

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.A No. 215 of 2012

Srinivas Mishra

Vs.

State of West Bengal & Ors.

Judgment on: 15/05/2023

Rai Chattopadhyay, J.

(1) In this appeal the appellant has challenged the judgment and order of the Additional Sessions Judge, 6th Court at Paschim Midnapore dated 30.06.2011. The judgment was delivered in Criminal Appeal No. 39/2010.

(2) By dint of the same the First Appellate Court has reversed the judgment of the Additional Chief Judicial Magistrate, Ghatal, Paschim Midnapore, dated 21.08.2010 in G.R. Case No. 8/1999, i.e, under Sections 406/420/120B IPC. The Magistrate recorded the judgment of conviction and sentence whereas the same was reversed by the First Appellate Court, by dint of the impugned judgment. Hence, being aggrieved the appellant/de facto complainant has assailed the said impugned judgment in this appeal.

(3) This appeal has been filed in the year 2012 and pending since then.

(4) This appeal has been listed before this Court on 08.05.2023. Since the date of listing of this appeal before this Court, the same has been called on for twice, on each date of Court's functioning. However, no one has appeared either for the appellant or the State. Thus, in this appeal, it is found that the appellant has had a reasonable and sufficient opportunity of being heard, which he did not avail in spite of the appeal being pending and called on for a considerable period of time.

(5) It is also noted that during the time the present appeal has been pending before this Court and called on, no pleader for the appellant has also represented him, in spite of there being sufficient scope for him to appear to represent the appellant. Accordingly it is found that pleader on behalf of the appellant, if there is any, has also not availed the opportunity to represent the appellant in spite of there being sufficient scope and reasonable opportunity for that.

(6) Under such circumstance this appeal may be taken up for final determination, which shall not be in contravention and hostility with the provision under Section 384 (1) proviso (a) of the Cr.P.C.

(7) On perusal of the record it is also found not necessary to call for the record from the trial Court in G.R. Case No. 8 of 1999.

(8) The instant case has been initiated on the basis of a Court complaint lodged by one Sri Nibash Mishra on 21.10.98 which was later on forwarded to O.C, Chandrokona P.S. under Section 156 (3). It is the case of the prosecution that the D.C happens to be retired veterinary surgeon. He settled at village Kasigaunge under Chandrokona P.S, i.e, his in laws house after his retirement in a rented house. The accused persons are full brothers to each other. Accused Swarup Kr. Ghosh is an employee at Khirpai B.D.O office under agricultural department. D.C. used to reside in the rented house near and around the Khirpai B.D.O office and as such he developed an intimacy with accused Swarup Kr. Ghosh. The said accused used to visit the house of the D.C. Later on accused Swarup Kr. Ghosh introduced accused Arup Kr. Ghosh his brother as a building contractor. The D.C expressed his desire to purchase som land and construct a dwelling house before accused swarup Kr. Ghosh. The said accused assured the D.C to purchase landed property and construct a dwelling house for the D.C. Later on accused persons visited the dwelling house of the D.C in presence of witnesses. They entered into an agreement with the D.C for construction of a dwelling house at Chandrokona road. The D.C on the self same date, i.e, 14.03.1997 paid Rs. 50,000/- (fifty thousand) to the accused and on the same day he handed over

two bank draft of Rs. 50,000/- each totaling to Rs. 1,50,000/- (one lac fifty thousand) only to accused Arup Kr. Ghosh. In turn accused Arup Kr. Ghosh executed a receipt of the said amount on a 10 rupee non judicial stamp paper on 21.04.97. The accused persons earned such faith before the D.C that the D.C used to put his signature only on the bank draft whereas the accused persons used to fill up the said draft. Later on the D.C, as per letter issued by the accused Arup Kr. Ghosh and on negotiations he again handed over a bank draft of Rs. 50,000/- to accused Arup Kr. Ghosh on 02.05.97 drawn on UCO bank, Kirpai branch. In such way the D.C paid Rs. 200,000/- (two lac) in all to accused no.1 rather entrusted the said money to accused no.1 for the purchase of a landed property and construction of a dwelling house for the D.C when the D.C did not see any steps taken by the accused persons towards the construction of his dwelling house etc. within a reasonable time, he demanded back his money from the accused persons. The accused persons assured the D.C to return his money. Accused Arup Kr. Ghosh also issued a cheque of Rs. 50,000/- in favour of the D.C on 15.11.97. The said cheque was deposited by the D.C at State Bank of India, Haldardighi branch and the same was dishonored. Thereafter, the D.C again demanded back his money advanced to the accused persons but they did not pay any need to it. Ultimately the D.C

served a legal notice upon the accused persons on 02.06.98 which was personally served upon the accused persons. The accused persons with a view to defraud and cheat the D.C in order to misappropriate the advance money, both the accused persons entered into written agreement with the D.C on 14.07.98. Accused Swarup Kr. Ghosh by which under took to supply 100 bags of cement to the D.C by the end of August, 1998 and accused Arup Kr. Ghosh under took to supply the D.C 10,000/- bricks by the end of December, 1998 in lieu of the money advanced to them. However, the accused persons did not comply the terms of the said agreement. On further demand of the D.C the accused persons again under took to pay off the entire amount of Rs. 200,000/- (two lac) within one month but the same was never complied. On 11.10.98 the D.C visited the house of the accused persons and demanded back his money where upon the accused persons refused to pay off the same.

Defense is a plea of innocence on the ground that a false case has been filed against them owing to previous enmity and grudge over a common passage.

(9) On the perusal of the certified copy of the impugned judgment it appears that the trial Court, in the same, has elaborately and categorically discussed on the evidence available before it, both ocular as well as others. The trial Court has analyzed the same

and after through scrutiny, has come to a finding and decision which is a just, reasonable and plausible view, on the basis of the available evidence.

(10) This Court finds no cogent or sufficient reasons to interfere with such plausible decision, arrived at by the trial Court on the basis of the evidence on record. Hence, it is found that there is no sufficient ground for this Court to interfere with the finding of the trial Court and its decision in the impugned judgment and order. Hence, the appeal merits no success.

(11) Therefore, upon examining the petition of appeal and the copy of the impugned judgment and upon finding that there is no sufficient ground for interfering, CRA 215 of 2012 is dismissed in terms of the provision under Sections 406/420/120B IPC.

(12) Urgent certified copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Rai Chattopadhyay, J.)