IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.40483 of 2012 (O&M)
Decided on: 03.10.2017

S.K. Arora

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Sandeep Chopra, Advocate
for the petitioner.

Mr. Amandeep S. Gill, Sr. DAG, Punjab.

Mr. Navdeep Singh Bhullar, Advocate
for Mr. Kuldeep V. Singh, Advocate
for respondent No.2.

Mr. Mahesh Dheer, Advocate
for respondent No.3.

ARVIND SINGH SANGWAN J.

The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') seeking quashing of complaint No.6 dated 10.01.2007 as well as the summoning order dated 07.04.2011 passed by the trial Court and all subsequent proceedings arising therefrom.

Brief facts of the case are that respondent No.2 – Rajwant Singh filed a criminal complaint under Section 420, 409, 468 and 471 of the Indian Penal Code, 1860 (hereinafter to be referred as 'IPC') against the petitioner with the allegation that he is an agriculturist by profession and had opened 03 FDR accounts for a period of 06 months in the State Bank of India, Branch Baam (for short 'the Bank') amounting to Rs.90,500/-. On 24.04.2006, the complainant went to the bank to withdraw the aforesaid amount and at that time, accused No.1 i.e. Rajwinder Singh Mehra, Manager of the branch and accused No.2 – S.K. Arora, Cashier of the Branch were present there. They obtained the signatures of the complainant on the forms for encashment of the FDRs and informed the complainant to come after lunch for collecting the money after they completed the necessary formalities. However after lunch, the complainant was informed that the computers are not working and, therefore, he should come on the next day i.e. 25.04.2006.

On the very next day i.e. 25.04.2006, the complainant came to the bank for receiving the amount where the accused persons asked the complainant to wait for some time. In the meantime, 03 armed robbers carrying fire arms entered the bank with intention to commit robbery and at that time, the amount was lying in front of the cashier i.e. accused No.2 and the aforesaid unidentified robbers took away the money from the bank. At that time, Labh Singh son of Harnam Singh and Chinda Singh son of Labh Singh were present in the Bank and one Jaspal Singh son of Jagtar Singh was also present in the Bank. It was, thus, alleged that the accused persons have misappropriated the money of the complainant which they were legally bound to hand over to him after encashing the FDRs and by not making the payment, they have committed the offence of fraud and cheating. The complainant has made applications to higher officials of the Bank as well as the police for taking action against the accused persons as they had not made payment of due amount to the complainant but no action has been taken.

In support of the complaint, the respondent/complainant examined himself as CW1 and eyewitness Chhinder Singh as CW2. Both of them deposed on the line of the version given in the complaint and CW3 – M. Baghia, Special Assistant, State Bank of India Branch at Baam appeared with regard to the transaction done by the complainant. The complainant further proved Ex.C1, an application filed by him for registration of the criminal case, postal receipts Ex.C2 to Ex.C6, newspaper Ex.C7, copies of FDRs as Ex.C8 to Ex.C10 and an application to the Branch Manager, Muktsar as Ex.C12 and closed the evidence. Thereafter, the trial Court vide impugned order dated 07.04.2011 summoned the petitioner/accused under Section 409 IPC.

The petitioner in the present petition has prayed for quashing of the aforesaid complaint and the summoning order on the ground that on 25.04.2006, an FIR No.98 was got recorded by Ravinder Singh, Manager State Bank of India Branch at Baam against unknown persons under Sections 397 read with Section 34 IPC and 25, 27/54/59 of the Arms Act in Police Station Sadar Malout, District Muktsar. It is further submitted that as per this FIR when the accused persons entered the Bank, the guard of the Bank namely Nachattar Singh was absent and in fact he was absent since 15.04.2006 and on seeing the robbers, 03 persons sitting on the counter i.e. S.K. Arora, Ram Chand Salewal and Subhash Chander ran away and entered in the bathroom of the Bank and bolted it from inside. When the door was not opened one of the assailants fired a shot which hit on the arm of Ram Chander Salewal and thereafter, the door was opened and all these 03 persons took away the cash lying in the cashier counter as well as the cash lying in the safe of the bank. It is further submitted that in fact the petitioners are only employees of the Bank and, therefore, cannot be held liable for offence punishable under Section 409 IPC.

