

HIGH COURT OF TRIPURA

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Criminal Petition No.63 of 2022

Shri Balaram Saha, son of Sri Ranjit Saha, resident of Sabroom Town, P.O.
& P.S. Sabroom, District- South Tripura

.....Petitioner(s)

V E R S U S

(i) Shri Aswani Debbarma, son of Sri Umesh Debbarma, resident of
Gongkharbari, Khowai, P.S. Khowai, District- Khowai Tripura.

(ii) Sri Subhash Debbama, son of late Kali Kumar Debbarma, resident of
Samprai Para, Chankhala, Chankala Bazar, P.S. Khowai, District- Khowai
Tripura.

(iii) The State of Tripura.

..... Respondent(s)

For Petitioner(s) : Mr. S. Saha, Advocate.

For Respondent(s) : Mr. S. Debnath, Addl. P.P,

HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing and Judgment : 4th January, 2023.

JUDGMENT & ORDER(ORAL)

Heard Mr. S. Saha, learned counsel appearing for the
petitioner and also heard Mr. S. Debnath, learned Additional Public
Prosecutor appearing for the State-respondent.

[2] The present petition has been filed by the petitioner under
Section 482 of the Criminal Procedure Code to challenge the judgment
and order dated 30.06.2021 passed by the learned Single Judge of this
Court in Criminal Revision Petition No.03 of 2018.

[3] Brief facts are as under :

Sri Balaram Saha, Son of Sri Ranjit Saha of Sabroom lodged an FIR against the petitioners with the Officer in Charge of Sabroom police station on 14.09.2014 alleging, *inter alia*, that in the year 2011 he came to know accused petitioner Aswini Debbarma when said Aswini Debbarma was posted as a teacher in Baishnabpur Mogpara High School at Sabroom where the informant had a bakery. Said Aswini Debbarma used to live in the house of Tapan Bhowmik on rent and at that time he used to visit the bakery of the informant frequently. In that connection they had developed a good relationship. In the course of a parlance with the informant, accused petitioner Aswini Debbarma came to know from the CrI. Rev. P. No. 03 of 2018 informant that he had several brothers one of whom had done post graduation who was unemployed. Said Aswini Debbarma then told the informant that he had a friend in Raj Bhavan at Agartala who managed government job for many unemployed persons in exchange of money and he told the informant that if the informant was willing to spend money he could also manage a government job for his brother. After a few days, said Aswini Debbarma brought accused petitioner Subhash Debbarma to the informant and introduced said Subhash Debbarma to the informant as a government employee of the

GA(SA) department, Government of Tripura who was posted at Raj Bhavan, Agartala. Said Subhash Debbarma told the informant that he could easily manage a job for his brother because he had good terms with a lot of ministers and he managed government job for many others. Subhash Debbarma demanded a sum of Rs.90,000/- for providing a job to the brother of the informant and he assured the informant that his brother would get offer of appointment within 2(two) months. On 30.09.2011, both the petitioners met the informant in his bakery at about 8 O'clock in the evening and tried to convince the informant by saying that chance comes once in a lifetime and requested the informant to avail the chance by giving a sum of Rs.90,000/- to them. The informant gave a sum of Rs.90,000/- to Subhash Debbarma for the job of his brother and a written contract was executed between them. Nothing happened in the following 7/8 months. Whenever the informant contacted the petitioners they assured him that his brother would shortly get the job. On 20.05.2012 they demanded additional sum of Rs.20,000/- showing him a list of Crl. Rev. P. No. 03 of 2018 selected candidates which also contained the name of the brother of the informant. Having reposed faith in him, informant gave further sum of Rs.20,000/- to Subhash Debbarma. But, no government job was provided to the brother of the informant. Thereafter, on 19.07.2014 said Subhash Debbarma issued a cheque in the name of the informant of a sum of Rs.55,000/- drawn on SBI which was dishonoured

from the Sabroom Branch of SBI for insufficient fund in the account of the petitioner. On 01.08.2014, accused petitioner Subhash Debbarma issued another cheque payable to the informant drawn on SBI, Sabroom branch. When the cheque was presented at the bank, the said cheque was also dishonoured by the bank and the cheque was returned to the informant stating that petitioner Subhash Debbarma had already closed his account in the bank. After the said incidence, informant failed to contact the petitioners despite several attempts. The informant [PW-1] then reported the matter to police by lodging the said FIR.

[4] Based on the FIR, Sabroom PS Case No.61 of 2014 dated 14.09.2014 the case was taken up for police investigation. During investigation Sub-Inspector of Police Khokan Saha visited the place where the alleged agreement was executed on a non judicial stamp paper. He seized the said agreement by drawing up a seizure list signed by the parties. The Investigating Officer also enquired about the cheques allegedly drawn by Subhash Debbarma. After all the seizure, examining witnesses under Section 161 Cr.P.C, charges against the petitioners under Section 420 read with Section 34 IPC were established. Subsequently, the Investigating Officer submitted charge-sheet against the petitioners for having committed offence punishable under Section 420 read with Section 34 IPC.

