

THE HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P. No.06 of 2007

Shri Tapan Majumder
S/O. Shri Sadhan Majumder
Of Shib Bari Road, P.S. R.K. Pur,
Sub-Division – Udaipur, Dist. South Tripura.

..... *Petitioner*

- Vs. -

The State of Tripura.

..... *Respondent*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the Petitioner : Mr. P.K. Biswas, Sr. Advocate.
Mr. P. Majumder, Advocate.

For the respondent : Mr. R.C. Debnath, Advocate.

Date of hearing & : 17.03.2015.
delivery of
Judgment & order

Whether fit for : Yes.
reporting

JUDGMENT & ORDER (ORAL)

This revision petition is directed against the judgment dated 08.01.2007 passed by the learned Sessions Judge, South Tripura, Udaipur in Criminal Appeal No.35(3) of 2006 whereby he dismissed the appeal of the petitioner and upheld the judgment of the Judicial Magistrate, 1st Class, Udaipur, South Tripura convicting the accused of having committed offences punishable under Sections 420 and 392 IPC.

2. The accused was sentenced to undergo 6 months R.I. for commission of the offence under Section 420 IPC and also to pay a fine of Rs.3,000/- and in default of payment of such fine to undergo further R.I. for 2 months. In respect of the offence under Section 392 of the IPC, he was held liable to suffer R.I. for one year and pay a fine of Rs.5,000/- and in default of payment of fine to undergo further R.I. for 3 months.

3. The prosecution story briefly stated is that on 8th June, 2004, the complainant Nagendra Ch. Das filed a complaint with the Officer-in-Charge, Udaipur Police Station in which it was alleged that the complainant had applied for grant of LPG dealership by the Indian Oil Corporation (hereinafter referred to as 'the IOC'). It is further alleged that the accused Tapan Majumder had told the complainant that he was closely known to some MLAs, Ministers etc. and could therefore, arrange for the LPG dealership. According to the complainant, he paid a sum of Rs.85,000/- to the accused Tapan Majumder to arrange the LPG dealership. Thereafter, on 17th April, 2004, he asked the accused-petitioner Tapan Majumder to visit Guwahati to inquire about the status of his LPG dealership. The accused was permitted to use Maruti Alto car No. TR-03-0707 belonging to the wife of the complainant and this vehicle was being driven by P.W.5 Gautam Deb. According to the complainant, after 3/4 days, he received information on telephone from his driver

that the driver was beaten up at Pathar Kandi, Assam and forcibly asked to get down from the vehicle and thereafter, the accused stole the vehicle and went away with this vehicle.

4. On the basis of these allegations, Charge was framed against the accused both under Sections 420 IPC and 392 IPC. The Charge reads as follows:-

"CHARGE

I, Sri G. Sarkar, Judicial Magistrate 1st Class, Udaipur, South Tripura, do hereby charge you namely SRI TAPAN MAJUMDER as follows:-

Firstly, that on 07/03/2004 to 17/04/2004 in different dates you cheated the informant Nagendra Chandra Das by dishonestly inducing him to deliver the dealership of L.P.G. Gas from I.O.C. Ltd. at Gauhati and for that you have taken dishonestly Rs.1,00,000/- (Rupees one lakh) which is belongs to the informant and thereby you have committed an offence punishable U/S 420 of IPC and within my cognizance.

Secondly, that on 17/04/2004 you committed robbery of a Maruti vehicle bearing No. TR03-0707 which was the property of informant Nagendra Ch. Das, then in his possession and thereby committed an offence punishable U/S 392 of IPC and within my cognizance.

And, I hereby direct that you be tried on the said charges."

5. As far as the second Charge is concerned, the Charge as framed is extremely vague because it does not even mention the place and time of occurrence. It appears that this was done because the alleged theft had taken place outside the State of Tripura in the State of Assam and the only way of linking the theft and bringing it within the jurisdiction of the Courts at Tripura would be to also bring out a case of cheating and then connecting it to the theft/robbery.

6. I shall first deal with the issue as to whether any offence of cheating is made out. The complainant is not an uneducated person. He is a businessman. He had applied for grant of LPG dealership. According to the averments made in the complaint, the complainant himself was guilty of having committed an offence under the Prevention of Corruption Act because according to him, the accused had told him that the accused knows Ministers and MLAs and on payment of Rs.1,00,000/- can arrange that the LPG dealership shall be granted to the petitioner or his wife. One fails to understand why no case was lodged against the complainant himself because this was a clear cut attempt to bribe a public servant because officials of the IOC are also public servants within the meaning of the Prevention of Corruption Act. There is no cheating involved in such a case. The petitioner was not in a position himself to grant the IOC dealership. Assuming that he falsely stated that he knew Ministers, MLAs or other politicians and could arrange the IOC dealership then if the complainant himself was acting in violation of the law and conspiring with the accused to get an IOC dealership by illegal means, no offence of cheating is made out. Even if the allegations are taken to be the gospel truth, it only means that the complainant and the accused both conspired to get the IOC dealership by hook or by crook thereby depriving some other

rightful claimant of the IOC dealership. Therefore, in my opinion, no offence under Section 420 IPC is made out.

