

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRA 69 of 2017

TARAPRASANNA BANERJEE & ORS.
VS.
CENTRAL BUREAU OF INVESTIGATION

For the Appellants : Mr. Ayan Bhattacharyya, Adv.
Mr. Kunal Ganguly, Adv.
Mr. Tirupati Mukherjee, Adv.
Mr. A. Aich, Adv.

For the C.B.I. : Mr. Kallol Mondal, Adv.

Hearing concluded on : 8th December, 2023

Judgement on : 18th December, 2023

Siddhartha Roy Chowdhury, J.:

1. Challenge in this criminal appeal is to the judgement and order of conviction passed by learned Judge, Special (CBI Court), Asansol, Burdwan in CBI Special Case No. 4 of 2011 thereby convicting the appellants under Section 420 and 120B of the Indian Penal Code.
2. Briefly stated, The Inspector of Police, SPE, CBI, Dhanbad set the criminal administration of justice into motion by recording an information he received through a reliable source that Sri S.N. Tiwari, Sri T.P. Banerjee and Sri A.M. Mandal while holding different posts in Chanch Victoria area of BCCL, Barakar during the year 1991-92, entered into a criminal conspiracy with M/s Omega Enterprise and in furtherance thereof falsely recommended for payment for complete

work causing wrongful loss to the BCCL to the tune of Rs. 3,47,456.06/- corresponding to wrongful gain to themselves in the matter of execution of contract work relating to overhead line for power supply to DOCP sub-station from Victoria sub-station. Sri T.P. Banerjee and Sri S.N. Tiwari fraudulently and dishonestly allowed the payment to M/s Omega Enterprise though the said company failed to execute the entire work of fixing overhead line for a stretch of 4 kilometres approximately. The said company only completed overhead line for a length of 0.876 kilometres. Sri T.P. Banerjee and A.M. Mandal were supposed to do proper inspection of the work done and furnish specific report but they falsely certified the completion of work and satisfactory performance of M/s Omega Enterprise.

3. The information since disclosed offence cognizable in nature the FIR No. R.C. 4(A)/69(D) dated 22nd February, 1996 was registered which culminated into submission of charge sheet.
4. The accused persons being charged under Section 120B/420/468/471/477A of the Indian Penal Code, 1860 (I.P.C.) read with Section 13(1)(d)/13(2) of the Prevention of Corruption Act, 1988, pleaded to be innocent and claimed to be tried.
5. Learned Trial Court after considering the evidence adduced by the prosecution witnesses was pleased to record an order of conviction under Section 120B and 420 of the I.P.C. and sentenced the convicts to suffer imprisonment for one month and to pay fine of Rs. 5000/- with a default clause each for committing offence under Section 120B of the I.P.C. and imprisonment for one month and to pay fine of Rs.

5000/- with a default clause each for committing offence under Section 420 of the I.P.C. Learned Trial Court recorded an order of acquittal from the charges under Section 468/471/477A of the I.P.C. and charges under Section 13(1)(d)/13(2) of the Prevention of Corruption Act.

6. Mr. Ayan Bhattacharyya, learned Counsel representing the appellants submits that the impugned judgement was pronounced in utter misreading of evidence. It is contended by Mr. Bhattacharyya that prosecution examined nine witnesses but none of them claims to have consulted the measurement book. The measurement book was even not produced before the Court. It is submitted that it would appear that the job was allotted in the year 1992 and the enquiry was commenced in 1994. The security money was refunded to the company, M/s Omega Enterprise as stated by P.W. 3 only after completion of guarantee period following the procedure prescribed under the rule and while doing so the bills were verified with the measurement book by the Overseer/ Engineer. But the Investigating Officer as P.W. 9 stated that he did not verify the measurement book and he did not investigate as to whether any complaint was made during the guarantee period as to the non completion of work.

7. Mr. Bhattacharyya further submits that the summum bonum of the prosecution case is that the appellants had cheated BCCL by inducing it to make payment upon some false bills, submitted by M/s Omega Enterprise dated 30th March, 1992 on the basis of the false job execution certificate in respect of five bills. But learned Special

judge did not find any ingredient of offence within the meaning of Section 468/471/477A of the Indian Penal Code. Therefore, the very genesis of the prosecution case gets eroded and charge under Section 420 of the I.P.C. cannot be said to have been established. That apart, Mr. Bhattacharyya submits that there is no evidence to show that there was intention to cheat since the inception of the transaction. If such intention has developed later the same cannot amount to cheating. To buttress his point Mr. Bhattacharyya places his reliance on judgement of Hon'ble Supreme Court in **UMA SHANKAR GOPALIKA VS. STATE OF BIHAR & ANR.** reported in **(2005) 10 SCC 336**, wherein it is held :

"6. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is condition precedent for an offence Under [Section 420](#) of the Indian Penal Code."

