

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.129 OF 2014

THE STATE OF MAHARASHTRA)...APPELLANT

V/s.

MUSTAQ AASMOHAMMAD MEV (KHAN))...RESPONDENT

Mr.Deepak Thakre, APP for the Appellant – State.

None for the Respondent.

CORAM : ABHAY M. THIPSAY, J.

DATE : 10th FEBRUARY, 2015.

ORAL JUDGMENT :

1 The respondent herein was prosecuted on the allegation that he had committed an offence punishable under Section 420 of Indian Penal Code (IPC). The Judicial Magistrate, First Class, Kolhapur, after holding a trial, found him guilty. The Magistrate convicted the respondent of an offence punishable under Section 420 of IPC and sentenced him to suffer Simple Imprisonment for 18 months and to pay a fine of Rs.5,000/-, in

default, to suffer Simple Imprisonment for 1 month. The State of Maharashtra is not satisfied with the order of conviction, in as much as, according to the State, the sentence imposed by the trial court upon the respondent is less, and that, actually it ought to have been more. The State has, therefore, filed the present appeal for enhancement of the sentence, as contemplated under Section 377 of the Code of Criminal Procedure (Cr.P.C.).

2 I have gone through the facts of the case, as reflected from the impugned judgment, and also from the notes of evidence of the witnesses, recorded during trial.

3 The case against the respondent was that he had made a false representation to the first informant – Krishnakumar Pol alias Chandrakant Pol and induced him to part with an amount of Rs.90,000/-. The representation was that in return for the said amount, the respondent would be giving a gold biscuit to the said Krishnakumar. The biscuit was actually given, but it turned out to be of brass and not of gold.

4 It appears that the amount of Rs.90,000/- was recovered from the respondent in the course of investigation. It also appears that this amount has been restored to the first informant.

5 When the respondent has actually not made any financial gain by committing the offence in question, and when he has been found guilty and sentenced to suffer Simple Imprisonment for 18 months, I do not think that a case for enhancement of the sentence is made out. The quantum of punishment to be imposed upon the offender, in the event of his being found guilty, is within the discretion of the trial court, subject to the statutory minimum prescribed in any given case. The discretion of the trial court cannot be interfered with, unless it would appear to the appellate court that the discretion has been exercised improperly, arbitrarily or capriciously.

6 It does not appear that, in this case, the sentence
imposed upon the respondent by the trial court is inadequate, and
that, therefore, it ought to be enhanced.

7 I do not find any substance in this appeal.

8 The appeal is dismissed.

(ABHAY M. THIPSAY, J.)