It may be noticed here that this petition was filed in the year 2012 and notice of motion was issued on 20.12.2012 and later on, the trial Court was directed to adjourn the case beyond the date given by this Court vide order dated 18.09.2013 and since then, the interim stay is continuing and, therefore, no further proceedings were undertaken by the trial Court. It is also relevant to note that later on, the petitioner moved an application for impleading the State Bank of India as respondent No.3 and the same was allowed vide order dated 02.12.2014 and respondent No.3 was served and also filed its reply.

In the meantime, this Court directed the counsel for the State to inform about the investigation carried out in pursuance to the FIR No.98 dated 25.04.2006 (Annexure P3) regarding the robbery which took place in the bank. The matter remained pending for a considerable long time for the purpose of informing the Court about the investigation in the aforesaid FIR and vide order dated 19.08.2016, it was noticed that the police has submitted the untraced report regarding the aforesaid FIR and the same has been accepted by the trial Court vide order dated 28.10.2015.

It is also relevant to notice here that as per the affidavit filed by the Senior Superintendent of Police, Sri Muktsar Sahib dated 10.12.2015, it was submitted that the trial Court has already issued notice to the complainant, Bank Manager State Bank of India and thereafter, the untraced report was accepted by the Judicial Magistrate

Ist Class, Malout which shows that the Bank did not file any protest petition against the untraced report and accepted the same.

Thereafter, the matter was listed for arguments on the main petition.

The Bank/respondent No.3 also filed its written statement in which it was admitted that on 25.04.2016, there was an incident of robbery in the Baam Branch where the petitioners were posted as Branch Manager and Cashier. However, it was further submitted that as per the Bank records, the respondent No.2/complainant had come to the Branch on 25.04.2006 to seek the FDRs payment of Rs.90,500/- and respondent No.2 had filled the requisite withdrawal form on 25.04.2006 and on receiving the withdrawal form, the amount of Rs.90,500/- was taken by him and as such, the Bank has already made the payment to respondent No.2. It is also submitted that the payment has been done through his saving bank account. It has been averred that the complaint filed by respondent No.2 seems to be false.

It is submitted on behalf of complainant/respondent No.2 that the complainant has already moved an application to the police for registration of a criminal case against the Bank officials but no action was taken and he has also submitted a complaint Ex.C12 to the Bank for making the payment but again no action has been taken.

Counsel for the petitioners has not disputed the fact that, in fact, a complaint dated 27.04.2006 was filed by respondent No.2/complainant with the Regional Manager, State Bank of India, Bathinda, Assistant General Manager, State Bank of India, Ludhiana along with Deputy General of Police, Punjab Police and Vigilance

Bureau. This application is relied upon by the petitioners themselves by attaching it as Annexure P4.

It is also submitted on behalf of respondent No.2/complainant that he is a very poor small farmer and he has been deprived of his hard earned money and the withdrawal form showing the payment to the complainant has been prepared subsequently to make up a defence as it being a computer generated invoice does not gave the exact time when the amount was allegedly paid and it is submitted that the complainant is entitled to receive the amount of Rs.90,500/- which has been illegally retained by the petitioners and the Bank and as such, prayed that the petition filed by the petitioners be dismissed as evidence under Section 409 IPC is clearly made out from the bare perusal of the complaint as well as the summoning order which has been passed on appreciation of the oral as well as the documentary evidence including the statement of CW2, an eyewitness who has duly supported the case of the complainant.

After hearing counsel for the parties, I find that the following facts emerges from the petition as well as the reply filed by the respondents:-

A. Admittedly, respondent No.2 was a consumer of the Bank and had made a deposit of Rs.90,500/- in the shape of the FDRs which he had applied for encashment on 24.04.2006 and he was directed to come on 25.04.2006 for receiving/collecting the payment.

