

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.416 OF 2014

THE STATE OF MAHARASHTRA)...APPELLANT

V/s.

BABURAO YASHWANT KOLEKAR)...RESPONDENT

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

CORAM : ABHAY M. THIPSAY, J.

DATE : 13th FEBRUARY, 2015.

ORAL JUDGMENT :

1 On the basis of a complaint lodged by one Raghunath Bapu Jadhav, on which an order to investigate into the matter, as contemplated under Section 156(3) of the Code of Criminal Procedure (Cr.P.C.) was passed by the learned Magistrate, the respondent was charge-sheeted and prosecuted on the allegation of having committed offences punishable under Sections 406 and 420 of Indian Penal Code (IPC). The learned Judicial Magistrate First Class, after holding a trial, found the respondent guilty of an

offence punishable under Section 420 of the IPC and sentenced him to suffer Simple Imprisonment for a period of 2 months and also to pay a fine of Rs.15,000/-, with a default sentence of Simple Imprisonment for 3 months. The State of Maharashtra, however, is not satisfied with this, as according to it, the sentence imposed by the learned Magistrate is inadequate, and that, it needs to be enhanced. It is, thus, that the State has filed the present appeal for enhancement of sentence, as contemplated under Section 377 of the Cr.P.C.

2 I have heard Mr.Deepak Thakre, the learned APP for the State. With his assistance, I have gone through the judgment delivered by the learned Magistrate, and also glanced through the copies of the notes of evidence that were adduced during the trial.

3 The case of the original complainant was that, the respondent had made false representation to him about the quality of the pipes supplied by him to the original complainant, and had, thus, cheated him.

4 Since the respondent has been held guilty of cheating and since the correctness of this conclusion does not arise for my consideration in the present appeal, I have not examined that aspect of the matter. I have confined the examination of the matter to see whether the sentence as imposed by the Magistrate is inadequate, needing enhancement.

5 Admittedly, the respondent is a person who deals in pipes and hardwares. The transaction between the original complainant and the respondent was a business transaction. There is nothing to show that the respondent had any antecedents.

6 Sentencing is a matter within the discretion of the court. The discretion exercised by the lower court cannot be unnecessarily interfered with. Such discretion, which is undoubtedly available to a court, can be interfered only where it would appear to this court that such discretion has been exercised arbitrarily or unreasonably.

7 The respondent could have been dealt with even under the provisions of The Probation of Offenders Act, 1958. Considering the nature of the offence, the sentence of imprisonment for a period of two months and of fine of Rs.15,000/- does not seem to be inadequate at all. Infact, there would be quite a good case for release of the respondent on bond of good behaviour.

8 There is no substance in the appeal.

9 The appeal is dismissed.

(ABHAY M. THIPSAY, J.)