7. Cheating is defined under Section 415 of the IPC as follows:-

"415. 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".

8. The basic ingredients of this offence are that one person should deceive another person by fraud or dishonesty and thereby the person who has been deceived or defrauded should part with some property which he would not have otherwise done so. As pointed out above, the allegations of the petitioner is that he virtually had engaged the accused to arrange for his IOC dealership by any means. There is no deception or fraud involved in such a situation.

9. Coming to the second issue. Robbery has been defined under Section 390 IPC as follows:-

"390. Robbery.—In all robbery there is either theft or extortion.

When theft is robbery.—Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or

wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.—Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted."

10. At this stage, it may be pertinent to refer to the statement to the driver Gautam Deb, P.W.5. His statement is that he was deputed by the complainant to take the accused to Gauhati from Agartala. Thereafter, they went to Tejpur and then to Tinsukia. It is not clear who ordered the driver to go from Guwahati to Tejpur and Tinsukia. The owner-complainant does not say a word in this regard. The statement of the driver with regard to the theft is as follows:-

"...Subsequently Tapan Majumder went to Dibrugar with the vehicle and on the way to Dibrugar I have been dragged out from the car and Tapan Majumder went away to Dibrugar with 2 females..."

11. For a theft to be robbery within the meaning of Section 390 IPC, it is necessary that the theft should be accompanied either by causing death, voluntary hurt or wrongful restraint of some person or an attempt to cause instant death, instant hurt or instant wrongful restraint. The use of the words 'instant' is very material because it means that the person should be in fear of instant injury or death or wrongful restraint and then parts with the property. In the present case, the driver does not say that he

was threatened with death or injury or that he was hurt or threatened with hurt or that he was wrongfully restrained.

12. Therefore, there is no case of robbery made out. At this stage, it would be pertinent to mention that the complainant compromised the matter with the accused. He settled the matter outside the Court. A petition was filed but the said petition was rejected because the offence under Section 392 IPC is not compoundable. The offence under Section 420 IPC is compoundable with the permission of the Court. In a case where two distinct offences like in the present case are made out, I see no reason why offence which is compoundable would not be compounded. Both the Courts below did not at all consider these facts.

13. Even with regard to the offence of theft, I am clearly of the view that no offence of theft is not made out in the facts of the present case. It is alleged that Gautam Deb was the driver of the vehicle. No record has been produced to show that he was engaged as a driver on the vehicle. There is only the oral statement of the owner and the driver. The police has not even thought it fit to seize the driving licence of Gautam Deb. When Gautam Deb appeared in Court, he admitted that his driving licence had not been seized. He stated that he could not produce his driving licence. A suggestion was put to him that he did not

even have a driving licence. He denied the suggestion, but during the course of the trial, the prosecution still did not feel it proper to try and produce the driving licence. Therefore, it is not even proved that Gautam Deb had a driving licence or was the driver on the vehicle.

14. Other grounds for holding that no case of theft is made out are –

i) even according to the complainant he himself had granted permission to the accused to go along with the vehicle.

ii) According to the complainant, it is the son of the accused, who himself brought back the vehicle and the vehicle was never seized by the police.

iii) The occurrence is stated to have taken place within 3/4 days of 17th April, 2004, but the complaint was lodged on 8th June, 2004. If after 5/6 days, the driver had informed the owner that he had been beaten up and the vehicle had been stolen, I see no reason why the owner should not have lodged the complaint immediately thereafter. All these facts go to indicate that there was some other story and that the complainant and the accused may have been engaged in other activities and to settle scores, this false complainant was lodged.

15. Normally, this Court is very reluctant to interfere in findings of fact recorded by two Courts below in exercise of its

powers under Section 397 Cr.P.C. However, in this case, I am compelled to interfere because the judgment of the learned Sessions Judge is no judgment in the eyes of law. The Sessions Judge, who is the last Court of fact, has not even discussed the statement of any witness. He has not discussed any evidence and has only decided the case by upholding the judgment of the Trial Court and commenting that the lawyer of the accused was more interested on getting the matter settled outside the Court than in cross-examining the witnesses. Such un-savoury comments against members of the bar should be avoided unless they are specifically called for in a particular case.

16. Therefore, I have been compelled to go through the entire evidence even in revision and decide the case on merits itself.

17. Send down the L.C.Rs forthwith.

CHIEF JUSTICE

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