

Case Brief

Ramila Devi v. Nepal Government.

Plaintiff	Nepal Government (FIR by Ms. Roshni Joshi)
Defendant/Appellant	Ms. Ramila Devi Raut
First Decision Court	Kathmandu District Court
Appellate Court	Patan High Court
Subject	Revision of the decision of High Court Patan
Final Adjudication Authority	Supreme Court
Case	Fraud/Deception
Case citation	Case Number : 075-CR-0585 Nepal Kanun Patrika, 2079 : Volume 9 , Part 64, DN: 10941
Verdict	Not Guilty

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Introduction

1. Identifying the true perpetrator of an offense committed by a legal person has always posed significant challenges. In Nepal, Section 30 of the Muluki Criminal Code 2074 and other specific legislations seek to address this issue by mandating the identification of the actual offender within the legal entity. However, given the complex and often opaque structure of corporate entities, pinpointing the individual responsible for an offense becomes exceedingly difficult. This uncertainty frequently leads to the extension of liability to owners, and other key officials of legal persons, despite a lack of direct involvement in the offense. The challenge is even more pronounced in the case of Sahakari institutions (cooperatives) where the law is not as clearly defined, and the hierarchical structure complicates the identification of the real culprit. Consequently, courts have often held all office bearers liable in cases involving fraud, especially when depositors' money is at stake.
2. A key issue arises from how courts perceive deception in case of cooperative institutions. In deception cases, particularly when depositors do not receive their money back, the non-payment itself is often construed as "deception". Historically, this has led to blanket punishments for all individuals holding positions within the entity, regardless of their actual involvement in the day-to-day operations of the cooperative. The precedent set by UK courts in cases like *Leonards Carrying Co Ltd vs Aslatle Petroleum Limited* (1915) and *Tesco Supermarkets Ltd vs Natrass* (1972), where the doctrine of the "controlling mind" was used to pinpoint the individual responsible for corporate wrongdoing, was not initially adopted in Nepal. Instead, as iterated earlier, the Nepalese judiciary often resorted to holding all office bearers culpable. A notable departure from this practice occurred in the landmark case of **Ramila Devi v. Nepal Government (NKP 2079, D.No. 10941)**.

Facts

3. This case of *Ramila Devi v. Nepal Government (NKP 2079, Nirnaya No. 10941)* involved a cooperative institution, Manas Bachat Tatha Rin Sahakari Sastha (**Manas Sahakari**), where depositors filed complaints to Sahakari Division Kathmandu after failing to receive their deposits. A criminal case was later initiated by a depositor, alleging that the officials of Manas Sahakari, including the Chairman, CEO and office bearers, had committed deception by not returning the depositors' money.
4. Miss Ramila Devi, a former member of the board of directors, was among those prosecuted in the Kathmandu District Court. Her defence centered on the fact that she had been a passive member, forced into the role by familial obligations, and had resigned from Manas Sahakari in 2069 B.S. due to an inability to fulfil her duties. She argued that since she had no active involvement in the cooperative's affairs and had not participated in any deception, she

should not be held liable. Despite her resignation and lack of involvement, the district court convicted her of deception.

5. Ms. Ramila Devi appealed the decision to the High Court Patan, but her conviction was upheld. She then escalated the matter to the Supreme Court, requesting a revision of the decision. Her primary contention was that she had neither committed any act (*actus reus*) nor harboured any intent (*mens rea*) to commit fraud, and therefore, she should not have been prosecuted. The Supreme Court examined two critical questions in this case:

Analysis by the Court

6. **Does failure to return a depositor's money in a Sahakari institution automatically constitute deception?**

The Court delved into the definition of deception, considering both specific (*Sahakari Act and Regulations*) and general (*Muluki Criminal Code 2074*) legislations. Citing Judge Holmes, the Court reflected that deception "*needs no definition: it is as old as falsehood and as variable as human ingenuity.*" While acknowledging that deception could occur within the structure of a co-operatives, the Court recognized that simply failing to return money did not necessarily equate to deception unless there was an element of human ingenuity—an intent to deceive—behind the non-payment.

7. **Who should be held responsible for the fraudulent actions of a Co-operative?**

The Court explored the legal fiction that corporations, including co-operatives, are separate legal entities distinct from their members. This fiction, though convenient for conducting business, does not negate the fact that a corporation is essentially a collection of individuals. The Court emphasized that punishment should not be indiscriminately imposed on all members of a Sahakari. Instead, the doctrine of "identification" should be applied to identify the individual who had control over the wrongful acts. This controlling mind, who had direct involvement and knowledge of the wrongdoing, should bear the liability.

Decision

8. In Ramila Devi's case, the Supreme Court found that she had no direct involvement in the day-to-day activities of the cooperative and had merely played a passive role. Since there was no evidence of her involvement in the fraudulent acts, the Court acquitted her, concluding that passive membership alone is not sufficient to attribute liability.

Conclusion:

9. The decision in **Ramila Devi v. Nepal Government** marks a significant shift in the approach to corporate criminal liability in Nepal, particularly concerning a co-operative institution. By

moving away from the blanket punishment of all office bearers and adopting a more nuanced approach focused on identifying the controlling mind behind the fraudulent acts, the Supreme Court has set an important precedent. As legal entities continue to evolve, this approach will provide greater clarity and fairness in assigning corporate criminal liability in Nepal.

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