

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1188 of 2002**

Firanta Alias Shanker, S/o. Sahasram, aged about 37 years, Ex Driver at present unemployed R/o. Devar Bija, P.S. Memetara, District Durg (C.G.)

---- Appellant

Versus

State of Chhattisgarh

---- Respondents

 For Appellant : Smt. Usha Chandrakar, Advocate
 For Respondents : Mr. Anil S Pandey, Govt. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

07.11.2017

- 1) This appeal is directed against the judgment of conviction and order of sentence dated 25.09.2002 passed by Special Judge Scheduled Caste and Scheduled Tribe(Prevention of Atrocities Act) 1989/Additional Session Judge, Durg in Special Case No. 30/2000, wherein the said Court convicted the accused/appellant under Section 420 of the IPC and sentencing him to undergo rigorous imprisonment for two years and to pay fine of Rs. 6000/- with default stipulations.
- 2) As per prosecution case, the complainant took buffalos from the accused/appellant valued at Rs. 4300/- and oxen valued at Rs. 3500/- total valued at Rs. 7800/-. The appellant promised to make payment within 20 days but he failed to make the same and not returned the animals. When the complainant demanded money from accused/appellant he used abusive language against him.

The matter was reported to Special Police Station Durg vide Ex.P-1, First Information Report Ex.P-10 was registered against the accused/appellant. After completion of the investigation, charge sheet was filed against the accused/appellants before the trial Court, to which he did not plead guilty, therefore, trial was conducted. After completion of evidence of the prosecution side, statement of the appellant under Section 313 of the Cr.P.C. was recorded and after completion of trial, the trial Court considering the material available on record by the impugned judgement convicted and sentenced the accused/appellant as mentioned above.

- 3) Learned counsel for the appellant submits that the case of the prosecution is of civil in nature and the dispute is regarding payment of amount of purchase of animal. She submits that no ingredients of offence under Section 420 of the IPC is established by the prosecution, therefore, conviction of the appellant is not in accordance of law. Learned counsel for the appellant further submits that the charges are not proved and the finding of conviction is liable to be reversed.
- 5) Per contra, learned State counsel supporting the impugned judgment has submitted that the judgment of the trial Court is strictly in accordance with the law and well founded and there is no illegality or infirmity in it warranting any interference by this Court invoking the jurisdiction of appeal.
- 6) Anjori (PW-5) complainant of the case. He deposed that accused/appellant took oxen from him for Rs. 35,00/- and purchased buffaloes from him for Rs. 4300/-. The appellant

assured him that the amount will be paid within 20 days. He further deposed that after lapse of 20 days when he demanded money from the accused/appellant then the accused/appellant replied that he has sold the animals for his interest and complainant is free to do anything what he wants. Version of this witness is supported by the version of Churaman Singh (PW-4) and Tilakram (PW-3). Version of these witnesses is again supported by FIR Ex.P-10 and the other relevant documents.

- 7) Offence of cheating can be said to have been made out if the following ingredients are satisfied. (i) deception of a person either by making a false or misleading representation or by other action or omission, (ii) fraudulently or dishonestly inducing any person to deliver any property; or (iii) to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit. It is required to be proved that the accused/appellant was having fraudulent or dishonest intention at the time of promise or representation.
- 8) Now, the point for consideration whether the accused/appellant has deceived the complainant. From the evidence, it is established that the intention of the accused/appellant was to cheat the complainant from very beginning. The intention can be gathered by circumstances of the case. The accused/appellant induced the complainant that he will make payment within 20 days and he was not willing to do the same. It is not a case where the intention to cheat develop later on, but at the time of making representation for payment the accused/appellant was not

intended to do so. If he had to carry out his promise he would have asked for extension of time for payment. But he flatly replied the complainant that he will never make payment and in this way he has shown his dishonest intention to cause wrongful loss to the complainant and wrongful gain to himself. The complainant lost his animals due to deception by the accused/appellant for which he was entitled and the accused/appellant gain money out of sale of animals to which he was not legally entitled. The Act of the accused/appellant clearly shows that his intention was dishonest from the day one taking of animals of the complainant. The complainant had given animals in faith but the intention of the accused/appellant was deceiving it is established that the appellant intentionally induced the complainant to give his animals for which he was not willing to pay.

- 9) There is no force in the argument of the counsel for the appellant that it is a case of civil in nature. A case will fall in civil nature only when anyone is unable to execute any terms of contract. The appellant sold the animals of the complainant and he is duty bound to pay the amount because the animals were trusted for sale and getting back the amount. Reply of the accused/appellant shows that he induced the complainant to deliver the buffaloes and oxen for which he was never intended to pay the amount. The findings arrived at by the trial Court is based on the evidence adduced before it and when all the ingredients of cheating is established the offence false under mischief of section 420 of the

IPC for which the trial Court convicted the accused/appellant and the same is hereby affirmed.

10) Heard on sentence part. The accused/appellant had not paid the fine amount out of which the compensation was to give to the complainant, this shows his disregard for law of land and shows his arrogance also. In the case of cheating punishment should be exemplary and sentence awarded by the trial Court cannot be termed as harsh and disproportionate or unreasonable and the same is not liable to be interfered with by this Court.

11) The appeal is liable to be and is hereby dismissed.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**

Santosh