

THE HIGH COURT OF TRIPURA
AGARTALA

CRL.A. NO. 11 OF 2012

Sri Mantosh Sinha,
S/O. Late Babulok Sinha,
Vill & P.O.- Goldharpur,
P.S.-Kailashahar,
District-Unokoti,

.....**Appellant.**

- Versus -

1. Smt. Anima Sinha,
W/O. Late Manirai Sinha,
of Durgapur, P.O. Paithurbazar,
P.S. Kailashahar, District-Unokoti.
2. Sri Sukumar Chowdhury(Malakar),
S/O. Late Sashadhar Chowdhury of
Durgapur, P.O. Paithurbazar,
P.S. Kailashahar, District-Unokoti.
3. The State of Tripura.

.....**Respondents.**

BEFORE
THE HON'BLE MR. JUSTICE S. C. DAS

For the appellant : Mr.Sekhar Datta,
Advocate,

For the respondent Nos.1 & 2 : Mr. H. K. Bhowmik,
Advocate.

For the respondent No.3 : Mr. A. Ghosh,
P.P.,

Date of hearing : 09.02.2015.

Date of delivery of
Judgment and Order : **18.02.2015.**

Whether fit for reporting : **Yes.**

JUDGEMENT AND ORDER

This appeal against acquittal is directed against judgment and order dated 29.09.2012 passed by the learned Sessions Judge, North Tripura, Kailashahar in Criminal Appeal No.16(2) of 2012, whereunder the learned Sessions Judge set aside the judgment and order of conviction and sentence dated 30.05.2012 passed by the learned Chief Judicial Magistrate, North Tripura, Kailashahar in case No. C.R. 112 of 1998.

2. Heard learned counsel, Mr. S. Dutta for the appellant, learned counsel, Mr. H. K. Bhowmik for the respondent Nos.1 and 2 and learned P.P., Mr. A. Ghosh for the respondent No.3.

3. Fact of the case, necessary for disposal of this appeal, may be summarized thus :-

The appellant, Sri Mantosh Sinha set the law in motion by filing a written complaint before the Chief Judicial magistrate, North Tripura, Kailashahar alleging, *inter alia*, that his maternal uncle (mother's brother), namely, Late Maniraj Sinha, S/O. Late Mantri Sinha was originally a resident of Patharkandi, Assam and after the death of his parents he shifted to the house of the complainant and after completion of his studies he got a job as a school teacher under the Government of Tripura and was posted at Santipur J. B. School. In the year 1991 he purchased 11 gandas of land by two

registered sale deeds in the name of his nephew, Sri Manigo Sinha @ Prabhas Sinha, S/O. Prafulla Sinha and those sale deeds were executed by one Sabitri Datta in the name of Manigo Sinha. Maniraj Sinha died in the year 1995. In the year 1996 accused Anima Sinha, W/O. Late Maniraj Sinha hatched a conspiracy with other accused Sukumar Chowdhury (Malakar) and pursuant to such conspiracy accused-respondent, Anima Sinha, made an application for mutation of that 11 gandas of land purchased in the name of Manigo Sinha, in her name and that was registered as a Mutation Case No.1167 dated 21.12.1995. In that mutation case accused Anima Sinha falsely stated that her husband Late Maniraj Sinha was also known as Manigo Sinha and that Maniraj Sinha and Manigo Sinha were same person and thereby obtained mutation of the land in her name. Pursuant to such conspiracy, the said accused Anima Sinha in the year 1997 executed a sale deed in favour of other accused respondent, Sukumar Chowdhury (Malakar) and sold out that 11 gandas of land to Sukumar Chowdhury (Malakar). Subsequently, accused Anima Sinha and accused Sukumar Chowdhury (Malakar) started living together as husband and wife and they out of a criminal conspiracy with a view to deprive Manigo Sinha @ Prabhas Sinha from the enjoyment of his property created false Khatian in the name of Anima Sinha and subsequently Anima Sinha executed the sale deed in the name of accused Sukumar Chowdhury (Malakar). Manigo Sinha used to reside away from Tripura and, therefore,

he appointed the complainant, Mantosh Sinha, as an attorney to look after and to deal with his property in Tripura and Mantosh Sinha having come to know about the criminal act of accused Anima Sinha and Sukumar Chowdhury(Malakar) lodged the criminal complaint alleging commission of offence punishable under Sections 420, 466, 467, 468, 120B, 193, 109 read with Section 34 of IPC.