[5] The learned Sub-Judicial Magistrate, Sabroom received the charge sheet and after taking into account the facts took cognizance of offence punishable under Section 420 read with Section 34 IPC and transferred the case to the court of the Judicial Magistrate, First Class at Sabroom for trial.

[6] At the commencement of trial, the learned Judicial Magistrate, First Class framed the following charges against the petitioners :

“Firstly, That both of you being a Public servant on 30.09.11 at around 8.00pm in the shop of the informant Balaram Saha at Sabroom under Sabroom PS cheated Balaram Saha by dishonestly inducing him to deliver certain property, to with (cash amounting to Rs.90000/-) and subsequently on 20.05.12 another of you in furtherance of common intention cheated him again by dishonestly inducing him to deliver certain property, to with (cash amounting to Rs.20000/-) and which was the property of the said Balaram Saha for the purpose of obtaining Govt. job of Babul Saha the brother of the informant and accordingly the information been induced delivered the same money to both of you are thereby committed offence punishable section 420 read with section 34.

Secondly, That you Subhash Debbarma being a Public servant on the same date, time and place executed to written agreements on non judicial stamp wherein you were entrusted with certain property to with cash of Rs.90000/- and Rs.20000 respectively that is a total of Rs.110000/- by the informant and on been entrusted you dishonestly misappropriated or converted the same to your own use in violation of the direction of the legal contract express or implied which the informant have made touching the discharge of such trust. And you thereby committed offence punishable section 406 read with section 34.

Thirdly, That of you Sri Ashwini Debbarma being a Public servant on the same date time and place abetted/ instigated/ engaged with/ intentionally aided Subhas Debbarma in dishonestly inducing delivery of Rs.90,000/- and Rs.20,000/-that is a total of Rs.1,10,000/-from the informant to him and in converting the same Balaram Saha and criminal breach of trust and that you at Sabroom on the said date abetted and instigated to deliver Rs.90000/- and Rs.20000/- to the accused Subhas Debbarma in dishonestly misappropriating or

converting the same to his own use in violation of the direction of the legal contract express or implied which the informant have Crl. Rev. P. No. 03 of 2018 made touching the discharge of such trust that you have thereby committed an offence u/s 109 of the IPC.

Fourthly, That you Sri Subhas Debbarma being a Public servant, on 19.07.14 and 09.08.14 issued two nos. cheques vide no. 323660 and 323661 amounting to Rs.55,000/- each amounting in total Rs.1,10,000/- drawn on State Bank of India Agartala Branch in favour of the informant Sri Balaram Saha from your State Bank of India A/C No.10915092014 which were dishonoured on the ground of "refer to drawer" and that you hereby committed an offence u/s 138 of NI Act. And do hereby direct that both of you be tried on the said charge."

The petitioner pleaded not guilty to the said charges and claimed a trial.

[7] In course of trial as many as 8 prosecution witnesses were examined and 2 witnesses were examined as court witnesses. Apart from the ocular testimony of the prosecution witnesses, 16 documents were also introduced.

[8] On appreciation of evidence the trial court by a detailed judgment held the petitioners guilty of cheating punishable under Section 420 read with Section 34 IPC for which the trial court convicted them and after declining to provide benefit of the Probation of Offenders Act to the petitioners heard them on the question of sentence and after such hearing sentenced both of them to SI for 1 year with a fine of Rs.5,000/- each with default stipulation.

[9] Being aggrieved thereby, the petitioners challenged the judgment of the trial court in appeal before the Court of the Sessions Judge, South Tripura, Belonia. The Sessions Judge held that the case of cheating was proved against the petitioners beyond reasonable doubt and having found no merit in the appeal dismissed the appeal and confirmed the conviction and sentence of the petitioners observing as under :

"15. 'Cheating' has been defined in section 415 IPC. According to section 415, whoever by deceiving any person fraudulently or dishonestly induces the person so deceived to deliver any property etc. or intentionally induced the person so deceived to do or omit to do anything which he would not do or omit to do if he was not so deceived and it is likely to cause harm to body, mind, reputation or property is said to commit cheating.

