NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 74 of 2020

1. Ranash Kumar @ Ranish Kumar Sonwani @ B.U. S/o Ram Lal Sonwani, Aged About 28 Years, R/o. L.I.G. 229, M.P. Nagar, Korba, Tahsil and District Korba, Chhattisgarh., District : Korba, Chhattisgarh
2. Manoj Kumar Bhardwaj S/o Ganga Ram Bhardwaj, Aged About 34 Years, R/o. House No.15, Block Korba, Tahsil and District Korba, Chhattisgarh., District : Korba, Chhattisgarh

---- Applicants

Versus

- State of Chhattisgarh Through- The District Magistrate, Durg, District Durg, Chhattisgarh., District : Durg, Chhattisgarh

----Non-applicant

For Applicants – Shri Akhtar Hussain, Advocate.
For Non-applicant/State – Shri Sudeep Verma, Deputy Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

27-02-2020

1. This criminal revision petition has been brought against the judgment dated 09-01-2020 passed in Criminal Appeal No.162/2016 by the Court of First Additional Sessions Judge, Durg, Chhattisgarh by which conviction against the applicants under Section 420/34, 120B of the IPC of the trial Court was upheld.

2. The facts of the case are these, that, complainant Vishnu Prasad Sahu had published advertisement in newspaper for the marriage of his daughter. Accused Manoj Kumar Bhardwaj presented himself as Visheshwar Sahu before the complainant and informed that he has a son by name Nitin Aryan who is employed as Squadron Leader in Army and he is interested in marrying the daughter of the complainant with his son. Subsequent to which, accused Manoj Kumar Bhardwaj obtained phone numbers of the complainant and his daughter and on various pretext gave them inducement to deliver money to them. Thereafter, co-accused Satish Kumar @ Nitin Aryan also appeared in the scene and he gave his consent to marry the daughter of the complainant, on the basis of the inducement given by accused Satish Kumar the complainant

deposited in total 37,97,700/- in the account numbers provided to him. The deposits were made in cash as well as through cheques. One of the accounts stood in the name of applicant Ranash Kumar and another account stood in the name of applicant Manoj Kumar Bhardwaj. Subsequent to that, the complainant came to know that co-accused Satish Kumar @ Nitin Aryan is already married then he lodged the FIR. The police investigated the case and on completion of the investigation filed charge sheet. The trial Court charged the applicants under Section 420/34, 120B of the IPC.

3. On completion of the trial both the applicants were convicted for offence under Section 420/34 and 120B of the IPC and applicant Ranash Kumar @ Ranish Kumar was sentenced for offence under Section 420/34 of the IPC R.I. for three years along with fine of Rs.500/- and for offence under Section 120B of the IPC R.I. for three years along with fine of Rs.200/- with default stipulations in case of non-payment of each fine amount, and applicant Manoj Kumar Bhardwaj was sentenced for offence under Section 420/34 of the IPC R.I. for three years along with fine of Rs.400/- and for offence under Section 120B of the IPC R.I. for three years along with fine of Rs.200/- with default stipulations in case of non-payment of each fine amount. The appeal preferred by them has been dismissed.

4. It is submitted that there is no evidence by any of the witnesses against these applicants, that they were the persons who gave inducement to make deposit in their account. The material witnesses have also admitted in their cross-examination that there was no compulsion on the complainant to make deposits. It is not denied that the accounts in which the money was deposited by the complainant stood in the name of these applicants; even if it is so, the applicants cannot be made responsible for cheating that has been committed by other accused persons.

Reliance has been placed on the judgment of Hon’ble the Supreme

Court in the matter of **Chandran Ratnaswami Vs. K.C. Palanisamy and others**, (2013) 6 SCC 740, in which it is held that What is unfair and wrong will be for the court to determine on the individual facts of each case. There is a growing tendency in business circles to convert purely civil disputes into criminal cases. On the basis of which, it is argued that in fact it had been a civil transaction between the complainant and the accused persons, the amount was simply borrowed which could not be returned, therefore, the false FIR has been lodged.

It is also submitted that Hon'ble the Supreme Court in the matter of **State of Kerala Vs. A. Pareed Pillai**, 1972 CRI LJ 1243 (V 78 C 324) (Supreme Court) held that in case where only civil liability arises a person cannot be held guilty for the offence of cheating, because dishonest intention has to be inferred from the facts and circumstances of each case. In this particular case, there is no evidence on record that any of these applicants gave inducement to the complainant to make deposit in their account. Therefore, even if the Court is not convinced by these arguments, then it is prayed that at most the offence that would be made out is offence under Section 120B(2) of the IPC read with Section 420 of the IPC.