4. Cognizance was taken on the basis of the police report and in due course evidence of the complainant and two other witnesses were recorded before charge and considering the evidence before charge adduced by the complainant, learned Chief Judicial Magistrate framed charges under Sections 468, 471 read with Section 34 of IPC against both the accused-respondents to which they pleaded not guilty and claimed to be tried.

5. In course of trial, PWs 1, 2 and 3, namely, Sri Mantosh Sinha, Sri Nirmal Sinha and Sri Bireswar Sinha respectively were cross-examined and thereafter complainant side also examined six more witnesses, namely, PW4, Sri Surendra Sinha, PW5, Sri Pravash Sinha @ Manigo Sinha, PW6, Sri Rajendra Barman, PW7, Sri Swapan Kumar Gun, PW8, Sri Tapan Kumar Gupta and PW9, Sri Sekhar Sinha and in course of examination of those witnesses, complainant also proved 15 items of documentary evidence, namely, Exbt.-1 to Exbt.-15, which are as follows :-

"Exbt.1 – **Death certificate of Maniraj Sinha, S/O. Mantri Sinha,**
Exbt.2(series) – **Sale deed No.1-1085 of 1997.**
Exbt.3(series) – **General power of Attorney No.iv-462 dated 19.08.1998.**
Exbt.3/1 - **Signature of P.W.3 on Exbt.3,**
Exbt.4(series) – **Registered deed No.1-1762 dated 31.09.1991,**
Exbt.5(series) – **Registered deed No.1-1763 dated 30.09.1991,**
Exbt.6(series) – **Sale deed No.1953 dated 13.05.1964,**
Exbt.7 – **Khatian No.2556,**
Exbt.8 & 8/1 – **the complaint and signature of P.W.4 on it.**
Exbt.8 – **Certified copy of the judgment in c/w T.S.31/1998.**
Exbt.9 – **Certified copy of the judgment in c/w title appeal No.07/2003.**
Exbt.10 – **Corrected Khatian No.2556 in the name of Manigo Sinha @ Prabhas.**
Exbt.11 – **Letter of Deputy Commissioner, Karimganj.**
Exbt.12(series)– **Survival certificate for deceased Maniraj Sinha, application, enquiry report of Tahashildar, T.K. report of Revenue Inspector, Kailashahar Circle and findings, death certificate of Maniraj Sinha, Citizenship certificate of Anima Sinha and an affidavit by Anima Sinha.**
Exbt.13(series)–**Mutation order sheets, dated 21.12.1995 in c/w M.R. Case No.1167 of 1995, mutation order sheet dated 3.6.1998 in c/w M.R. Case No. 1556 of 1998 and mutation notice in c/w M.R. Case No. 1167 of 1995.**
Exbt.14 – **Service book of late Maniraj Sinha,**
Exbt.15 – **forms No.3, 6, 12, 14 & 18."**

6. After closure of the prosecution evidence, accused persons were examined under Section 313 of Cr.P.C. and in their turn they declined to adduce any defence evidence. During cross-examination of the prosecution witnesses, defence proved the following documents :-

"Exbt.'A'(series) – **deposition of D.W.9, Sista Mh. Das in title suit No. 31 of 1998,**
Exbt.'B' – **diversion certificate dated 15.09.1992 issued by Sista Mh. Das, Deputy Collector, Kailashahar,**
Exbt.'C' – **Certified copy of the deposition of P.W.10 in T.S.31 of 1998."**

Defence case is that the complainant instituted a false case against the accused-respondents to harass them.

