IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on: 17.11.2025
Pronounced on: 26.11.2025

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*Whether the operative part or full judgment is pronounced: **Full***

CRM(M) No.485/2023
c/w
CRM(M) No.72/2024

MRS. SHABEENA IBRAHIM
THE HONGKONG & SHANGHAI BANKING CORPORATION LIMIT

...PETITIONER(S)/APPELLANT(S)

Through: - *Mr. Mohsin S. Qadiri, Sr. Advocate, with Mr. Vikas Malik, Mr. Sanjay Gupta, Mr. Rajnish Gaur and Ms. Sehar Mufti, Advocates (in CRM(M) No.72/2024)*

Mr. Sahil Parvez Kachroo, Advocate (in CRM(M) No.485/2023)

Vs.

MIR USMAN DISOOKI

...RESPONDENT(S)

Through: - *Mr. Z. A. Qureshi, Sr. Advocate, with Mr. Babar Ahmad, Advocate.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) By this common judgment, afore-titled two petitions, one filed by Mrs. Shabeena Ibrahim and the other filed Hongkong and Shanghai Banking Corporation Limited, challenging the complaint filed by respondent No.1 against them and against one Mrs. Jehan Habibullah Mir, are proposed to be disposed of.

2) It appears that a criminal complaint alleging commission of offences under Section 420, 405, 406, 463, 464, 465 and 120-B IPC came to be filed by respondent No.1 against the petitioners and Jehan Habibullah Mir before the Court of learned Chief Judicial Magistrate, Srinagar (for short "the trial Magistrate"). In the complaint it is alleged that the grandfather of the complainant, namely, Habibullah Mir, who has left for heavenly abode, has left behind two sons, namely, Late Mushtaq Ahmad Mir and Rafiq Ahmad Mir and one daughter, namely, Jehan Habibullah (respondent No.2 herein). It has been alleged that late Habibullah Mir and accused Jehan Habibullah were operating several joint accounts and FCD's in the branch units of the petitioner bank located at New Delhi and Mumbai. The details of the accounts have been given in the impugned complaint. It is alleged that after the death of Habibullah Mir, his legal heirs including the complainant, are entitled to all the movable and immovable property left behind by him, which includes the amounts which were deposited by him in different banks including the petitioner bank.

3) It has been alleged that after the demise of Shri Habibullah Mir, uncle of the complainant, Shri Rafi Ahmad Mir and others, approached the Court of Principal District

Judge, Budgam, for grant of succession certificate, which came to be issued on 10.03.2020. It is alleged that the accused persons including the petitioners have fraudulently changed the account numbers, as a result of which the account numbers mentioned in the succession certificate issued by the District Judge, Budgam, did not match with the account numbers maintained with the petitioner bank. The details with regard to changes in the account numbers have been given in para (7) of the impugned complaint. It has been contended that the petitioner bank has changed the ownership of 11 joint accounts contrary to the banking guidelines because as per the guidelines in respect of joint accounts, it is the duty of the bank to inform the other joint account holder. It has been submitted that accused Jehan Habibullah has made a false document by submitting request letter dated 04.02.2009 before the petitioner bank, as a result of which damage and injury has been caused to the complainant.

4) It has been alleged that accused Jehan Habibulla has changed her name to Jehan Habiballa Kidhr Jomir in her Customer ID with the petitioner bank with a view to alter the identity of the bank account. It has been further alleged that the petitioner bank has changed the GBP account numbers thereby changing the complete identity of the accounts.

Besides this, accused Jehan Habibullah had diverted the account and deposits and has succeeded in getting the whole money for their own gain.

5) According to the complainant, accused Jehan Habibullah in connivance with the petitioners, has diverted the funds to the tune of Rs.81,77,764.69/ to her unknown accounts. This has happened in December, 2021 and thereafter on 12.01.2022, the accused persons unlawfully transferred an amount of ₹.17,59,274.01/ to accused Jehan Habibullah. It is alleged that a recovery suit was filed by the complainant before the civil court at Patiala House, New Delhi, in which the petitioner bank is also a party but without waiting for the directions of the Court, the petitioner bank transferred an amount of ₹.44,42,822.64/ to unknown accounts of accused Jehan Habibullah, thereby committing criminal breach of trust.

6) On the basis of the aforesaid allegations, it is being contended in the complaint that the accused have committed the offences under Section 420, 405, 406, 463, 464, 465 120-B of IPC.

7) The learned trial Magistrate, after recording the preliminary statement of the complainant, took cognizance of the offences and issued process against the petitioners and co-accused Jehan Habibullah. The learned trial Magistrate vide his order dated 19.05.2023 framed a prima facie opinion that the aforesaid offences are made out against the accused persons.

