

CRR 1605 of 2004

In the matter of : Siddeswar Biswas

Mr. Soumya Nag

.... For the petitioner

Mr. Bidyut Kumar Roy

Ms. Sima Biswas

.... For the State

Heard Mr. Soumya Nag, learned counsel appearing for the petitioner and Mr. B. K. Roy, learned counsel appearing for the State.

This criminal revision challenges the judgment and order passed by the learned Additional Sessions Judge, third Fast Track Court, Bichar Bhavan, Calcutta in Criminal Appeal No. 87 of 2001 and thereby affirming the order of conviction and sentence passed by the learned Third Court of Metropolitan Magistrate in G.R. case No. 487 of 1999. The petitioner was found guilty to the charge under Section 408 of the I.P.C. and has been sentenced to suffer imprisonment for three years and to pay a fine of Rs.5,000/-. The petitioner stood the trial claiming innocence to the charge brought against him. To bring home the charges prosecution examined five witnesses. The learned Trial Court considering the evidence adduced by prosecution witnesses was pleased to hold that charge under Section 408 was proved by the prosecution witnesses.

The petitioner made an unsuccessful case to get the order of conviction reversed by preferring Criminal Appeal No. 87 of 2001.

Briefly stated Mr. Ketan Santhalia, Director of Kautilya Computers Pvt. Ltd. informed the Bowbazar Police Station that he gave a sum of Rs.2,00,000/- to the petitioner to deposit the same with the Bank of India, Calcutta. The petitioner used to work under him as a peon. However, instead of depositing the said amount, Siddeswar Biswas misappropriated the money. The information disclosed offence cognizable in nature and Police took up investigation which culminated into charge sheet. As I have already pointed out prosecution examined five witnesses.

P.W. 1 the defacto complainant stated that he gave a sum of Rs.2,00,000/- to his peon, Siddeswar Biswas and asked him to deposit the same with the Bank of India but he could not substantiate the claim by producing any document.

According to learned Trial Court P.W. 3 and P.W. 4 had direct knowledge about such transaction and they supported the testimony of P.W. 1 but from the judgment passed by the learned Trial Court I find that P.W. 3 stated on oath that P.W. 1 asked the accused person to deposit a sum of Rs.2,00,000/- but nowhere it was stated that he saw the defacto complainant hand over the money to the accused person for the purpose of depositing the same.

P.W. 4, from what I find from the judgment of learned Trial Court did not have any direct knowledge and he gathered his knowledge being told by P.W. 1. Therefore the testimony of P.W. 4 cannot be relied upon being hearsay. P.W. 2 in his oral testimony disclosed that P.W. 1 asked the accused person to deposit the sum of Rs.2,00,000/- but he did not return and the money was not deposited in the bank. Learned Trial Court observed that P.W. 2 who was at the relevant point of time serving the defacto complainant, since did not say that he heard the incident from his master, P.W. 1, it is to be presumed that he saw the incident and in his presence P.W. 1 gave the accused person a sum of Rs.2,00,000/-. In the criminal administration of justice this type of presumption cannot be made against the accused person. The charge is to be proved beyond reasonable doubt. Learned Trial Court recorded order of conviction without any substantial evidence which learned Appellate Court could not appreciate. In my humble opinion the impugned judgment was passed absolutely on misreading of evidence and without any support from documentary evidence. I do not want to use expressions such as that the judgment impugned is manifestation of surmise and conjecture. However, it suffers from serious infraction, and consequently, I quash the judgment impugned. The petitioner stands discharged from bail bond.

The criminal revision is thus allowed.

Let a copy of the order be sent to learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)