16. What necessarily follows is that, there is either fraudulent act or dishonest act in such deception to commit cheating. The word 'dishonestly' has been defined in section 24 IPC, it mandates that, whoever does anything with intention to cause wrongful gain to one person or wrongful loss to another person is said to have done that thing dishonestly. Wrongful loss and wrongful gain as per legislative mandates in section 23 IPC is that, any loss by unlawful means of property to which the person losing is legally entitled and wrongful gain is that gain by unlawful means to which the person gaining is not legally entitled. The term fraudulently has been defined in Crl. Rev. P. No.03 of 2018 section 25 that a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

17. In the case at hand, convict-appellants Subhash Debbarma and Aswini Debbarma had a clear intention to defraud PW-1, Balaram Saha knowing fully well that Subhash had no authority to give Govt. job and that to in lieu of money which is against public policy and legally prohibited. Meaning thereby, there is no escape from the fact that the present appellant Subhash Debbarma entered into two illegal agreements vide Exbt.1 & 2 with Balaram Saha and took Rs.1,10,000/- in total on his false assurance of giving a Govt. job to the younger brother of PW-1 and subsequently under pressure or any other reason, best known by the convict appellant Subhash Debbarma, he issued two cheques for Rs.55,000/- and Rs.55,000/- i.e. Rs.1,10,000/- vide Exbt.10 & 11. In fact, he also took Rs.1,10,000/- vide Exbt.1 & 2. If convict Subhash Debbarma had any other reason for issuing those two cheques in the name of PW-1, Balaram Saha he

should have discharged the burden of proof under Sec.106, Evidence Act because it is purely within his knowledge.

18. In a quest to answer, whether convict Aswini Debbarma although neither signed on Exbt.1 & 2 as one of the parties or as a witness nor even issued any cheque subsequently to PW-1, can be roped for commission of offence with the aid of section 34 IPC on the principal of vicarious liability, I consider the fact that Aswini Debbarma was posted in Sabroom and was a tenant in the house of PW-4 as I get from the evidence of PW-4. It has also been proved by the evidence of PW-1 and PW-2 that Aswini Debbarma used to visit the bakery of PW-1 regularly and appellant Aswini initiated the proposal with PW-1 that his friend i.e. convict Subhash Debbarma works in the Raj Bhawan at Agartala who can manage a Govt. job for PW-2, the brother of PW1. After that, convict Aswini Debbarma took convict Subhash Debbarma to the shop of PW-1 on 30.09.2011 at 8 p.m. and in his presence Exbt.1 i.e. agreement for giving a job to the brother of PW-1 in lieu of Rs.90,000/- was entered into. And Rs.90,000/- was paid to Subhash Debbarma in presence of convict-appellant Aswini Debbarma. Similarly, in the second agreement also vide Exbt.2 a further sum of Rs.20,000/- was paid to Subhash Debbarma in presence of Aswini Debbarma. Aswini Debbarma being a Govt. servant has the requisite knowledge that no Govt. service can be given in lieu of money and that Crl. Rev. P. No.03 of 2018 convict Subhash Debbarma being a Peon has no such authority or capacity to manage a Govt. job for PW-2, the younger brother of PW-1."

[10] Subsequently, the petitioner approached the High Court by filing criminal revision petition No.03 of 2018 challenging the judgment passed by the Judicial Magistrate First Class, Sabroom as affirmed by the Sessions Judge, South Tripura, Belonia. The learned Single Judge of this Court after taking into account all factual aspects of the matter dismissed the criminal revision petition and affirmed the judgment passed by the courts below. The learned Judge further directed the petitioners to surrender before the trial court within a period of 2 months from today to serve out the sentence failing which the trial court shall take appropriate

steps in accordance with law to make them suffer the sentence. The operative portion of the judgment reads as follows :

“[38] In view of what is discussed above this court is of the view that there is no infirmity with regard to the conviction and sentence of the petitioners. Their conviction and sentence passed by the trial court has been rightly affirmed by the learned appellate court. Resultantly, the criminal revision petition stands dismissed.

[39] Both the convict petitioners are directed to surrender at the trial court (Court of the Judicial Magistrate First Class, Sabroom, South Tripura Judicial District) within a period of 2(two) months from today to serve out the sentence failing which the trial court shall take appropriate steps in accordance with law to make them suffer the sentence.”

[11] Mr. S. Saha, learned counsel appearing for the petitioner submits that the dispute between the petitioner and respondents No.1 and 2 is private in nature and they have voluntarily agreed to settle the dispute and presently there is no threat, coercion. He further contends that the petitioner has no grievance against the respondents No.1 and 2 as the matter is already amicably settled and prays for setting aside the judgment and order dated 30.06.2021 passed by the learned Single Judge of this Court in Crl. Rev. P No.03 of 2018.

[12] On the other hand Mr. S. Debnath, learned Additional Public Prosecutor vehemently opposed the petition contending that since the learned courts below convicted the petitioner under Section 420 read with Section 34 of IPC as affirmed by the learned Single Judge of this Court, no

interference is required in the present revision petition and prays for dismissal of the same.

[13] After hearing learned counsel for the respective parties, this Court finds no merit in the petition and directs dismissal of the same.

[14] Pending application(s), if any, also stands disposed of.

CHIEF JUSTICE (ACTING)

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