IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 491 of 2019

Arunava Mitra

Vs.

Central Bureau of Investigation

For the Petitioner	:	Mr. Souvik Mitter, Mr. Arnab Banerjee.
For the CBI	:	Mr. Anirban Mitra.
Heard on	:	30.06.2023
Judgment on	:	17.07.2023

Shampa Dutt (Paul), J.:

1. The present appeal has been preferred against a judgment of conviction dated 30th of January, 2018 and order of sentence dated 31st of January, 2018, passed by the Learned Special Court, C.B.I. at Alipore, South 24 Parganas in Special Case No. 09 of 1999, corresponding to R.C. Case No. 5(E) of 1997, thereby convicting the present appellant for committing offences punishable under Section 420 of the Indian Penal Code 1860 and sentencing him to suffer imprisonment for two years and to pay a fine of Rs.25,000/- in default to suffer simple imprisonment for

six months for the offence under Section 420 of the Indian Penal Code, 1860.

2. The appellant's case is that the appellant had been placed on trial before the court of the Learned Special Court, C.B.I. at Alipore, South 24 Parganas, in Special Case No. 09 of 1999, corresponding to R.C. Case No. 5(E) of 1997; to answer the charges pertaining to commission of offences punishable under Section 477A/120B of the Indian Penal Code 1860 and Section 13(2) of the Prevention of Corruption Act 1988. The said case arose out of R.C. Case No. 5(E) of 1997, which in turn had been registered for investigation on the basis of a written complaint made by one Mr. B.K.Dhir (examined as prosecution witness No. 17) with the C.B.I.

3. The prosecution case, as brought by way of the said written complaint, is to the effect that on 18.02.1997 the Regional Manager of Allahabad Bank, informed the Joint Director, CBI about the perpetration of fraud by way of issuing fake banker's cheque by Allahabad Bank, Southern Avenue Branch. It is contended that Senior Manager, Assistant Manager, Special Assistant of that bank, in furtherance of criminal conspiracy caused fraudulent transactions by way of Banker's Cheque. **It was contended that from January 1995 to January 1996 Senior Manager fraudulently and dishonestly issued Banker's Cheque without consideration, with active connivance of other official of the branch, who countersigned the instruments.**

4. After completion of investigation the investigating agency submitted its Police report in final form as charge sheet against the present appellant and others.

5. Charge was framed against the appellant (and another) for his alleged involvement in commission of offences punishable under Sections 477A/120B of the Indian Penal Code 1860 and Section 13(2) of the Prevention of Corruption Act 1988.

6. The prosecution during the course of trial in order to prove its case, examined as many as 24 witnesses, while none was adduced on behalf of the defence. The defence case was that of 'false implication' and being 'not guilty'.

7. The Learned Judge vide his judgment dated 30th of January 2018 was pleased to find the present appellant guilty of committing offence punishable under Section 420 of the Indian Penal Code, 1860 and by his order of sentence dated 31st of January, 2018, sentenced the present appellant to suffer imprisonment for two years and to pay a fine of Rs.25,000/- in default to suffer simple imprisonment for six months for the offence under Section 420 of the Indian Penal Code, 1860.

8. That the Learned Judge has been pleased to acquit the present appellant from **all other charges framed** against him and **also has been pleased to pass an order of acquittal in favour of Ms. S.R. Ramamani, one of the principal accused.**

9. **Mr. Souvik Mitter, learned counsel for the appellant** has submitted that the Learned Judge by convicting the appellant **for the charge not framed against him caused serious miscarriage of justice.**

10. The order of conviction and sentence as recorded against the appellant is unsustainable in law inasmuch as it has not been proved beyond reasonable doubt that the incident had occurred on the date alleged, at the time alleged, and at the place alleged, under the circumstances as stated by the prosecution.

11. The judgment and order of conviction recorded against the appellant as also the sentence imposed on him are bad in law, and liable to be set aside on the grounds of patent violation of the mandatory provision of law and denial of a fair trial to the appellant.

12. The Learned Judge has failed to consider that all the witnesses categorically stated that **banker cheques can only be issued by the bank after verifying every factors. The Manager of the Bank namely S.R. Ramamani has been acquitted from all the charges, as prosecution has not been able to prove charges against the said accused beyond reasonable doubt. In that event a customer of the bank cannot be held responsible for issuance of banker cheques, without proper verification.**

13. The First Information Report which lays down the genesis of the instant case is devoid of essential material particulars which are necessary to determine the veracity of the same; and as such the same was not liable to be relied upon.

