

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.37 of 2019

Arising Out of PS. Case No.- Year-1111 Thana- District- Madhubani

Subhkant Jha son of Chandeshwar Jha resident of Village- Kaithiniya, P.S.
R.S. Shibir, Jhanjharpur, District- Madhubani.

... .. Petitioner/s

Versus

1. State of Bihar.
2. Shashi Kala Devi wife of Phulchand Thakur resident of Village- Kaithiniya,
P.S. R.S. Shibir, Jhanjharpur, District- Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Gagan Deo Yadav

For the Respondent/s : Mr.Sri Shyameshwar Dayal

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 27-03-2019

Heard the parties.

2. This Criminal Revision Petition has been filed against the order dated 16.11.2018 passed by Session Judge, Madhubani in Cr. Appeal No. 15 of 2008 dismissing the appeal of petitioner modifying the order of sentence as well as judgment of conviction and order of sentence dated 05.03.2008 passed in Trial No. 357 of 2007 (Complaint Case No. 750 of 2000) by which learned Judicial Magistrate 1st Class, Jhanjharpur has convicted petitioner under Section 406 of IPC



and sentenced to undergo simple imprisonment of three years and to pay fine of Rs. 2000/- and in default to undergo further simple imprisonment for three months.

3. Prosecution case is based upon a Complaint case filed by complainant that she wanted to deposit Rs. 8000/- in post office but at the insistence of accused petitioner that the amount will be doubled in five years if same is deposited by her in JVG and on such promise complainant on 26.08.1995 gave Rs. 8000/- to petitioner who deposited the same in J.V.G. finance limited and also gave a receipt of said deposit, however, after five years on 26.08.2000 when complainant went to withdraw the amount after maturity then she came to know that the receipt given by petitioner was forged and no amount was deposited by him. Petitioner undertook to pay the amount within one week but subsequently refused to pay the amount.

4. In support of prosecution six witnesses have been examined. P.W. 1 is Binod Thakur, P.W. 2 is Krishnakant Thakur, P.W. 3 is Shashikala Devi the complainant, P.W. 4 is Indrakant Thakur, P.W. 5 is Phulchand Thakur and P.W. 6 is Dev Swaroop Thakur. Complainant has also produced documentary evidence and complaint case No. 708/2000 has been marked as Exhibit-1. Defence has also examined oral evidences in defence.



D.W. 1 is Madheshar Jha and has also got two documents exhibited which has been marked as Exhibit-A and Exhibit-B and also produced receipt of J.V.G. finance limited dated 26.08.1995 showing deposit of Rs. 8000/- for five years.

5. P.W. 3 Shashikala Devi is Complainant and in her examination in chief has supported her allegation made in complaint petition. She has stated that both were running tea stall adjacent to each other, as such she believed the words of petitioner and deposited Rs. 8000/- and a receipt of JVG was also granted to her by the petitioner. Witnesses have fully supported the case of complainant and they have been cross examined and there is nothing to disbelieve their evidence. The trial court after due appreciation of the evidence on record has found that prosecution has been able to establish the charges under Section 406 of IPC against the petitioner beyond reasonable doubt and as such convicted him for the said charge, however, the trial court has held that prosecution has not been able to establish charge under Section 420 of IPC and sentenced him to undergo three years simple imprisonment and fine of Rs. 2000/- and in default to undergo further simple imprisonment for three months.

6. Aggrieved by the order passed by the trial court,



petitioner preferred Cr. Appeal being Cr. Appeal No. 15 of 2008 and appellate court also considered the evidences on the record and on re-appreciation and re-consideration of the evidences and materials available on record upheld the judgment of conviction of trial court under Section 406 of IPC and found that the charges under Section 406 of IPC stands proved beyond all reasonable doubt, however, the appellate court reduced the period of sentence as simple imprisonment of one year and a fine of Rs. 2000/- and in default of which to further go simple imprisonment for three months.

7. It has been submitted on behalf of petitioner that he has been sufficiently punished and has been facing ordeal of trial since 2007 for duping complainant for Rs. 8000/-.

8. After hearing the parties and going through the judgment and order passed by both the courts, this Court does not find any error in the judgment of conviction passed by both the courts under Section 406 of IPC. However, considering the prolonged trial faced by petitioner, this Court modifies the order of sentence as period already undergone.

9. The Criminal Revision Petition is dismissed subject to modification in the order of sentence as period already undergone and fine of Rs. 8000/-. Petitioner may be



released from jail custody if not wanted in any other case and on
payment of fine of Rs. 8000/-

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	

