BANK OF INDIA

v.

YETURI MAREDI SHANKER RAO & ANR.

JANUARY 28, 1987

[G.L. OZA AND M.M. DUTT, JJ.]

Indian Penal Code, 1860; s.467 read with s.109 and s.471—Accused—Bank Clerk—Getting signatures of account holder forged on withdrawal forms—Drawing money by presenting them in Bank—Held liable to be convicted for offences.

The respondent-Accused, who was working as an Accounts Clerk in the appellant Bank in the very branch where P.W. 1 had her account, was alleged to have presented forged cheques on her account and misappropriated the sum withdrawn. He has prosecuted for offences under s.467 read with ss. 109, 471, 408 and 420 of Indian Penal Code.

The trial court and the appellate court found that the signatures on the withdrawal forms were not that of P.W. 1 and that they were also not forged by the accused. But they recorded a concurrent finding of fact that the withdrawal forms bearing forged signatures of P.W. 1 were presented in the Bank by the respondent-accused and he obtained money and put his signatures on the reverse in acknowledgement of receipt of money, that the money so obtained was pocketed by the respondent-accused and was not returned or paid to P.W. 1. He was acquitted by the trial court of the charge under s.408 and by the appellate court under s.420, and ultimately convicted of the offence under s.467 read with s.109 and s.471. The State did not prefer appeal against the acquittal under ss.408 and 420.

On appeal by the accused-respondent, the High Court took the view that there was no evidence as to who forged the signatures of P.W. 1 on the withdrawal form and that it could not be said that the accused-respondent knew that the document was forged or that he got the document forged. It came to the conclusion that the offence under s.467 read with s. 109 was not made out and that consequently his conviction under s.471 also could not be maintained.

In these appeals it was contended on behalf of the appellant Bank that the respondent-accused was liable because he has admitted that the signatures on the back of the withdrawal form were his signatures

A acknowledging the receipt of money which he pocketed himself.

Allowing the appeals, the Court,

HELD: 1.1 The acquittal of the respondent-accused by the High
B Court for an offence under s.467 read with s. 109 of the Indian Penal Code was not justified.

1.2 Though there was no evidence about the forgery of the signatures of P.W. 1 on the withdrawal forms still the fact remained that the signatures were forged, that the withdrawal form was in the possession of respondent-accused and it was he who represented it in the Bank and
C obtained money. P.W. 1 used to take the assistance of the respondent-accused whenever she wanted to have any transaction in the Bank and therefore it was expected of him to have known the signatures of P.W. 1. Apart from it there was nothing to establish as to from where the respondent-accused got these withdrawal forms. These facts lead to the only inference that it was the accused-respondent who got the signa-
D tures of P.W. 1 forged on the withdrawal form.

2. It could not be doubted that the accused-respondent used the withdrawal forms knowing them to be forged or at least believed them to be forged on the basis of which he obtained money to which he had no
E claim and thereby caused wrongful gain to himself and wrongful loss to P.W. 1. It could not, therefore, be said that the respondent-accused could not be convicted for an offence under s.471.

3. As three separate prosecutions were launched the respondent is convicted of the offences under s.467 read with s. 109 and s.471 of the
F Indian Penal Code in each one of the three cases and sentenced to 9 months rigorous imprisonment for each of the offences. The sentences to run concurrently.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 485-488 of 1979 etc.

G

From the Judgment and Order dated 6.12.1977 of the Andhra Pradesh High Court in Cr. Revision Cases Nos. 294, 295, 296 and 293 of 1977

Kapil Sibal, Atul Wig, Raj Birbal, A.T.M. Sampath and G.M.
H Rao for the Appellant.

A.K. Goel, K. Ram Kumar, B Parthasarthi for the Respondents. A

The Judgment of the Court was delivered by

OZA, J. These appeals have been filed after grant of leave against the acquittal of the respondent from offences under Sections 467 read with Section 109 and 471 of the Indian Penal Code. B

The prosecution case at the trial was that V. Suryakantam is a resident of official colony VSP, and has a Bank account in the Bank of India since 1965. Her Account No. is 2006. She has also a cheque-book to operate the Bank transactions and she was also entitled to withdrawal facility for withdrawing money from her accounts. The respondent-accused was working as an Accounts Clerk in the Bank of India in the very branch where V. Suryakantam P.W.1 had her account. C

This V. Suryakantam, P.W.1 was acquainted with the respondent-accused and he used to assist her in the Bank transactions. It is D alleged that whenever she wanted to withdraw money on a cheque her daughter V.S. Kanthi used to fill up the cheque and she used to sign on the cheque. On 23rd November, 1970 the respondent accused misrepresented to P.W.1 that her account book is required in the Bank for the purpose of posting uptodate entries and on this representation obtained her pass-book which he never returned. P.W.1 demanded the E pass-book several times. He always represented that it was in the Bank and yet not completed.

