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HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment Reserved on : 01/02/2019

Judgment Delivered on : 07/02/2019

Criminal Appeal No. 1561 of 2017

Motiram Patel, S/o Shri Noharlal Patel aged about 30 years, occupation Agricultrist, R/o village Regda, police station Chakradharnagar, Tahsil and District Raigarh, Chhattisgarh.

---- Appellant

Versus

State Of Chhattisgarh through Station House Officer of the police station Chakradharnagar, Tahsil and District Raigarh, Chhattisgarh.

---- Respondent

For Appellant	:	Shri Arun Kochar and Shri K.N. Nande, Advocates.
For Respondent/ State	:	Shri H.S. Ahluwalia, Dy. A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV JUDGMENT

(1) Challenge in this appeal is to the judgment of conviction and order of sentence dated 28.9.2017 passed by Learned Special Judge (under the Chhattisgarh Protection of Depositors Interest Act, 2015), Raigarh, District Raigarh, Chhattisgarh in Special Case/ Depositors Interest Act No. 01 of 2016, whereby and whereunder the Learned Special Judge has convicted the appellant for the offence under Sections 420 and 409/ 120B of the Indian Penal Code and Sections 6/ 10 of the Chhattisgarh Protection of Depositors Interest Act, 2015 and sentenced him to undergo rigorous imprisonment for 7 years, 7 years and 7 years and to pay fine of Rs.2,000/-, Rs.2,000/- and Rs.1,00,000/- in default of payment of fine, to further undergo additional rigorous imprisonment for

1 month, 1 month and 2 years, respectively with a direction to run all the sentences concurrently.

(2) Conviction is impugned on the ground that without there being any iota of evidence, the trial Court has convicted and sentenced the appellant as aforementioned and thereby committed illegality.

(3) The prosecution case, in brief, is that complainant – Trilochan Chouhan (PW-1) had received compensation against the acquisition of his lands. The appellant who came to know about it, continuously approached the complainant and induced him that on depositing the amount with his company he will get doubled the amount in four years. He also gave assurance that in case there is any loss, he will refund the same on his own. Getting induced, the complainant made an investment of Rs.5,00,000/-. Similarly, Raju Nishad (PW-2) invested Rs.1,00,000/-, Nanki (PW-3) invested Rs.3,00,000/- and Bundkanwar (PW-5) invested Rs.4,00,000/- in the year 2011 in the company of the appellant. The amount was not refunded by the appellant as promised, therefore, written complaints were given by the complainants to the police station Chakradharnagar, Raigarh. On that basis, FIR Ex.P/22 was lodged. The case was investigated and the information regarding the companies were collected. All the relevant documents were seized and the statements of the witnesses were recorded. Charge-sheet was filed.

(4) During trial, the Court below framed the charge under Sections 420, 409/ 120B of the IPC and Section 6/10 of the Chhattisgarh Protection of Depositors Interest Act, 2015 read with Section 34 of the IPC. The prosecution examined 15 witnesses to prove the guilt of the appellant. No witness was examined in defence. Statement of the appellant was recorded under Section 313 of the Cr.P.C. wherein the appellant denied the circumstances appearing against him and pleaded innocence and false implication in the crime in question.

(5) After affording opportunity of hearing to both the parties, learned trial Judge convicted and sentenced the appellant as aforementioned.

(6) I have heard learned counsel for the parties, perused the judgment impugned and records of the Court below.

(7) Learned counsel appearing on behalf of the appellant submit that the appellant had not given any inducement to the complainant/ investors. He had simply acted as an agent of the company i.e. W.C. Strategy Group Company and Shiva Investment Company and described about the schemes of the Company which he was instructed to publicize and the complainants themselves got interested and have made the investments. The appellant is not responsible for closing down of the company and non-refund of the deposits. The document of Memorandum of Understanding, that has been executed between the company itself and the investors clearly shows that this appellant was

not a promiser for refund of the invested amount. Thus, it is the company which has cheated the investors, not this appellant. However, the documents that have been seized in this case have not been proved by the prosecution. Nowhere it is mentioned that the appellant was responsible for the refund of invested amount. It is also submitted that the complaint has not been filed in accordance with the rules framed under Chhattisgarh Protection of Depositors Interest Act, 2015 which postulates that on receipt of complaint from depositors or otherwise, the competent authority may initiate such enquiry he may deem necessary and no such enquiry has been made in this case. Therefore, the whole trial is vitiated. Hence, it is prayed that on these grounds, the appeal may be allowed and the appellant may be acquitted of the charges framed against him.