8) So far as petitioner Shabeena Ibrahim is concerned, she has challenged the impugned complaint and the impugned order dated 19.05.2023 passed by the learned trial Magistrate on the grounds that the complaint is completely silent with regard to her role. It has been contended that it is not mentioned in the complaint as to how the petitioner has facilitated the alleged change of accounts or diversion of amounts from the bank accounts of deceased Habibullah Mir.

9) It has been contended that the petitioner, in her capacity as Attorney Holder of accused Jehan Habibullah, has filed an application for revocation of the succession certificate before the District Judge, Budgam, otherwise she is neither privy to any alleged change of accounts nor alleged diversion of FDRs. Thus, according to petitioner Shabeena Ibrahim, no offence is made out against her even if the contents of the complaint are deemed to be correct.

10) Petitioner, Hongkong and Shanghai Banking Corporation Ltd. has contended that the learned trial

Magistrate did not have jurisdiction to entertain the complaint as no part of the cause of action has accrued in favour of the complainant within the territorial limits of the Chief Judicial Magistrate, Srinagar. It has been submitted that late Habibullah Mir, along with his daughter, respondent No. 2, Jehan Habibullah, had opened a Non-Resident(External) Savings Deposit Account in the year 1975 with British Bank of Middle East, which was later acquired by the petitioner Bank. It has been submitted that the account opening form dated 07.11.1975 shows that the deceased Habibullah Mir had opened a Non-Resident External Savings Deposit Account in his name and in the name of his minor daughter, namely, Jehan Habibullah. Vide letter dated 31.05.1990, the deceased had made Mrs. Jehan Habibullah as joint signatory to the said account and the account was to be operated either by Jehan Habibullah or by deceased Habibullah Mir. It has been further submitted that on the instructions of the joint account holders, term deposits/FCNR deposits were made from time to time and every time, when the term deposits/FCNR deposits were created, different account numbers were given and these term deposits/FCNR deposits originated from one saving account. It has been submitted that the operating instructions for all the term deposits/FCNR deposits were 'either or survivor'. Thus, once the term deposits/FCNR deposits matured, the amount was remitted to the savings account and the account number pertaining to the matured term deposits/FCNR deposits got closed and if a new term deposit/FCNR deposit was created, another account number was generated.

11) It has been submitted that deceased Habibullah Mir died on 23.03.2007 at Egypt and information in this regard was received by the petitioner bank whereafter accused Jehan Habibullah Mir continued to operate the accounts. It has been submitted there was no requirement for the petitioner bank to ask for succession certificate because in cases where the account is maintained jointly by two persons, in the event of death of one of them, the surviving person becomes the sole account holder. It has been submitted that on account of death of deceased Habibullah Mir, accused Jehan Habibullah Mir became the exclusive and absolute beneficiary of the amounts lying in the accounts, including the Term Deposits/FCNR Deposits.

12) According to the petitioner Bank, it owes no responsibility of whatsoever nature to the legal heirs of the deceased including the complainant. The petitioner bank has admitted filing of the suit by the complainant against it and has claimed that the District Judge, Budgam, vide order dated 27.12.2021 had stayed the operation of order dated 10.03.2021, by virtue of which succession certificate, in respect of the accounts maintained with the petitioner bank, was issued. It has been submitted that the claim of the complainant, if any, is against accused Jehan Habibullah and he has no claim against the petitioner bank. It has been submitted that the complainant has already filed a suit for recovery against the petitioner and, as such, the impugned complaint against the petitioner bank is not maintainable.

13) While challenging the impugned complaint, it has been contended that, as per Master Circular issued by the Reserve Bank of India, the petitioner bank is absolved of its liability towards the legal heirs of a deceased account holder of a joint account once the amount has been received by the survivor of the joint account. It has been contended that the legal heirs of the deceased joint account holder cannot lay their claim against the petitioner bank as payment of the amount to the survivor or nominee of the deceased represents a valid discharge of the bank's liability.

14) The petitions have been contested by respondent No.1/ complainant by filing his reply to the same. In his reply, he has reiterated the allegations made in the complaint against the accused persons, including the petitioners. It has been contended that the petitioner bank has fraudulently changed the account numbers and, as such, it is liable to be prosecuted for its actions. It has been further contended that even as per the RBI guidelines governing the subject, the petitioner bank was duty-bound to inform the legal heirs of deceased Habibullah Mir before transferring the amount in the account of the accused Jehan Habibullah. It has been submitted that being trustee of the amount deposited by late Habibullah Mir, the petitioner bank is obliged to give account of the said amount to the complainant and other legal heirs of deceased Habibullah Mir.

15) I have heard learned counsel for the parties and perused record of the case including the record of the trial court.