7. After the recording of evidence of both side was over, the trial court came to a finding that the charge should be altered and accordingly by order dated 30.11.2009 charge was altered and a fresh charge under Section 120B and Section 419 read with Section 34 of IPC was framed to which the accused persons pleaded not guilty. Thereafter date was fixed for adducing evidence by the complainant, but the complainant side did not adduce any fresh evidence. From the side of the accused prayer was made to submit list of witnesses for further cross-examination, but ultimately defence also did not further cross-examine the prosecution witnesses. The accused persons were thereafter examined under Section 313 of Cr.P.C. and at the conclusion of trial learned Chief Judicial Magistrate found the accused persons guilty of committing offence punishable under Section 419 read with Section 120B of IPC and sentenced them to suffer R.I. for three years and to pay a fine of Rs.1,000/- each, in default of payment to suffer simple imprisonment for one month.

8. Aggrieved, the accused-respondents preferred Criminal Appeal No.16(2) of 2012 in the Court of learned Sessions Judge and the learned Sessions Judge by impugned judgment dated 29.09.2012 allowed the appeal and acquitted

both the accused persons and hence, this appeal by the complainant.

9. Mr. Dutta, learned counsel for the complainant-appellant assailing the judgment passed by the learned Sessions Judge has submitted that the learned Sessions Judge set aside the reasoned judgment of the trial Court only on the ground that alteration of charge was not permissible at the fag end of the trial and that the complaint was filed by a power of attorney of the aggrieved person. He has also submitted that the learned Sessions Judge without considering and appreciating the evidence on record and the facts and circumstances of the case set aside the judgment only referring to the ingredient of cheating and such a judgment by an appellate Court is not permissible in law. He has, therefore, submitted that it is a fit case where the judgment passed by the learned Sessions Judge should be set aside and the case should be remanded back to the appellate Court for passing judgment after hearing and proper appreciation of the evidence on record.

10. Learned counsel, Mr. H. K. Bhowmik appearing for the accused-respondents has submitted that the appellate Court has given its finding in para 10 of the judgment, wherein it has been stated that the allegation does not constitute the offence of cheating and hence, the appellate court rightly passed an order of acquittal.

11. Learned P.P., Mr. Ghosh appearing for the State-respondent has submitted that the learned Sessions Judge did not discuss the evidence on record and so the judgment passed by the learned Sessions Judge cannot be said to be a reasoned judgment and hence, it should be interfered and set aside and the case may be remanded back to the appellate Court to hear afresh.

12. I have meticulously gone through the complaint, evidence on record and the judgment passed by the trial Court as well as the appellate Court. The trial Court, as it appears, passed a reasoned judgment referring to the evidence on record. On the contrary, the appellate Court, as it appears, passed a cryptic judgment even without referring to the evidence on record.

13. A trial Court is a Court of fact, but an appellate Court is both a Court of fact as well as a Court of law. A trial Court has the scope of directly dealing with the parties to the litigation. In a criminal case the trial Court can notice the manner, behaviour and standing of the witnesses as well as the accused persons, whereas the appellate court has no such scope. The trial Court passes a judgment taking into account all the factual aspect as well as considering the relevant provision of law. The appellate court may summarily dispose an appeal if it is found to be devoid of any merit. But if the appellate Court takes up an appeal for hearing in that case it is

the duty of the appellate Court to carefully consider the facts, material evidence on record and after hearing the parties to come to a conclusion about the appeal. Unfortunately, in the present case, I find that the learned Sessions Judge has failed to appreciate the evidence on record and arrived at a finding contrary to the finding of the trial Court without any cogent reason.

