

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL APPEAL NO. 466 OF 2002

The State of Maharashtra

.....Appellant

V/s.

Ronald Albert Williams
R/o : A/8 Gani Chawl, Bharat-nagar,
Vikhroli, Mumbai – 83.

....Respondent

Mrs. A. A. Maned APP for the State.
Mr. Anthony T. Marques for respondent no. 1

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : JANUARY 12, 2016.

JUDGMENT:

Heard. This is an appeal filed by the State of Maharashtra challenging the Judgment and Order dated 20/12/2001 passed by Metropolitan Magistrate 15th Court, Mazgaon, Mumbai wherein respondent is acquitted of offence punishable under section 420 of Indian Penal Code in C.C. No. 182/P/2000.

2) Heard respective counsel.

3) Such of the facts necessary for the decision of this appeal are as

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follows.

4) In the month of June, 1993 complainant/P.W. 1 Mrs. Lily Anthony Dass wanted to seek admission for the child of one of her friend in Don Bosco School. She had approached respondent herein. According to the complainant, respondent herein was a social worker and used to help people, seek admission, ration cards etc. It is alleged that respondent herein had demanded Rs. 25,000/- for seeking admission in Don Bosco school. The said amount was paid by the complainant, however according to the complainant, he had not made any efforts to seek admission and therefore, she had approached Byculla Police Station on 23/07/1993 and had lodged a report alleging therein that respondent herein had obtained Rs. 25,000/- fraudulently for seeking admission in Don Bosco school and hence, had cheated the complainant. On the basis of report lodged by P.W. 1, crime no. 271 of 1993 was registered at Byculla Police Station for offence punishable under section for offence punishable under section 420 of Indian Penal Code. After completion of investigation, charge-sheet was filed.

5) At the outset, upon perusal of the charge framed against the

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accused an inference can be drawn that charge was not framed against the accused in accordance with law as the charge was ambiguous. The charge only spells that present respondent had cheated one of the friend of the complainant. The identity of the friend is not disclosed in the charge. Similarly, charge spells that accused had obtained Rs. 25,000/- to secure admission of son of the friend of Smt. Lily Dass.

6) P. W. 1 is the complainant. She has deposed before the court that she was acquainted with the accused since her childhood. She requested him to help her seek admission to son of one Vyas who happens to be a friend of her husband. According to her, accused had demanded Rs. 50,000/-. There was negotiation and it was agreed that she would pay Rs. 35,000/-. She has further proceeded to stay on oath that she paid him Rs. 35,000/- in June, 1993. She paid Rs. 25,000/- on 17/06/1993 when the accused had been to her house. She has deposed that she paid Rs. 35,000/- to accused on 17/06/1993. It appears that complainant was confused as to whether she paid Rs. 35,000/- or Rs. 25,000/- on 17/06/1993. She has admitted in the cross-examination that one Vyas had given her Rs. 25,000/-. She has further stated that

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accused had abused her on 30/06/1993 and had also threatened her that he would kidnap her and her daughter. She had also admitted that since her husband had expired, she had requested the accused to help her seek admission. It is pertinent to note that in the cross-examination, she has stated that she did not know Madhubai Desai. She has also admitted that it is correctly mentioned in the F.I.R. that a certificate of Rupesh Desai was given to her. Upon perusal of records, it is clear that in fact, what she had given is his birth certificate of Rishab son of Madhubai Desai. In fact, prosecution has failed to establish a very identity of the child/guardian of the child who wanted to seek admission through Lily Dass.

7) Prosecution has examined P.W. 5 Vijay Vyas. It appears that he was working in a bank, he was taking tuitions of grandson of Mrs. Mhatre master Dhruv. Mrs. Mhatre had requested to accused to help her seek admission of one Desai's child in Don Bosco school of Matunga. He had approached the house of Mr. Dass. It was the complainant who had assured P.W. 5 that she would be able to take admission and at that time she had demanded Rs. 40,000/- to

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50,000/-. P. W. 5 has also admitted that some certificate was handed over to Dass for securing admission of Desai's child. Payment was made to Mrs. Dass. She had informed P.W. 5 that she has given the amount to one person, however, she had not disclosed to P.W. 5 that she had given the amount to the present respondent. It appears from the tenor of cross-examination that he had never enquired about name of Mrs. Dass and her daughter and had learnt about the said names only at the police station when the case was registered.

8) Upon perusal of the substantive evidence of the witnesses, it is clear that prosecution has failed to establish the guilt of the accused beyond reasonable doubt. There is no material on record which would clearly indicate that accused had made any misrepresentation to the complainant and had obtained money from her fraudulently. In fact, the evidence is otherwise. It appears that Lily Dass had approached respondent voluntarily. There is no evidence to even remotely indicate that there was misrepresentation by the respondent. There is nothing on record to indicate that Mrs. Lily Dass or anyone else had filed an application to Don Bosco school for seeking admission. In fact,

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complainant was attempting to mislead as she has birth certificate of Master Desai whereas she was seeking admission for the son of of Mr. Vyas.

9) Learned Magistrate has recorded justifiable reasons for recording acquittal in favour of accused. Findings recorded by the learned Magistrate do not call for any interference. Hence, following order.

ORDER

- (i) Appeal, being sans merits, stands rejected.

(SMT. SADHANA S. JADHAV, J.)