

16.08.2022
S/L No.9
KS

C.R.R. 3166 of 2005
Ganesh Bhakat
-Vs.-
The State of West Bengal & Anr.

Mr. Prabir Majumdar
Mr. Snehansu Majumdar
.....For the Petitioner
Mr. Abhra Mukherjee
Mr. Sauradeep Dutta
.....For the O.P. No.2

The present revisional application has been preferred challenging the judgment and order dated 30th September, 2005 passed by the Learned Additional Sessions Judge, Fast Track, First Court, Nabadwip, Nadia in Criminal Appeal No.6 of 2005/ 2 of 2005 holding the appellant guilty under Section 406 of the Indian Penal Code and sentencing him to suffer simple imprisonment for six months and a fine of Rs.2,000/- in default to suffer further simple imprisonment for one month. The said appeal was preferred against the judgment and order of conviction and sentence passed by the Learned Judicial Magistrate, Nabadwip, Nadia in connection with C.R. Case No.23/2003 wherein the Learned Magistrate was pleased to hold the present petitioner guilty of offence under Section 420 and 406 of the Indian Penal Code and sentenced him to suffer simple imprisonment for one year in respect of each of the offences.

The case as is reflected from the records originates from the facts that the accused person and the complainant and the witnesses were known to each other. Having known to each other, the complainant went to the house of the accused on 06.08.2001 at about 4 p.m. wherein the accused convinced all of them that they would be forming "Tant Samabay Samity" and by that Samity all of them will gain. The accused assured them to give money to form Samity. Thereafter the shares certificate would be issued to them which would be proportionate to the respective amount contributed by each of them. It was further repeated that Government would aid to the Samity and on such assurance the complainant and the witnesses deposited money to the accused persons in the following manner:-

"Complainant – Rs.1500/-

Purna Bhakat - Rs.3000/-

Kartick Bhakat – Rs.1100/-

Sumit Chowdhury – Rs.1000/-

Gour Bhakat – Rs.300/-

Arun Bhakat Rs.900/-."

It has been alleged that thereafter the complainant and the witnesses demanded refund of money however the accused refused to give the same.

Consequently, the complaint was filed before the Learned Magistrate and after examination of the complainant and its witnesses under Section 200 of the Code of Criminal Procedure as also directing enquiry to be conducted under Section 202 of the Code of Criminal

Procedure, the learned Magistrate on consideration of the evidence as well as the report was pleased to issue process under Section 420/406 of the Indian Penal Code. Pursuant to the summons being received the accused person appeared and evidence before charge was recorded. After completion of evidence of the witnesses adduced by the prosecution in support of its case charge was framed under Section 420 and Section 406 of the Indian Penal Code. The charges were read over to the accused person to which he pleaded not guilty and claimed to be tried. It would be reflected from the records of this case that the prosecution in support of its case examined nine witnesses which included P.W. 1 Ranjit Bhakat, P.W. 2 Purna Bhakat, P.W. 3 Gour Bhakat, P.W. 4 Arun Bhakat, P.W. 5 Kartick Bhakat, P.W. 6 Sumit Chowdhury, P.W. 7 Nakul Debnath, P.W. 8 Sadhan Bhakat and P.W. 9 Mahadeb Bhakat.

The records of the case reflects that each and every witness corroborated the oral version which was submitted by the complainant. However, no document has been submitted before the Court in any form of admissible evidence for the Court to come to a conclusion that there was entrustment made by the complainant and the witnesses to the accused. Surprisingly, the Learned Trial Court while referring to the same has observed that accepting no documents is produced before the Court, there is no scope for the Learned Trial Court to disbelieve the oral testimony of the witnesses who have consistently deposed before the Court. This Court while considering the present revisional

application scanned the Lower Court Records and found none of the documents have been marked as exhibit. No receipt has been placed before the Court, as such, the ground assigned by the Learned Trial Court sofaras the relying upon an oral assertion regarding the factum of entrustment required scrutiny and, as such, the manner in which the appeal Court dealt with the point was also considered by this Court. The Appellate Court affirmed such observation of the Learned Trial Court that in spite of any document not being placed in course of the trial but the consistent version of the witness were sufficient enough to come to a conclusion. The only issue which weighed with the Learned Trial Court was that Section 420 and Section 406 of the Indian Penal Code are mutually exclusive and, as such, both the offences cannot be committed in the same transaction and on such ground the Appellate Court acquitted the accused i.e. present petitioner under Section 420 of the Indian Penal Code.

I have considered the reasons assigned by the Learned Trial Court as well as the Learned Appellate Court. The basic foundation in a case under the Indian Penal Code is proof beyond any reasonable doubt. Mere oral assertion that a person has handed over money to any person is not enough in a case under Section 406 of the Indian Penal Code for a Court to come to a conclusion more particularly in a case where a Court is convicting and sentencing an accused person. The nature of evidence so produced before the Learned Trial Court and the legal appreciation of the evidence in respect of convicting the petitioner both by the

Learned Trial Court and the appeal Court raises serious questions of fact and law so far as 'proof' is concerned. The manner in which the Trial Court and appeal Court has arrived at its conclusion is converting factual circumstances of may presume to 'conclusive proof', which the law under no circumstances permit under the provisions of the Indian Evidence Act.

Having regard to the same, I am of the opinion that the order of the appellate Court calls for interference as such the judgment and order dated 30th September, 2005 passed by the Learned Appellate Court in Criminal Appeal No.6 of 2005/ 2 of 2005 is hereby set aside.

The present petitioner is acquitted of all the charges.

Accordingly, C.R.R. 3166 of 2005 is allowed.

All pending connected applications, if any, are consequently disposed of.

Department is directed to send back the Lower Court Record to the respective Courts.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)