(8) Reliance has been placed on the judgments of the Supreme Court in the cases of **Shivanarayan vs. State of Maharashtra** reported in **AIR 1980 SC 439**, **Bhagwan vs. State of Maharashtra** reported in **(1980) 1 SCC 610, Dharamdas vs. State of Bombay** reported in **AIR 1960 SC 734** and **Ganeshbhai vs. State of Gujarat** reported in **AIR 1972 SC 1618** and on the judgment of this High Court in the case of **Hori Lal and Another vs. State of M.P.** reported in **2011(4) CGLJ 51**.

(9) Per contra, learned counsel for the Respondent/ State opposed the prayer and submissions. It is submitted that there is no denial that it was because of the constant efforts of the appellant the complainants had invested their money in the company which has turned out to be a

fraudulent company. These constant efforts can be regarded as allurement or inducement given by the appellant, therefore, the offence under Section 420 of the IPC is clearly made out. It is submitted that the purpose of Rule 5 of the Chhattisgarh Protection of Depositors Interest Rules, 2015 is to make an enquiry against the company and not against an individual who is charged with offence of cheating etc. therefore, this argument is without any substance. It is further submitted that the prosecution has proved its case beyond reasonable doubt. Hence, no ground is made out for interference in the impugned judgment and the appeal may be dismissed.

(10) In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the prosecution.

(11) Trilochan (PW-1) has stated that the appellant had approached him and said that by depositing the money in government bank he will not get much interest, instead he should invest in W.C. Strategy Group Company, where he can get money doubled in a period of 4 years. The appellant also told him that he is the Proprietor of W.C. Strategy Group Company and Shiva Investment Company. After making investment of Rs.5,00,000/-, the appellant had given a cheque and a bond paper. After completion of 5 years, he presented the cheque in the bank having his account then he was informed by the Bank that the cheque was dishonoured. This witness again made contact with the appellant who provided him with another cheque freshly drawn, which was again deposited in the bank and the same was also dishonoured. Then the

complainant approached the appellant again and he was informed that the company was closed. Thereafter, he gave a written complaint Ex.P/1 to the police. In cross-examination, he has stated that he did not make deposit of money in any office and on the contrary, he gave the money to the appellant and the appellant had given the acknowledgement of the same alongwith a bond paper. He admitted that he did not make an enquiry regarding the company. He also admitted that he has not filed any complaint against the dishonour of cheque.

(12) Raju Nishad (PW-2) has stated that the appellant had approached him and said that he will give him Rs.2,00,000/- against the deposit of Rs.1,00,000/- after 4 years. He also stated that the appellant had informed him that he is the Proprietor of the company and if there is any loss, then he himself make the payment therefore, he made the investment. After making the deposit, the appellant had given a cheque. When the cheque was presented in the bank for payment, he was informed that the cheque was dishonoured, then he contacted with the appellant and it was informed by the appellant that the company was closed and the appellant refused to make the payment. In cross-examination, he has stated that he made the investment for the reason that the appellant said that he is the Proprietor of the company and after that he did not make any enquiry.