16) Before dealing with the contentions raised by the parties on the merits of the case, it would be apt to deal with the contention of the petitioners with regard to jurisdiction of Chief Judicial Magistrate, Srinagar, to entertain the complaint. In this regard, it is to be noted that the complainant is alleging commission of offences of criminal breach of trust and criminal misappropriation on the part of the accused persons. As per Section 181(4) of the Cr. P. C, any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property, which is subject to the offence, was received or retained or was required to be returned or accounted for by the accused. Thus, in a case relating to criminal misappropriation or criminal breach of trust, the Court, within whose local jurisdiction either the offence is committed or any part of the property which is subject matter of the offence was received or was required to be returned or accounted for, would have the jurisdiction to entertain the complaint.

17) In the present case, as per the allegations made in the impugned complaint, the offence relating to diversion of funds/deposits and change of account numbers has not taken place within the jurisdiction of the trial court as, according to the complainant, these acts have taken place either at Delhi or at Mumbai. It is also not the case of the complainant that any of the deposits which is subject matter of the impugned complaint was received or retained within the jurisdiction of the trial court. However, the complainant is a resident of Srinagar, the alleged misappropriated funds were required to be returned or accounted for at Srinagar.

Therefore, the learned trial court does have the jurisdiction to entertain the complaint.

18) That takes us to the merits of the contentions raised by the petitioners. So far as petitioner Shabeena Ibrahim is concerned, if we have a look at the contents of the impugned complaint, no specific allegation has been made by the complainant against her. There are bald and vague allegations against the said petitioner in the impugned complaint that she has facilitated the alleged illegal acts of other accused. It is not discernible from the contents of the impugned complaint as to in what manner petitioner Shabeena Ibrahim has facilitated the alleged acts of other accused. It is not the case of the complainant that petitioner Shabeena Ibrahim has executed any document on behalf of accused Jehan Habibullah which led to diversion of funds or change of account numbers by the petitioner bank. The only act in which she is involved is that she, as an Attorney Holder of accused Jehan Habibullah, has filed a petition for revocation of the succession certificate before the District Judge, Budgam. This act of petitioner Shabeena Ibrahim can, by no stretch of reasoning, be taken to mean that she was in connivance with other accused while committed the alleged acts. Thus, even if the contents of the impugned complaint are taken to be true at their face value, no offence is made against petitioner Shabeena Ibrahim.

19) That takes us to the merits of the contentions raised by the petitioner Hongkong Shanghai Banking Corporation Limited. There is no dispute to the fact that deceased Habibullah Mir and accused Jehan Habibullah had opened a joint account with the petitioner bank in the year 1975 and there is also no dispute to the fact that the instructions for operating the said account were "either or survivor". The question that arises for determination is as to whether in such a situation transfer of money to the account of accused Jehan Habibullah upon death of Habibullah Mir would constitute a valid discharge of liability of the petitioner Bank or whether it was duty bound to inform the legal heirs of deceased Habibullah Mir before releasing the amount that was lying in the joint account of the deceased and accused Jehan Habibullah. The determination of this issue would have a bearing on the question whether the petitioner bank is criminally liable for having committed the offence of crimination breach of trust.

20) In the above context, the guidelines provided in RBI Master Circular on Customer Services in Bank are required to be noticed. The same are reproduced as under:

1. It is clarified that if fixed/term deposit accounts are opened with operating instructions Either or Survivor, the signatures of both the depositors need not be obtained for payment of the amount of the deposits on maturity. However, the signatures of both the depositors may have to be obtained, in case the deposit is to be paid before maturity. If the operating instruction is "Either or Survivor and one of the depositors expires before the maturity, no pre-payment of the fixed/term deposit may be allowed without the concurrence of the legal heirs of the deceased joint holder. This, however, would not stand in the way of making payment to the survivor on maturity.

RBI Master Circular on Maintenance of Deposit Accounts

4.4.2 Registration of Nomination

(ii) In case of joint deposits, after the death of one of the depositors, the banks may allow variation/ cancellation of a subsisting nomination by other surviving depositor (s) acting together. This is also applicable to deposits having operating instructions "either or survivor". It may be noted that in the case of a joint deposit account, the nominee's right arises only after the death of all the depositors.

5. Operations In Accounts

5.1 Joint Accounts

5.1.1 Modes of Operations in Joint Accounts If fixed/term deposit accounts are opened with operating instructions Either or Survivor', the signatures of both the depositors need not be obtained for payment of the amount of the deposits on maturity. However, the signatures of both the depositors may have to be obtained, in case the deposit is to be paid before maturity. If the operating instruction is 'Either or Survivor and one of the depositors expires before the maturity, no pre-payment of the fixed /term deposit may be allowed without the concurrence of the legal heirs of the deceased joint holder. This. however, would not stand in the way of making payment to the survivor on maturity.