14. Learned Sessions Judge has observed in his judgment that alteration of charge at the fag end of trial was totally illegal and that no scope of cross-examination was given. This finding of learned Sessions Judge is contrary to the provision prescribed in the Code of Criminal Procedure. Section 216 of Cr.P.C. clearly prescribes that charge may be altered at any time before judgment is pronounced. Here the alteration of charge was made before pronouncement of judgment. Section 216 further prescribes that if there is an alteration or addition to the charge, scope should be given to the parties to adduce evidence in respect of new or added charge.

In the present case order dated 30.11.2009 passed by the learned Chief Judicial magistrate shows that the complainant side submitted that they have already adduced all evidence and to prove the altered charge they need not examine any more witness. Defence counsel prayed for time to submit a list of those witnesses of the prosecution whom the defence likes to further cross-examine in view of the altered

charge. Subsequent order shows that the defence did not ultimately submit any list of witnesses of the prosecution for such cross-examination and thereby waived their right to further cross-examine the prosecution witnesses. The observation of the learned Sessions, therefore, is devoid of merit and contrary to record.

15. The next observation made by the learned Sessions Judge is that complaint was filed by Mantosh Sinha being an attorney of the owner of the land, i.e., Manigo Sinha and that there is no provision for filing a criminal proceeding by an attorney. The complainant clearly stated that his maternal uncle, Maniraj Sinha purchased the land in the name of his nephew, Manigo Sinha and Manigo Sinha by power of attorney entrusted him to look after the property. When Mantosh Sinha found that the accused persons mutated the land of Manigo Sinha in the name of accused Anima Sinha, he being the attorney filed the complaint. There is no legal compulsion that a complaint has to be filed by the aggrieved person himself and that other person cannot file a complaint. A criminal offence is an offence against the society as a whole. Mantosh Sinha, the complainant, was duly authorized to look after the property of Manigo Sinha (PW5) and when Mantosh Sinha found that the accused persons out of conspiracy created false mutation record and thereafter transferred the land of Manigo Sinha for which he was appointed power of attorney, he filed the complaint.

The victim of the alleged conspiracy or cheating Manigo Sinha appeared before the Court and examined himself as PW5. Therefore, on this ground a criminal complaint cannot be said to be bad in law simply because the complaint was filed by an attorney who was physically looking after the land in question which is the subject matter of the complaint. This observation of the learned Sessions Judge, therefore, is wholly untenable and not acceptable at all.

16. Learned Sessions Judge in para 10 of his judgment recorded a cryptic finding referring to the ingredients of cheating and held that the required ingredients has not been proved, but did not discuss the evidence on record while arriving at the conclusion.

The word 'cheating' has been defined in Section 415 of IPC thus -

"Cheating. – Whoever, by deceiving any person fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation. – A dishonest concealment of facts is a deception within the meaning of this section."

Here in this case, the allegation is that the accused Anima Sinha filed petition seeking mutation contending that Maniraj Sinha (her husband) and Manigo Sinha were same

person. She has allegedly concealed the fact that they were different person and such concealment of fact is a deception as defined in the explanation to the definition of cheating. Thereafter she has executed sale deed of said mutated land to the other accused Sukumar Choudhury(Malakar). Learned Sessions Judge without carefully scrutinizing the evidence arrived at a finding that there was no delivery of property and hence set aside the judgment passed by learned Chief Judicial Magistrate. Such finding of learned Sessions Judge appears to be a perverse finding contrary to the evidence on record and hence not tenable in law.

17. The judgment passed by learned Sessions Judge cannot be termed as a judgment of the appellate Court in appreciation of the evidence on record. The appellate Court should not lightly brush aside the appreciation of evidence done by the trial Court except for cogent reason. It is the settled law that the appellate Court shall critically scrutinize the evidence in some details indicating the reasons as to why it differs from the trial Court. Disposal of an appeal in a cryptic manner is unsustainable and cannot stand in the eye of law.