(13) Nanki (PW-3) has stated that the appellant had approached and asked him to deposit the money in his company. Then, this witnesss after withdrawing a sum of Rs.3,00,000/- from his account, gave the

same to the appellant regarding which a cheque was given to him by the appellant. Later on, when he made a contact with the appellant for refund he was informed that his company was closed. Hence, he filed a written complaint vide Ex.P/5. In cross-examination, he said that the appellant had not given any acknowledgement of Rs.3,00,000/- paid to him, however, he had given a cheque. He has denied the adverse suggestions given. Bundkanwar (PW-5) has stated that her husband had paid Rs.4,00,000/- to the appellant. When the appellant was asked for refund, the appellant informed that the company is closed and no papers were given in this respect. With the permission of the Court, the prosecution asked leading questions in which she replied, the appellant had given inducement that the amount will be doubled. On the inducement given by the appellant, her husband after withdrawing Rs.4,00,000/- from her bank account, deposited the same with the appellant and stated that the appellant had cheated them. In cross-examination, she has admitted that the appellant was not paid any amount by her husband, in her presence.

(14) Shoukilal Sarthi (PW-6), Shobharam (PW-7), Rajesh Patel (PW-8) and Baharulal (PW-9) are seizure witnesses. There is no need to consider on their statements. Pankaj Agrawal (PW-10) is the Branch Manager of the State Bank of India, who has informed about transactions and statements vide Ex. P/13 and 14 that cheques were issued by W.C. Strategy Group which were dishonoured. In cross-examination, he has stated that there were no accounts in the name of Shiva Investments. Jitendra Prasad (PW-11), Assistant Manager, Oriental Bank of

Commerce has the bank accounts and cheques of the investors. Sub-Inspector, Uttam Kumar Tiwari has carried out the part of the investigation. Sub-Inspector, C.M. Malakar (PW-14) and D.N. Sahu, ASI, (PW-15) have also carried out the investigation of the case.

(15) After scrutiny of the evidence present on record, it appears to be unrebutted statement of the investor witnesses, that they were approached by the appellant and informed that he is the Proprietor of W.C. Strategy Group Limited and Shiva Investment Company. Getting influenced by the statement made by the appellant, the investors witnesses have made respective investments regarding which the cheques issued were not honoured and no refund was made by the appellant. It was the burden of the appellant to bring evidence that the company had an existence and he was appointed and working as an agent by the said company. Without there being any such evidence, it is difficult to hold in that way and there is nothing to make out that the appellant had simply represented the company. On the other hand, the evidence is suggestive of the fact that the appellant himself claimed to be the proprietor of the company and had given allurement to the innocent investors to make investments.

(16) The enquiry under Rule 5 of the Chhattisgarh Protection of Depositors Interest Rules, 2015 could not be applicable in this case, because that is against a company and not against an individual person. Therefore, it appears to be a clear case of cheating, which is clearly made out from the evidence discussed herein-above. However, the

offence under Section 6 read with Section 10 of the Chhattisgarh Protection of Depositors Interest Act,2015 is not made out, as it has not been proved that the W.C. Strategy Group Company existed and the appellant was it's agent. This offence and penal provision is for the financial institutions and not against an individual. Offence of cheating and misappropriation has been formed proved against the appellant in individual capacity. Therefore, after due consideration, it is found that the appellant is entitled to be acquitted of charge under Section 6 read with Section 10 of Chhattisgarh Protection of Depositors Interest Act,2015.

(17) Similarly, the offence under Section 409 read with Section 120B of the IPC is also not made out for the reason that the appellant has been found convicted for committing the offence of cheating in individual capacity. He is not a trusty, public servant, banker, merchant etc. and it is also not proved that he was an agent of W.C. Strategy Group Company. Therefore, the only offence that is made out against the appellant is under Section 420 of the IPC.

(18) After due consideration, the appeal is allowed in part and the appellant is acquitted of the charges under Section 409/120B of the IPC and Section 6 read with Section 10 of the Chhattisgarh Protection of Depositors Interest Act, 2015, however, his conviction under Section 420 of the IPC is upheld. After considering the submissions made in this respect that the sentence imposed upon the appellant is too harsh, I feel inclined to reduce the sentence, therefore, the sentence imposed upon the appellant for the offence under Section 120B of the IPC is modified

and reduced to sentence of three years R.I. in jail alongwith fine of Rs.2000/-, in default of payment of fine, to further undergo additional R.I. for one month.

Sd/-

(Rajendra Chandra Singh Samant)
JUDGE

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