21) Learned Senior Counsel appearing for the respondent/complainant has brought to the notice of this Court another Master Circular issued by the Reserve Bank of India vide LAC/19-96-29 dated 28th August, 1980. The relevant clause of the said Circular is also reproduced as under:

"**3. Benefits of survivorship:**
If the benefit of survivorship is provided, the survivor can give a valid discharge to the bank. Even though payment to the survivor will confer valid discharge to the bank, the survivor will, however, hold the money only as trustee for the legal heirs

> (who may include the survivor as well) unless he is the sole beneficial owner of the balance in the account or the sole legal heir of the deceased. Thus, the survivor's right unless he is the sole owner of the balance in the account/sole legal heir of the deceased, is only in the nature of a mere right to collect the money from the bank. If the legal heirs of the deceased lay a claim to the amount in the bank, they should be advised that in terms of the contract applicable to the account, the survivor is the person entitled to payment by the bank and that, unless the bank is restrained by an order of a competent court, the bank would be within its rights to make the payment to the survivors) named in the account. The position, briefly, is that a payment to survivor can be made if there are no orders from a competent court restraining the bank from making such payments.

22) From a reading of the aforesaid clauses, it is clear that if the operating instructions in a joint account is 'either or survivor' and one of the account holders expires before the maturity, no pre-payment of the fixed/term deposit can be allowed without the concurrence of the legal heirs of the deceased joint holder. It is further clear that once the fixed/term deposit matures, the payment can be made to the survivor on maturity. It also appears that unless the bank is restrained by an order of a competent court, the bank would be within its rights to make payment to the survivor named in the account. Thus, in a case where joint account is opened with survivorship clause, the payment of the balance lying in the deposit account to the survivor of deceased deposit account holder, would be a valid discharge of a bank's liability. However, the payment made to a survivor would not affect the right or claim which any person may have in respect of the amount released in favour of the survivor.

23) The High Court of Delhi in the case of **Prabha Kaul vs. Chandra Kaul Muthoo & Ors.**, 2013 SCC OnLine Del 3027, has held that holder of joint account would be authorized to withdraw the amount but he would be bound to restore the amount to the legal heirs of the deceased joint account holder. The Court further held that the bank in such a case would be discharged by payment to the survivor but the survivor would be accountable to the heirs of the joint account holder.

24) In the light of the aforesaid legal position, let us now analyze the admitted facts of the present case. Deceased Habibullah Mir and Jehan Habibullah were, admittedly, joint account holders which contained survivor clause "either or survivor". Therefore, once the petitioner bank, upon death of deceased Habibullah Mir transferred the amount from the joint account to the account of Jehan Habibullah (the survivor), the petitioner bank is discharged from its liability towards all claims. The complainant, who claims to be the legal heirs of Habibullah Mir, if he has any claim in respect of the amount left behind by deceased Habibullah Mir in his joint account, the same cannot be fastened against the petitioner bank but he can enforce his claim against accused Jehan Habibullah. Once the petitioner bank transferred the amount lying in the joint account, after the death of Habibullah Mir, to the account of accused Jehan Habibullah, it would give a valid discharge to the said bank against all claims. The petitioner bank has categorically stated that none of the fixed deposit receipts were prematurely encashed so as to give a cause to the legal heirs of deceased Habibullah Mir to lay claim against the petitioner bank. Once these FDRs were, upon their maturity, transferred to the account of survivor Jehan Habibullah, the complainant and other legal heirs cannot hold the petitioner bank liable.

25) Regarding change in the bank accounts, it has been categorically explained by the petitioner bank that this change took place on account of change in account numbers upon opening of new fixed deposit receipts and their encashment upon maturity. The succession certificate that was issued initially by the District Judge, Budgam, in respect of the deposits of late Habibullah Mir was not pertaining to the accounts maintained by him with the petitioner bank. Therefore, there was no valid court direction on the basis of which the petitioner bank could have refused to release the amounts from the joint account to the account of survivor after the death of deceased Habibullah Mir.

26) In view of the foregoing analysis, it is clear that the complainant has no claim against the petitioner bank so as to hold it criminally liable for the offence of criminal breach of trust or criminal misappropriation. If at all the complainant has any claim the same is against accused Jehan Habibullah and none else. Filing of the complaint by the respondent/complainant against the petitioner bank and against petitioner Shabeena Ibrahim in these circumstances is nothing but an abuse of process of law. Therefore, the impugned complaint and the proceedings emanating therefrom to the extent of the petitioners deserve to be quashed.

27) Accordingly, both the petitions are allowed. The impugned complaint and the proceedings emanating therefrom to the extent of the petitioners are quashed.

(SANJAY DHAR)
JUDGE

Srinagar
26.11.2025
"Bhat Altaf"

*Whether the **Judgment** is speaking:* ***Yes***
*Whether the **judgment** is reportable:* ***Yes***