

undergone by him in prison. Thus, in this background, the rigours of Section 375 Cr.P.C. barring appeal in cases where accused pleads guilty would not be strictly applicable, as the impugned judgment of conviction and order of sentence dated 13th July, 2022 contain conflicting findings relating to the sentence part.

18. As a result, the objection raised by the learned State Counsel regarding maintainability of the appeal is also hereby rejected. In view of the above discussion, this Court has no hesitation in holding that the impugned sentence part contained in the judgment dated 13.7.2022 suffers from grave illegality and calls for interference by this Court in exercise of appellate jurisdiction.

19. Resultantly, the appeal is **party allowed** and while maintaining the judgment of conviction dated 13th July, 2022, the impugned order on sentence is modified to the extent that all the sentences imposed upon the appellant-convict for commission of offences punishable under Section 354A IPC, Section 11/12 Protection of Children from Sexual Offences Act, 2012 and Section 3(1)X Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 shall run concurrently.

(2024) 11 ILRA 562

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 13.11.2024

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE VIPIN CHANDRA DIXIT, J.

Writ -C No. 8197 of 2024

Manoj Kumar Sharma

...Petitioner

Versus

U.O.I. & Anr.

...Respondents

Counsel for the Petitioner:

Ram Lal Mishra

Counsel for the Respondents:

A.S.G.I., Anadi Krishna Narayana, Harish Kumar Yadav, Ishan Shishu, Sandeep Kumar Singh

A. Banking Law – Succession – Banking Regulation Act, 1949 - Section 45ZA - Section 45-ZA(2) merely puts the nominee in the shoes of the depositor after his death and clothes him with the exclusive right to receive the money lying in the account. It gives him all the rights of the depositor so far as the depositor's account is concerned. But it by no stretch of imagination makes the nominee the owner of the money lying in the account.

The Banking Regulation Act is enacted to consolidate and amend the law relating to banking. It is in no way concerned with the question of succession. All the monies receivable by the nominee by virtue of S. 45-ZA(2) would, therefore, form part of the estate of the deceased depositor and devolve according to the rule of succession to which the depositor may be governed. (Para 8)

The petitioner's main argument is that the petitioner being the nominee, the petitioner is entitled to receive the money in the FDRs as per Section 45ZA. (Para 5)

The petitioner has a right to obtain the money from the bank as he is a nominee. However, this money which is received by the petitioner would be subject to the succession laws and the heirs of the deceased would have a right to the said amount in accordance with law. (Para 11)

Writ petition disposed of. (E-4)

Precedent followed:

Ram Chander Talwar & anr. Vs Devender Kumar Talwar & ors., (2010) 10 SCC 671 (Para 8)

(Delivered by Hon'ble Shekhar B. Saraf, J.
& Hon'ble Vipin Chandra Dixit, J.)

In Re: Civil Misc. Impleadment Application.

1. Impleadment application is allowed.

2. Let the necessary impleadment be incorporated in the memo of writ petition forthwith.

Writ Petition

1. Heard learned counsel for the parties and perused the record.

2. The present writ petition has been filed seeking the following reliefs:-

"(I) Issue a Writ, order or direction in the nature of Mandamus directing and commanding the respondent No.2 to release the FDR Account No. 25660300006755, 25660300006754, 25660300015398 and 25660300006756 in favour of petitioner as being a nominee and a legal heir.

(II) To, issue any other writ order or direction which this Hon'ble Court may deem just and proper and the circumstances of the case.

(III) Award the cost of the petition in favour of the petitioner."

3. The brief facts of the case are that the mother of the petitioner died on February 8, 2020. Before the death of the mother of the petitioner, the mother of the petitioner was owner of several properties as well as owner of several FDRs at the

Bank of Baroda. In all these FDRs the petitioner has been named as a nominee.

4. It is to be noted that the petitioner had also filed succession suit being Civil Suit No.195 of 2020 before the learned Civil Judge (Senior Division)/F.T.C., Moradabad. However, this suit was dismissed on the ground that there was another suit pending for cancellation of the alleged will of the petitioner's mother.

5. The petitioner's main argument is that the petitioner being the nominee, the petitioner is entitled to receive the money in the FDRs as per Section 45ZA of the Banking Regulation Act, 1949 (hereinafter referred to as the 'Act'). The said section is delineated below:-

"45ZA. Nomination for payment of depositors' money.?"

(1) Where a deposit is held by a banking company to the credit of one or more persons, the depositor or, as the case may be, all the depositors together, may nominate, in the prescribed manner, one person to whom in the event of the death of the sole depositor or the death of all the depositors, the amount of deposit may be returned by the banking company.

(2) Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such deposit, where a nomination made in the prescribed manner purports to confer on any person the right to receive the amount of deposit from the banking

company, the nominee shall, on the death of the sole depositor or, as the case may be, on the death of all the depositors, become entitled to all the rights of the sole depositor or, as the case may be, of the depositors, in relation to such deposit to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner.

(3) Where the nominee is a minor, it shall be lawful for the depositor making the nomination to appoint in the prescribed manner any person to receive the amount of deposit in the event of his death during the minority of the nominee.

(4) Payment by a banking company in accordance with the provisions of this section shall constitute a full discharge to the banking company of its liability in respect of the deposit: Provided that nothing contained in this subsection shall effect the right or claim which any person may have against the person to whom any payment is made under this section."

