

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (U/S) No.1 of 2015**

Arising Out of PS.Case No. -null Year- null Thana -null District- SASARAM (ROHTAS)

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1. Ram Naresh Singh Son of Late Ram Briksha Singh, resident of village- Patnawa,  
P.S.- Indrapur, District- Rohtas at present F.T. 40, Irrigation Colony, Indrapuri,  
District- Rohtas

.... .... Appellant/s

Versus

1. The State of Bihar  
2. Sanjay Kumar, Son of Ram Singhasan Bhagat  
3. Ram Singhasan Bhagat, Son of Feku Bhagat, Both R/o R.T. 37, Irrigation  
Colony, Indrapuri, P.S.- Indrapuri, District- Rohtas

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Sanjay Kumar  
With Mr. Vinod Kumar, Advocates  
For the Respondent/s : Mr. Z Hoda, APP

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**  
**CAV JUDGMENT**  
**Date: 13-01-2017**

This is an appeal filed by the complainant against the judgment and order, dated 26.09.2013 passed in G.R. No. 288©/2001/T.R. No. 108/2013 arising out of Complaint Case No. 288 of 2001 by learned Judicial Magistrate, Ist Class, Dehri On Sone, whereby he has acquitted Opposite parties No. 2 and 3 of the charge punishable under Sections 406, 420 and 504 of the Indian Penal Code. Leave to file appeal was granted to the appellant by an order, dated 18.06.2014 passed in SLA No. 55 of 2013 by this Court, hence this appeal.

2. Briefly narrated, the case of the prosecution is that



Respondent Nos. 2 and 3 had approached the appellant informing them that Jain Commercial Company (hereinafter referred to as the **Company**) has been launched at Dehri On Sone and told him that if he wished his son is appointed in that Company, he would have to deposit a sum of Rs. 4,000/- as security money and a sum of Rs. 9,000/- to be fixed for a period of four years, whereafter he would get double the amount of Rs. 9,000/-, in return on maturity. Respondent No.2 claimed himself to be the Area Manager of the said Company. The appellant, thereafter, deposited a sum of Rs. 9,000/- in the name of his daughter, Sunita Kumari at the Branch office of the said Company on 03.09.1995 where the Respondent No.2 had received the money, who was working as Branch Manager there. He also gave an amount of Rs. 4,000/- to Respondent No.2 as security money for employment of his son Shailesh Kumar. Respondent No.2 is said to have told the complainant that his son will get employment within two months but the office of the Company was found closed thereafter. When the appellant started making demand for the money, the respondents firstly evaded and on 08.04.2001, they abused the appellant and refused to repay the amount.

3. With these allegations, the complaint case giving rise to Complaint Case No. 288 of 2001 came to be registered on 10.04.2001 for the offences punishable under Sections 406,420



and 504 of the Indian Penal Code. Upon framing of charge under the aforesaid Sections, Respondents were put on trial. Since the respondents denied the charges, the trial against them commenced.

4. From the records it appears that at the trial, 5 complainant witnesses were examined. The appellant was examined as C.W.4, who while supporting the case of the prosecution as narrated in the complaint petition deposed that Respondent no.2 claiming himself to be the Area Manager had received a sum of Rs. 4,000/- and Rs. 9,000/- and had issued receipt in token thereof.

5. This has to be kept in mind that it was the specific case of the appellant in the complaint petition that amount of Rs. 9,000/- was deposited in the Branch Office of the Company and there is no allegation that the said amount was received by Respondent No.2 at the residence of the appellant.

6. Rama Shankar Singh, C.W.1 in his deposition said that on 02.01.1995 he had gone to the residence of the appellant where opening of Jain Commercial Company was being discussed. According to him, on assurance of the Respondent Nos. 2 and 3 that the amount of Rs. 9,000/- would get doubled if fixed deposited for a period of four and half years and his son would get employment in the Company on payment of a sum of Rs. 4,000/- as security money, the appellant had paid the said



amount of Rs. 13,000/- in his presence. According to C.W.1, the amount was paid not at the Branch Office but in the house of the appellant where altogether six persons were sitting. Similar deposition was made by C.W.1 Ram Nath Singh, according to which transactions were completed in his presence at the residence of the appellant when he had gone there to deliver Milk. He even described denominations and number of currency notes handed over to Respondent No.2 at the residence of the appellant. C.W.2 is son of the appellant, who in his deposition said that he had not received any receipt in token of payment of the said amount of Rs. 4,000/-. C.W. 5 is another son of the appellant, who did not say anything as to where the amount was received by Respondent No.2. He, however, claimed to have identified the signature of Respondent No.2 on the receipt.

7. So far as Respondent No.3 is concerned, except that he had accompanied respondent No.2 when he was convincing the appellant as regards the benefits of deposit, there is no allegation or evidence against him.

8. The defence on the other hand denied signature of Respondent No.2 over the receipt issued to the appellant.

9. Upon considering the evidence on record, both oral and documentary, learned Judicial Magistrate Ist Class has recorded acquittal of Respondent Nos. 2 and 3 of the charges punishable under Sections 406, 420 and 506 of the Indian Penal



Code by the judgment and order, dated 26.09.2013, which is being assailed in the present appeal.