B. The fact that on the next day on 25.04.2006 when the payment was to be made to respondent No.2 a robbery took place in which the entire cash amount of the bank was taken away by 03 robbers and at that time, there was *no security guard in the bank as admittedly, the security guard was absence as per the own version of the Bank given in the FIR No.98 dated 25.04.2006 registered with the Police regarding the alleged occurrence of robbery, therefore, it is apparent that the Bank miserably failed to provide protection to its employees as well as the consumers like the complainant and in case there was proper security arrangement such incident could have been avoided.*

C. Despite the fact that the complainant has filed application with the Bank as well as the police that he has been deprived of his money, no, in-house enquiry was conducted by the Bank to find out if the amount was actually paid to the complainant and, therefore, the written statement filed by the Bank on 24.08.2015 i.e. after a period of more than 09 years, that the payment was already made to respondent No.2/complainant is on the face of it, is just to escape the liability of the Bank.

D. It is own case of the petitioners who are the employees of the Bank that two days after the incident, a detailed complaint was filed by the complainant dated 27.04.2006 (Annexure P4) for taking action against the petitioners as under the garb of the incident of robbery, they have misappropriated his cash amount of Rs.90,500/-. The in-action on the part of the Bank to conduct an enquiry immediately after the incident and to verify the truth show that the Bank has openly stayed with the employees i.e. the petitioners and, thus, it had raised a suspicion on the working of the Bank despite the fact that respondent No.2 is demanding his money neither the enquiry was conducted nor at any stage, the complainant was joined by the petitioners to verify the facts of his representation.

E. A perusal of the written statement filed by *respondent No.3 – Bank also clearly show that it is not disputed that the complainant came to the Bank on the date when the robbery took place i.e. on 25.04.2006 and had applied for encashing the FDRs, therefore, the presence of the complainant on the given date and time is not disputed, however, there is not even a single averment in the reply filed by respondent No.3 that respondent No.2 was not present in the Bank when the alleged incident took place.*

A perusal of the statement of M. L. Bagia who appeared as CW3 before the trial Court on 25.07.2009, it is alleged that the payment was made to the complainant. It has also come on record that both the petitioners were only employees of the Bank and the criminal liability, if any, would be of the principal i.e. the Bank and, therefore, the liability to pay the amount of Rs.90,500/- to respondent No.2/complainant would be of the principal i.e. the Bank/respondent No.3.

After hearing counsel for the parties, I find that it is proved on record that on 25.04.2006, the respondent/complainant had gone to the Bank, submitted the original FDRs for encashment, the amount was debited to his account and when the Bank officials were in the process of handing-over the amount, the incident of robbery took place and the entire cash amount lying in the Bank was taken away and, therefore, the petitioners or the Bank has failed to prove that the amount was paid to the complainant, though, the withdrawal form has been placed on record as Annexure R1 which as observed above does not show the time of payment, though the alleged occurrence of robbery has taken place at 12:15 PM as per the FIR No.98. Since, the Bank officials failed to conduct any enquiry regarding the complaints made by the complainant to find out whether the amount was actually paid to him or not, it can be safely held that the amount was never paid to him and it was a part of the total amount which was taken away by the robbers and in order to escape their liability, the petitioners have shown that the amount was paid to the complainant. Since, the complainant is also a consumer of the Bank, which has failed to provide adequate security at its premises, at the time when the consumers were operating their accounts and doing transactions in the Bank, the Bank cannot escape its vicarious liability for any act of omission done by its employees i.e. the petitioners.

Accordingly, I hold that it will be in the interest of justice, that the complaint (Annexure P1) and the summoning order dated 07.04.2011 are quashed subject to the condition that the respondent/Bank will make the payment of Rs.90,500/- to the respondent No.2/complainant. Since, the complainant is pursuing his legal remedy for the last about 11 years, I also hold it appropriate to award a cost of Rs.9,500/- in favour of respondent No.2/complainant, who is a small farmer and is deprived of his hard earned money.

In view of what has been discussed hereinabove, the petition is allowed and the complaint No.6 dated 10.01.2007 as well as the summoning order dated 07.04.2011 passed by the trial Court and all subsequent proceedings arising therefrom are ordered to be quashed subject to the condition that the respondent/Bank will make the payment of Rs.1,00,000/- to the respondent/complainant within a period of 04 months from today failing which the present petition shall stands dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

03.10.2017
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Whether speaking/reasoned Yes/No

Whether reportable: Yes/No