. The attempt made by A.2 to withdraw the amount on the basis of a forged cheque did not fructify in view of the alertness exhibited by the bank officials. The petitioner/A.2 cannot also be said to have committed the offence which is punishable under Section 420 IPC.

In view of the above, it is held that the prosecution proved its case against the petitioner/A.2 and the offence that is committed by him squarely falls within the ambit of Sections 420 and 471 read with 511 IPC.

For the reasons stated above, the Criminal Revision Case is dismissed. However, the petitioner/A.2 is found guilty of the offence punishable under Sections 420 and 471 r/w.Sec.511 IPC instead of Sections 420 and 467 IPC as recorded by both the Courts below. Accordingly, the petitioner/A.2 is convicted for the offences under sections 420 and 471 r/w.511 IPC and sentenced to suffer simple imprisonment for 3 (three) months for the offence under Section 420 IPC and 3 (three) simple imprisonment for the offence under section 471 r/w. Section 511 IPC and to pay fine of Rs.2,000/- (Rupees two thousand only) for each offence, in default to suffer simple imprisonment for one month each. Both the sentences shall run concurrently. Petitioner/A.2 is entitled to set off under Section 428

Cr.P.C

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 01.02.2016

Dsr/Smr