18. Chapter XXIX of Code of Criminal Procedure deals with appeals. Section 384 of Cr.P.C. empowers the appellate Court to dismiss an appeal summarily, if it considers that there is no sufficient ground for interference. Section 385 of Cr.P.C. gives the procedure for hearing appeals not dismissed

summarily and Section 386 of Cr.P.C. gives the powers of the appellate Court.

19. In the case of **Amar Singh V. Balwinder Singh & ors.**, reported in **(2003) 2 SCC 518**, the Apex Court has considered and laid down the duty of the appellate court while hearing a criminal appeal in the light of the aforesaid provision of law. In para 7 of the judgment the Apex Court held thus :-

"7. The learned Sessions Judge after placing reliance on the testimony of the eye-witnesses and the medical evidence on record was of the opinion that the case of the prosecution was fully established. Surprisingly, the High Court did not at all consider the testimony of the eye witnesses and completely ignored the same. Section 384 Cr.P.C. empowers the Appellate Court to dismiss the appeal summarily if it considers that there is no sufficient ground for interference. Section 385 Cr.P.C. lays down the procedure for hearing appeal not dismissed summarily and sub-section (2) thereof casts an obligation to send for the records of the case and to hear the parties. Section 386 Cr.P.C. lays down that after perusing such record and hearing the appellant or his pleader and the Public Prosecutor, the Appellate Court may, in an appeal from conviction, reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court of competent jurisdiction. It is, therefore, mandatory for the Appellate Court to peruse the record which will necessarily mean the statement of the witnesses. In a case based upon direct eye-witness account, the testimony of the eye-witnesses is of paramount importance and if the Appellate Court reverses the finding recorded by the Trial Court and acquits the accused without considering or examining the testimony of the eye-witnesses, it will be a clear infraction of Section 386 Cr.P.C. In Biswanath Ghosh v. State of West Bengal & Ors. AIR 1987 SC 1155 it was held that where the High Court acquitted the accused in appeal against conviction without waiting for arrival of records from the Sessions Court and without perusing evidence adduced by prosecution, there was a flagrant mis-carriage of justice and the order of acquittal was liable to be set aside. It was further held that the fact that the Public Prosecutor conceded that there was no evidence, was not enough and the High Court had to satisfy itself upon perusal of the records that there was no reliable and credible evidence to warrant the conviction of the

accused. In State of UP v. Sahai & Ors. AIR 1981 SC 1442 it was observed that where the High Court has not cared to examine the details of the intrinsic merits of the evidence of the eye-witnesses and has rejected their evidence on general grounds, the order of acquittal passed by the High Court resulted in a gross and substantial mis-carriage of justice so as to invoke extra- ordinary jurisdiction of the Supreme Court under Article 136 of the Constitution."

20. In criminal trial law permits an appeal only once against a judgment of a trial Court. There is no provision of any second appeal. So, the appellate Court, it is expected, must be careful while dealing with an appeal. It must carefully go through the evidence and materials on record while recording a contrary finding than that of the finding of the trial Court. It should not interfere with the finding of the trial Court without assigning cogent reason referring to the evidence on record. It is shocking that in the present case the learned Sessions Judge has not applied his mind at all to the evidence on record and mechanically passed a cryptic judgment setting aside the judgment of the trial Court which is not tenable in law.

21. Accordingly, I think it is a fit case that it should be remanded back to the learned Sessions Judge for hearing the appeal afresh and to pass a reasoned judgment appreciating the evidence on record according to law.

22. The appeal is accordingly allowed. The judgment and order dated 29.09.2012 passed by learned Sessions Judge,

North Tripura, Kailashahar in Criminal Appeal No.16(2) of 2012 is set aside. The criminal appeal is remanded back to the learned Sessions Judge, North Tripura, Kailashahar for hearing it afresh and to dispose the appeal according to law.

23. Send back the lower court records along with a copy of this judgment.

JUDGE