On 9.12.1970 the respondent got filled up by some person withdrawal form No. 2055 on the account of P.W.1 on the Bank of India for Rs.6,000 and represented this withdrawal form in the Bank. He F received the money i.e. Rs.6,000 and mis-appropriated the same. On 11.3.1971 P.W.1 went to the Manager of the Bank. The respondent was absent and she told him about the fact of having given her pass-book to the respondent long back and that he was not returning the pass-book and dodging her. She also requested him to verify her accounts. The Manager asked her to come on the next day. G

On 12th March, 1971 when she went to the bank to her surprise she learnt that some withdrawal of money have been done and very little amount was left over. She immediately gave a complaint that this withdrawal of Rs.6,000 was not by her as well as two other withdrawals and on the same day the Manager and staff officer went to the house of H

A the accused and questioned him about those transactions. The respondent accused admitted his guilt before the Manager and requested the Manager to excuse him and gave a confessional statement in writing.

During investigation hand-writing specimen of P.W.1 and admitted handwriting of the accused-respondent were compared with the B handwriting on the withdrawal forms by the expert. The opinion of the expert was that signature on the withdrawal form was not by P.W.1 and that the signatures on the reverse of the form which is taken in the Bank as an acknowledgement for the receipt of money was that of the respondent-accused. It was therefore opined that the respondent-accused got forged the signatures of P.W.1 on the withdrawal form, presented it as genuine at the Bank and withdrew Rs.6,000 and there- C fore he was prosecuted for offences under Sections 467 read with Sec. 109, 471, 408 and 420 of Indian Penal Code. As there were three items of such withdrawals three prosecutions were launched consequently three appeals and ultimately three appeals are filed here by the Bank of India and there is also an appeal filed by the State against the D judgment of acquittal passed by Hon'ble the High Court.

On trial the respondent accused was convicted for an offence under Sec. 420 and sentenced to undergo imprisonment for 9 months and to pay a fine of Rs.100. He was also convicted for an offence under Sec. 467 read with Sec. 109 and sentenced to imprisonment for 9 E months and a fine of Rs.100. He was also convicted under Sec. 471 IPC and sentenced to 9 months imprisonment. The trial court however acquitted him from the effence under Sec. 408.

The appellate court acquitted the respondent accused from charge under Sec. 420 IPC but confirmed his conviction under Sec. 467 F read with Sec. 109 and also under Section 471, the sentence under the two was maintained.

The State did not prefer an appeal against the acquittal of the respondent under Sec. 408 IPC by the trial Court and his acquittal under Sec. 420 IPC by the appellate Court. The respondent accused G aggrieved against conviction preferred a revision petition before Hon'ble the High Court of Andhra Pradesh and Hon'ble the High Court by its judgment dated 21st February 1977 came to the conclusion that the offence under sec. 467 read with Sec. 109 IPC is not made out. The learned Judge also came to the conclusion that consequently his conviction under Sec. 471 also could not be maintained. Consequently the H respondent was acquitted from the charges levelled against him and it

is against this judgment of Hon'ble the High Court that the present appeals have been filed after obtaining leave from this Court. A

The learned trial Court and the appellate Court came to the conclusion that the signatures on the withdrawal form were not that of P.W.1 but it also came to the conclusion that they were also not forged by the respondent-accused but both the Courts came to a concurrent finding of fact that these withdrawal forms on which there were forged signatures of P.W.1 were presented in the Bank by the respondent-accused and he obtained money on the basis of these withdrawal forms and he put his signatures on the reverse of these withdrawal forms in acknowledgement of the receipt of money. These signatures on the back side of the withdrawal form acknowledging the receipt of money were also admitted by the respondent-accused at the trial. B C