5. Learned counsel for the State/respondent opposes the submission and submits that there is evidence of prosecution beyond reasonable doubt against the applicants and these applicants had been party to the conspiracy, therefore, they cannot now take this stance that they had no intention to cheat the complainant. All the acts that have taken place by way of transaction which were so connected with each other, that the theory of these applicants that they had been separate from the intentions of other accused persons is not at all made out. Therefore, it is prayed that there is no need of any interference by this reivision petition.

6. Heard learned counsel for the parties and perused the record of the

Court below.

7. The main witness in this case is Vishnu Prasad Sahu (PW-2), he has stated in his examination-in-chief, that after he published the advertisement for marriage of his daughter, he received a phone call on 27-02-2011. The caller identified himself as Vishveshwar Sahu and told that he himself is Commander in Army and his son is also a Squadron Leader in Army who is posted in Kargil and his name is Nitin Aryan. The caller took phone number of the daughter of the complainant. Subsequent to that, the said Nitin Aryan called the daughter of the complainant and he promised that he will marry her. These phone calls continued. Later on, the said Nitin Aryan called the complainant and told him that his mother is severely ill, whose both kidneys are damaged for which he needs Rs.18,00,000/-, then he gave an account number of applicant Ranish Kumar Sonwani, in which, the complainant made deposit of money on various dates, in total the complainant made deposit of Rs.25,53,000/- in the said account. Subsequent to that, the said Nitin Aryan called the complainant and asked him to make deposit in another account. He has also stated that then the said Nitin Aryan provided him another account number of Ramgopal Dahariya in which the complainant deposited Rs.1,87,000/- and again the same Nitin Aryan provided the complainant one account number of Manoj Kumar Bhardwaj in which the complainant deposited Rs.8,01,200/- and in this manner he has deposited in total Rs.37, 97,700/-. Nowhere in his statement he has stated that he never met with these applicants and neither any of these applicants asked him to make deposit in their accounts. In cross-examination there is no different statement.

8. Anita Sahu (PW-1) has stated about the phone calls made to her by said Nitin Aryan who has been prosecuted as co-accused Satish Kumar and then also about the demand made and the money deposited in the account numbers given. She has also never met with these applicants.

9. The other evidence are regarding investigation procedure, seizure of pass-books etc. and it is clearly established that the accounts were standing in the name of these applicants which were used by co-accused persons. There is no need to scrutinize and appreciate other evidence.

The material witnesses who are the complainant and his daughter have not testified anything directly against the applicants. Due to lack of evidence in this respect, the role of the applicants becomes limited to only this extent that they had account numbers standing in their names which they are admitting and the same were used for depositing the money received by inducement given by co-accused persons. To complete evidence in proof of offence under Section 420 of the IPC, the definition under Section 415 of the IPC provides firstly that a person must have induced dishonestly for delivering of valuable property. There is no evidence against the applicants on this part. Secondly, the person who gets induced delivers the property to some person other than who has induced him that completes the offence of cheating. Therefore, a person can be charged and convicted for offence of cheating only when he has given dishonest inducement and made a person victimized to deliver property. The person who received the property of such inducement may be a part of transaction, but he is not the person cheating. The individual case of these applicants that is made out is only with respect to other part regarding being receiver of the property which came to their account by inducement given by others. Hence, it may be a part of a conspiracy, but they are not the persons who have cheated the complainant.

10. The submission has been made by learned counsel for the applicants that act of the applicants will be covered under Section 120B(2) of the IPC. The offence that is punishable under Section 120B(1) of the IPC is defined as a criminal conspiracy to commit an offence punishable with death (imprisonment for life or rigorous imprisonment for a term more than two years or above) in

that case punishment of such conspiracy be same, as it is punishment for abetment. In this case the offence committed is under Section 420 of the IPC and punishment for offence under Section 420 of the IPC is more than two years that extends upto seven years, therefore, there is no reason to hold that the offence committed by these applicants is covered under Section 120B(2) of the IPC. However, it is found proved that the applicants have committed offence under Section 120B(1) of the IPC.

11. On the basis of the discussions made hereinabove and the finding recorded in this revision, the revision petition deserves to be allowed with modification. Consequently, this criminal revision is allowed in part. Conviction against the applicants under Section 420 read with Section 34 of the IPC is set aside. Conviction against the applicants under Section 120B read with Section 420 of the IPC is upheld. So far as the prayer made by learned counsel for the applicants to reduce the sentence, the same is considered and finding that these applicants have not played the main roles, the applicants are in jail since more than three months as it is informed by learned counsel for the applicants, therefore, the sentence part is interfered with and the jail sentence imposed upon the applicants for commission of offence under Section 120B read with Section 420 of the IPC by the Court below is set aside and now it is ordered that these applicants are sentenced with the period of detention already undergone by them in jail. The fine sentence imposed upon the applicants by the Court below for offence under Section 120B read with Section 420 of the IPC is maintained.

12. The revision petition is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Aadil