8. In **VESA HOLDINGS PRIVATE LIMITED & ANR. VS. STATE OF KERALA & ORS.** reported in **(2015) 8 SCC 293** Hon'ble Apex Court held :

"8. From the decisions cited by the appellant, the settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception."

If the intention to cheat has developed later on, the same cannot amount to cheating. In other words for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under [Section 420](#) of the Indian Penal Code can be said to have been made out.

9. According to Mr. Battacharyya the judgement passed by learned Trial Court is based on conjecture and surmise and does not stand to reason.
10. Refuting such contention Mr. Kallol Mondal submits that documentary evidence produced by the prosecution would unerringly indicate that the company did not complete the work of fixing overhead line stretching a distance of 4 kilometres. Only 0.876 kilometres were covered but the company submitted false bill and the accused persons hatched a criminal conspiracy to defraud BCCL and issued certificates as to the completion of work which was far from being correct. The BCCL had to incur loss wrongfully because of such act on the part of the accused persons to facilitate wrongful gain to the said company M/s Omega Enterprise. The accused persons ought not to have issued the certificates when the work so entrusted was not completed by the company.
11. Upon perusal of the impugned judgement I find that M/s Omega Enterprise submitted bills after completion of work which was

supported by the certificate showing the completion of work, issued by the accused persons and bills were paid by BCCL. Subsequently, it was found that the work was not completed by the company.

12. Learned Trial Court further held : “It has already been mentioned hereinabove that the primary certificate was given by the accused Sri A.M. Mandal (since deceased) and the other accused persons just endorsed the said certificate by taking follow up action for the payment of bill.” Such observation of learned Trial Court would lead any man of ordinary prudence to hold that the accused persons did not discharge their duty properly. Instead of relying upon the certificate issued by Sri A.M. Mandal (since deceased) they ought to have examined the issue. There is nothing to suggest that there was a criminal mind behind such dereliction of duty.

13. It is rightly submitted by Mr. Bhattacharyya that when learned Trial Court did not find any ingredient of offence within the meaning of Section 468 of the Indian Penal Code, conviction cannot be maintained under Section 420 of the Indian Penal Code. Foundation of the prosecution case is that the accused persons issued false certificate to induce BCCL for making payment to the company. When charge under Section 468/471 of the Indian Penal Code was not proved, the accused persons could not have been convicted for committing offence under Section 420 of the Indian Penal Code for the alleged certificate as to the completion of work issued by Mr. A.M. Mandal (since deceased) and endorsed by the accused persons.

14. From the testimony of P.W. 1 it appears that the normal procedure is to consult the measurement book, before passing the bills for payment, which he did not peruse. He did not verify any documents relating to this issue, during enquiry. P.W. 5 said that he had no personal knowledge regarding measurement. P.W. 7 also stated that there is a measurement book regarding measurement of work completed. He had no knowledge as to who was managing the measurement book, who was authorised to take measurement. When the best document that would have thrown light to this controversy was not produced before the Court, learned Trial Court ought to have drawn adverse inference and ought to have recorded an order of acquittal instead of recording the order of conviction.
15. Be that as it may as I have already pointed out without the measurement book being produced before the Court learned Trial Court had no reason to hold that M/s Omega Enterprise was given the bill without completing the work entrusted with the company. There is no evidence to show that the accused persons had mens rea to commit such crime when they endorsed the certificate as to the completion work primarily issued by Mr. A.M. Mandal. Absence of measurement book before the Court is sufficient to shroud the prosecution case with shadow of suspicion and for that benefit of doubt ought to have given to the accused persons.
16. In my humble opinion, the judgement and order of conviction cannot be sustained and should be set aside, which I accordingly do.

17. Consequently, the appeal is allowed. The order of conviction passed by learned Trial Court is set aside. The accused persons be set at liberty and be released from bail bonds.
18. Let a copy of the judgement and the lower court record be sent down to the learned Trial Court for information.
19. Seized alamats be destroyed after the period of appeal is over.
20. Urgent certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)