6. The petitioner further relies on the Circular letter No.RB12004-05/490 09.06.2005. Paragraph 2 of the said Circular is provided below:-

**"2. ACCESS TO
BALANCE IN DEPOSIT
ACCOUNTS**

**(A) Accounts with
survivor/nominee clause**

2.1 As you are aware, in the case of deposit accounts where the depositor had utilized the

nomination facility and made a valid nomination or where the account was opened with the survivorship clause ("either or survivor", or "anyone or survivor", or "former or survivor" or "latter or survivor"), the payment of the balance in the deposit account to the survivor(s)/nominee of a deceased deposit account holder represents a valid discharge of the bank's liability provided:

(a) the bank has exercised due care and caution in establishing the identity of the survivor(s) / nominee and the fact of death of the account holder, through appropriate documentary evidence;

(b) there is no order from the competent court restraining the bank from making the payment from the account of the deceased; and

(c) it has been made clear to the survivor(s) / nominee that he would be receiving the payment from the bank as a trustee of the legal heirs of the deceased depositor, i.e., such payment to him shall not affect the right or claim which any person may have against the survivor(s) / nominee to whom the payment is made.

2.2 It may be noted that since payment made to the survivor(s) / nominee, subject to the foregoing conditions, would constitute a full discharge of the bank's liability, insistence on production of legal representation is superfluous and unwarranted and only serves to cause entirely avoidable inconvenience to the survivor(s) / nominee and would,

therefore, invite serious supervisory disapproval. In such case, therefore, while making payment to the survivor(s) / nominee of the deceased depositor, the banks are advised to desist from insisting on production of succession certificate, letter of administration or probate, etc., or obtain any bond of indemnity or surety from the survivor(s)/nominee, irrespective of the amount standing to the credit of the deceased account holder."

7. The petitioner argues that aforesaid Circular is having binding effect by virtue of provisions of Section 35A. The Section 35A is provided herein below:-

"/35A. Power of the Reserve Bank to give directions.-

(1) Where the Reserve Bank is satisfied that-

(a) in the [public interest];

or

[(aa) in the interest of banking policy; or]

(b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company;
or

(c) to secure the proper management of any banking company generally,

it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such directions as it deems fit, and the banking companies or the banking company, as the case may be, shall

be bound to comply with such directions.

(2) The Reserve Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under subsection (1), and in so modifying or cancelling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.]"

8. The petitioner further relies on the judgment of a co-ordinate Bench in Cdr. Vineet Kumar Sharma Vs. Union of India and 3 others (Neutral Citation No.-2024:AHC:12018-DB), wherein the co-ordinate Bench had considered the judgment of Supreme Court in ***Ram Chander Talwar and another Vs. Devender Kumar Talwar and others, (2010) 10 SCC 671***, wherein the Supreme Court had held as follows:-

"Section 45-ZA(2) merely puts the nominee in the shoes of the depositor after his death and clothes him with the exclusive right to receive the money lying in the account. It gives him all the rights of the depositor so far as the depositor's account is concerned. But it by no stretch of imagination makes the nominee the owner of the money lying in the account. It needs to be remembered that the Banking Regulation Act is enacted to consolidate and amend the law relating to banking. It is in no way concerned with the question of succession. All the monies receivable by the nominee by virtue of Section 45-ZA(2) would, therefore, form part of the estate of

the deceased depositor and devolve according to the rule of succession to which the depositor may be governed."

9. The co-ordinate Bench had categorically held as follows:-

"16. In any case, Section 45-ZA of the Act introduced by Act No. 1 of 1984 w.e.f. 29.03.1985 leaves no matter of doubt, in the above regard. As correctly submitted by learned counsel for the petitioner, by virtue of Section 45-ZA (2) of the Act, the nominee alone remains entitled to receive the money from the bank notwithstanding any disposition whether testamentary or otherwise. The right to receive the money from the Bank is distinct and different from the right to succeed to that money. Seen in that light, the petitioner has a perfect right to receive the money from the Bank, at present.

17. It is to enforce that provision of law that the Reserve Bank of India has issued the Circular instruction dated 09.06.2005 (noticed above). Those instructions appear to have been issued in public interest to ensure that the new law (Section 45-ZA), is given full effect by the Banking Companies. Section 35-A (1) of the Act leaves no matter of doubt that those directions issued by Reserve Bank of India are mandatory in nature and the respondent bank is duty bound to follow the same.

18. Insofar as the other TDRs are concerned where the petitioner is the surviving

depositor, his rights may be better. However, no final conclusion has been drawn at this stage as the issue of succession is pending before the court of competent jurisdiction. At the same time, by virtue of the instruction given to the respondent bank by Col. Satish Kumar Sharma during his life time, the respondent bank would remain obligated to hand over that money also to the present petitioner.

19. Let the money deposited against the FDR Nos. 0328833439, 50375954027, 50375954210 and 50470840305, five other FDRs bearing FDR Nos. 50532431644, 50532431521, 50532431349, 50532431203 and 50532430833 and savings bank account No. 20290126475 be released in favour of the petitioner forthwith with the rider that the petitioner would remain liable to account for the same in accordance with law."

10. Per contra counsel appearing on behalf of private respondents and the State submit that Section 45ZA of the Banking Regulation Act cannot over rule the laws of succession and, therefore, even if the money is required to be given to the petitioner, the same would have to be held by the petitioner in trust for the legal heirs of the deceased.

11. Upon analysis of the catena of Supreme Court judgments and the judgment delivered by the co-ordinate Bench, we are of the view that it is patently clear that the petitioner has a right to obtain the money from the bank as he is a nominee. However, we are of the view that this money which is received by the