14. After the preliminary inquiry by bank officials, FIR was lodged by P.W. 17 and the petitioner was not named in that FIR, lodged by P.W. 17. **The accused persons whose names were mentioned in the FIR have been acquitted by the Learned Judge.**

15. The appellant was convicted by the Learned Judge for commission of offences punishable under Section 420 of the Indian Penal Code, 1860. But the Learned Judge has failed to consider that **no charge under such section was framed against the appellant. Charges were framed under Section 477A of the Indian Penal Code, 1860. Section 420 and Section 477A of the Indian Penal Code are from two different chapter of the Indian Penal Code. They were not inter-connected with each other.**

16. Charges under Section 477A of the Indian Penal Code 1860 cannot be modified/altered to section 420 of the Indian Penal Code 1860.

17. That each and every witnesses of the prosecution categorically stated that the alleged banker cheques were prepared by S.R. Ramamani and the same was also signed by another bank employee. **But still the Learned Judge in one hand passed an order of acquittal in favour of S.R. Ramamani and in another hand passed an order of conviction against the appellant.**

18. That if the Bank officials deserve an order of acquittal then in that event the charges against the appellant automatically became frustrated.

19. The Learned Judge has failed to appreciate that the prosecution has failed to prove the guilt of appellant beyond all reasonable doubts.

20. The prosecution has failed to establish the presence of the appellant at the time and place of the occurrence.

21. That the impugned judgment is otherwise bad in law and the same is liable to be set aside.

22. **Mr. Anirban Mitra, learned counsel for the Central Bureau of Investigation** has submitted on filing a short written note that the prosecution has proved the charge against the appellant beyond all reasonable doubt and as such the appeal should be dismissed.

23. **<u>Analysis of evidence:-</u>**

The prosecution has examined 24 witnesses. Out of these witnesses, only the evidence of P.W. 10 and P.W. 17 are relevant in respect of the appellant herein.

P.W. 10, Madan Gopal Bangore knows the appellant. He has deposed that the appellant had requested him to find investors to make fixed deposits in the name of his firm. This witness invested Rs.21 lakhs.

P.W. 17, has proved the written complaint filed by him regarding the alleged fraud committed in the Southern Avenue Branch of Allahabad Bank.

The appellant has not been named in the FIR.

24. Finally, charge was framed against the principal accused, S.R. Ramamani, the then Sr. Branch Manager, Allahabad Bank and the appellant Arunava Mitra.

25. Charge was framed under Section 477A read with Section 120B of the Indian Penal Code and under Section 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act against the appellant Arunava Mitra.

26. **On perusal of the same it appears that the alleged defalcation, if any, are the acts of the staff of the bank. Charge against the appellant is that the bank allegedly issued three Banker's cheques in**

favour of the appellant of an amount which exceeded the funds in the appellant's account with the bank.

27. The trial Judge held that the three Banker's Cheques were issued from the bank when accused S.R. Ramamani was the Sr. Manger. The trial Judge held:-

> *"…………Thus it is established beyond doubt that accused Arunava Mitra was given pecuniary advantage by the bankers but the question that calls for consideration is whether accused S.R. Ramamani can solely be blamed for such pecuniary advantage obtained by accused Arunava Mitra.*
>
> *It is correct that vouchers were stated to have been written by accused S.R. Ramamani and I do not find any reason to attribute criminal motive behind such act of Ms. S.R. Ramamani when I find any PW-10 Adhir Ch. Sardar, stating that in absence of any staff, the Manager even used to do the work assigned to the absentee staff.*
>
> *The debit voucher was prepared under the signature of Special Assistant and according to PW-18 Biman Rakshit, Exhibit – 33 was written by S.R. Ramamani. But he stated during cross examination that he never worked with S.R. Ramamani.*
>
> *The IO as PW-22 also stated that the document was prepared and signed by accused S.R. Ramamani. But evidence of I.O. regarding handwriting and signature of any person, is not worth credence in view of section 47 of the Evidence Act.*
>
> *In my humble opinion, it has been established beyond reasonable doubt that though there was insufficient fund, in his account, accused Arunava Mitra got the drafts issued in favour of his borrowers from the bank and thus the accused Arunava Mitra, gained wrongfully causing corresponding pecuniary loss to the bank, to the tune of Rs. 66,86,018/-. Therefore, he has made himself culpable for committing offence U/s. 420 of the IPC. However, there is no evidence to substantiate charges under Sections 468/471/120B of the IPC.*
>
> *Question that now calls for consideration is whether accused Ms. S.R. Ramamani committed criminal misconduct, in furtherance of criminal conspiracy?*

> ***Admittedly this case was sprouted from the fact that Banker's cheques were issued and according to prosecution those were issued fraudulently.***
>
> *Therefore, we need to peep into the established procedure of the bank in this regard as stated by PW-14 Sri Santanu Ghosh. It will not be out of place to mention here that prosecution did not produce the relevant rule or the circulars regarding issuance of Banker's cheque. In view of Section 91 of the Evidence Act, in this case, there is hardly any scope to adduce oral evidence on procedure, when there is rule in black and white……………"*

28. **Finally considering all the evidence on record, the trial Judge held:-**

> *"Though accused Arunava Mitra is found not guilty to the charges U/s. 468/471/120B of the IPC, yet charge U/s. 420 of the IPC has been proved beyond doubt against him. Accordingly, I record an order of conviction".*

No charge under Section 468/471/120B IPC was framed.