Both the Courts below also came to a concurrent finding of Act that the money so obtained from the Bank from the account of P.W.1 on the basis of these withdrawal forms was pocketed by the respondent-accused and was not returned or paid to P.W.1 although that was the stand taken by the respondent-accused and he also attempted to prove it by producing a defence witness for that purpose. On the basis of these findings both the Courts ultimately convicted the respondent-accused for an offence under Sec. 467 read with Sec. 109 and Sec. 471 IPC. D E

The learned Judge of the High Court while acquitting the respondent-accused came to the conclusion that it was the duty of the prosecution to establish as to who had forged the signatures of P.W.1 on the withdrawal form as admittedly it has not been established that they were forged by the respondent-accused and on this basis the learned Judge observed that as there is no evidence as to who forged the signatures P.W. 1 on the withdrawal form it could not be held that the accused-respondent knew that the document was forged nor it could be said that he got the documents forged and on the basis of this conclusion the learned Judge came to the conclusion that none of the two offences i.e. Sec. 467 read with Sec. 109 or offence under Section 471 is established. F G

The learned counsel appearing for the appellant (the Bank) contended that so far as receipt of the money on the basis of the withdrawal form from the Bank is concerned it is admitted by the respondent accused as he admits his signatures on the back of the withdrawal form which are signatures acknowledging the receipt of the money. H

Both the Courts (trial Court and the appellate Court) negatived the defence that the money so collected from the bank by the respondent was given over to P.W.1 and High Court also maintained that finding as it has not been negatived. He therefore contended that the following facts are established and accepted to be established even by the High Court:-

(i) that the withdrawal form did not bear the signatures of P.W.1;

(ii) that on the basis of the withdrawal form the accused-respondent withdrew money from the bank from the account of P.W.1 and that

(iii) he signed the acknowledgement of receipt of money and did not return the money to P.W.1 but pocketed himself.

These facts therefore clearly establish that the respondent-accused used the forged document and on the basis of that document obtained money to which he had no claim and thereby caused wrongful gain to himself and wrongful loss to P.W.1. It is also clear from the evidence that P.W.1 used to take the assistance of the accused-respondent whenever she wanted to have any transaction in the Bank and therefore it is expected of him to have known the signatures of P.W.1 Apart from it there is nothing to establish as to from where the respondent-accused got these withdrawal forms. Under these circumstances it could not be doubted that he used these withdrawal forms knowing them to be forged or at least believed them to be forged and therefore it could not be said that he could not be convicted for an offence under Sec. 471.

As regards the offence under Section 467 read with Sec. 109, the learned High Court acquitted the respondent because it came to the conclusion that there is no evidence to establish as to who forged the signatures of P.W.1 on the withdrawal form. It is no doubt true that so far as the evidence about the forgery of the signatures of P.W.1 on the withdrawal form is concerned there is no evidence except the fact that the signatures are forged and the further fact that this withdrawal form was in the possession of respondent-accused who presented it in the Bank and obtained money therefrom and pocketed the same. From these facts an inference could safely be drawn that it was the respondent-accused who got signatures of P.W.1 forged on this document

as it was he who used it to obtain money from the Bank from the account of P.W.1 and pocketed the same. It is no doubt true that there is no evidence as to who forged the signatures of the withdrawal form but the circumstances indicated above will lead to the only inference that it was the accused-respondent who got the signatures of P.W.1 forged on the withdrawal form. In this view of the matter therefore the acquittal of the respondent for an offence under Section 467 read with Sec. 109 also could not be justified.

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It is unfortunate that the State did not prefer an appeal against the acquittal of the respondent under Section 408 and also under Section 420, even before this Court it is first the Bank which came by way of special leave but later on the State has chosen to prefer an appeal.

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In the light of the discussions above, in our opinion, the appeal deserves to be allowed. It is therefore allowed and the acquittal of the respondent for offence under Section 467 read with Section 109 and Section 471 of the Indian Penal Code is set aside. Instead he is convicted for these two offences. As there were three items, three separate prosecutions were launched and ultimately three appeals were before the High Court and in each one of them identical questions were involved. Consequently respondent is convicted for the above mentioned two offences in each one of the three cases and sentenced to 9 months rigorous imprisonment for each of the offences. But it is further directed that all the sentences shall run concurrently.

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P.S.S. Appeal allowed.