10. Mr. Sanjay Kumar, learned counsel appearing on behalf of the appellant has strenuously argued that definite case of the appellant that Respondent No.2 had received the amount of Rs. 13,000/- from the appellant portraying himself to be an Area Manager of the concerned Jain Commercial Company under an assurance that he would get in return double the amount of Rs. 9,000/- on maturity after four and half years and his son would get employment on depositing security money of Rs. 4,000/- stood proved beyond doubt at the trial on the basis of evidence adduced. According to him, the very fact that the said amount was not returned to the appellant despite all efforts proves that Respondent Nos. 2 and 3 in collusion misappropriated the entire amount, and thereby committed offence under Section 406 of the Indian Penal Code. He has also submitted that the appellant was thus deceived by the Respondent Nos. 2 and 3 dishonestly and fraudulently by inducing him to deliver the money with clear intention to cheat the appellant. He has submitted that the Respondent Nos. 2 and 3 did so with the full knowledge that wrongful loss would ensue to the appellant inasmuch as the appellant would never get the return of such deposits as had been assured to him.

11. I have perused carefully the evidence on record



and I have given my anxious considerations the submissions and contentions made on behalf of the appellant.

12. On careful examination of the allegation made in the complaint case and evidence of complainant witnesses adduced at the trial, it can be easily seen that it has never been the case of the prosecution that the amount, which Respondent No.2 had received was not deposited in the account of said Jain Commercial Company. Jain Commercial Company has not been made accused. It is the specific case of the appellant that the amount was taken for being deposited in Jain Commercial Company. In the complaint petition, the appellant had alleged that on 03.01.1995 the appellant had deposited the amount of Rs. 9,000/- in the Company having its Branch office at Dehri where the Respondent No.2 was working as Branch Manager. Two days thereafter on 05.01.1995, according to the appellant, in his complaint case, he had given to Respondent No.2 a sum of Rs. 4,000/- in the name of his son Shailesh Kumar for his employment. It is the specific in the complaint petition that the said two amounts were paid on different dates.

13. C.W.1 and C.W. 3 in their deposition on the other hand, categorically deposed that both the amounts were paid at the residence of the appellant on the same day, viz, 02.01.1995. Curiously, C.W.1 is categorical to the extent of giving the details of denominations and number of currency notes handed over by



the appellant to the Respondent No.2 in his presence, whereafter Respondent No.2 had given receipt for a sum of Rs. 13,000/-.

14. There is thus, apparent contradiction in the statement of complainant witnesses over the time and place where the said amount was allegedly received inasmuch as the prosecution witnesses have deposed that both the amounts were paid on 02.01.1995 at the residence of the appellant, that was not even the case of the prosecution in the complaint petition according to which, the said amounts were paid on 03.01.1995 and 05.01.1995 to the Respondent No.2.

15. Considering the aforesaid inconsistencies in the evidence of witnesses and the fact that the prosecution could not establish that the amount was kept by Respondent No.2 himself instead of depositing the same in the account of Jain Commercial Company, even if the case of the prosecution is treated to be true for argument sake, recording of acquittal by the Court below by impugned judgment and order cannot be said to be unjustified.

16. C.Ws. do not appear to be trustworthy, which contradict the case of the prosecution as narrated in the complaint petition. The delay of six years in lodging of the complaint case, in the background of the allegation that the Company had closed its office only two months after the deposits were made, does not have any explanation on record. Last but



not the least, there is no evidence to establish that the Respondent No.2 was doing it intentionally in order to deceive the appellant, knowing well that the amount so taken shall be misappropriated.

17. It is basic principle on criminal jurisprudence that a guilt of an accused must be proved beyond all reasonable doubt and the said burden of proving lies totally on the prosecution.

18. It is also well recognized principle that when two views are possible on the basis of evidence adduced at the trial one pointing towards the guilt of the accused and another towards his innocence, view which is favourable to the accused should be adopted (***Harbeer Singh Vs. Sheeshpal and others AIR 2016 SC 4958***).

19. In case of ***Harbeer Singh Vs. Sheeshpal*** (supra), the Supreme Court reiterated the consistent view taken in case of appeal against acquittal that unless the findings are perverse and not reasonably possible view, the appellate Court need not interfere.

20. In my opinion, the view taken by the trial Court in the judgment and order recording acquittal is a reasonably possible view and it cannot be said to be perverse, manifestly illegal or grossly unjust. Even on the ground that another view could also have been possible on the evidence on record,



reversal of an order of acquittal by the High Court will not be justified.

21. Reference can be made in this regard to Supreme Court's decisions in case of State of U.P. Vs. Harihar Bux Singh and anr, ( 1975) 3 SCC 167: (AIR 1974 SC 1890); State of Uttar Pradesh V. Ashok Kumar and anr, ( 1979) 3 SCC 1: (AIR 1979 SC 874); State of U.P. V. Gopi & ors., ( 1980) Supp. SCC 160: (1979 Cri L.J. 1121(SC); State of Karnataka V. Amajappa & Ors., ( 2003) 9 SCC 468; State of Uttar Pradesh V. Banne @ Baijnath & Ors., ( 2009) 4 SCC 271; State of U.P. V. Gurucharan & Ors., (2010) 3 SCC 721: ( AIR 2009 SC (Supp) 1873); State of Haryana V. Shakuntla & Ors., ( 2012) 5 SCC 171 : ( AIR 2012 SC 2123) and Hamza V. Muhammadkutty @ Mani and Ors., ( 2013) 11 SCC 150 : (AIR 2013 SC 3173).

22. In view of the discussions as above, I do not find any merit in this appeal, which is, accordingly, dismissed.

**(Chakradhari Sharan Singh, J)**

ArunKumar/-

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