29. The appellant Arunava Mitra has been found guilty and convicted of the offence under Section 420 IPC. He has been acquitted of charge under Section 468/471 etc. but charge for the said offence has not been framed in this case.

30. **On careful scrutiny of the records, it is found that no charge under Section 420 IPC was framed against the appellant.**

31. Section 420 IPC is not the lesser charge to Section 477A nor does it include the offence under Section 477A IPC in respect of which charge has been framed.

32. **Section 222 of the Code of Criminal Procedure, lays down:-**

> ***"222. When offence proved included in offence charged.***

> *(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence though he was not charged with it.*
>
> *(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.*
>
> *(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.*
>
> *(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied."*

33. In ***Virendra Kumar vs State of U.P., Criminal Appeal No. 69 of 2007, on 16th January, 2007,*** the Court held that:-

> *"The residual question relates to the applicability of Section 113A of the Evidence Act and the question as to whether in the absence of the specific charge under Section 306 IPC, the appellant could be convicted though he was only charged in terms of Section 302 IPC.*
>
> *So far as the question as to the effect of no charge having been framed under Section 306 is concerned the*

effect of Section 222(2) and Section 464 of Cr. P.C. cannot be lost sight of. In Dalbir Singh's case (supra) it was inter alia noted as follows:

"Here the Court proceeded to examine the question that if the accused has been charged under Section 302 IPC and the said charge is not established by evidence, would it be possible to convict him under Section 306 IPC having regard to Section 222 Cr.P.C. Sub- section (1) of Section 222 lays down that when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it. Sub-section (2) of the same Section lays down that when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. Section 222 Cr.P.C. is in the nature of a general provision which empowers the Court to convict for a minor offence even though charge has been framed for a major offence. Illustrations (a) and (b) to the said Section also make the position clear. However, there is a separate chapter in the Code of Criminal Procedure, namely Chapter XXXV which deals with Irregular Proceedings and their effect. This chapter enumerates various kinds of irregularities which have the effect of either vitiating or not vitiating the proceedings. Section 464 of the Cr.P.C. deals with the effect of omission to frame, or absence of, or error in, charge. Sub- section (1) of this Section provides that no finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any

error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. This clearly shows that any error, omission or irregularity in the charge including any misjoinder of charges shall not result in invalidating the conviction or order of a competent Court ***unless the appellate or revisional Court comes to the conclusion that a failure of justice has in fact been occasioned thereby.*** *In Lakhjit Singh (supra) though Section 464 Cr.P.C. has not been specifically referred to but the Court altered the conviction from 302 to 306 IPC having regard to the principles underlying in the said Section. In Sangaraboina Sreenu (supra) the Court completely ignored to consider the provisions of Section 464 Cr.P.C. and keeping in view Section 222 Cr.P.C. alone, the conviction of the appellant therein under Section 306 IPC was set aside."*

34. The ingredients in respect of Section 477A IPC and Section 420 IPC are entirely different.

35. **Section 477A of IPC, lays down:-**

*"**477A. Falsification of accounts**-- Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any *[book, electronic record, paper, writing], valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in. any such *[book, electronic record, paper, writing], valuable security or account, shall be punished with imprisonment of either*

description for a term which may extend to seven years, or with fine, or with both.

Ingredients of offence.— *The essential ingredients of the offence under Section 477A are stated below:-*

(1) The accused was a clerk or officer or servant employed or acting in such capacity.

(2) He while acting willfully or with intent to defraud-

(a) Destroyed, altered, mutilated or falsified any book, electronic record, paper, writing, valuable security or account belonging to or in possession of his employer or which has been received by him on behalf of the employer.

(b) Made or abetted to making of any false entry in or omitted or altered or abetted the omission or alternation of any material particularly from or in any such book, paper, electronic record, writing valuable security or account."

36. **Section 420 of IPC, lays down:-**

*"**420. Cheating and dishonestly inducing delivery of property.—**Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

Ingredients of offence.— *The essential ingredients of the offence under Sec. 420 are as follows:-*

(1) There should be fraudulent or dishonest inducement of a person by deceiving him;

(2) (a) The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

> *(b) the person so induced to do anything which he would not do or omit if he were not so deceived, and*
>
> *(c) in cases covered by second part of clause (a), the act or omission should be one which caused or was likely to cause damage or harm to the person induced in body, mind or property.*
>
> *The two essential ingredients of the offence under this section are –*
> *(A) Deceit, that is to say dishonest or fraudulent misrepresentation, and*
> *(B) Inducing the person deceived to part with property."*

37. None of the ingredients required to prove the charge as framed under Section 477A of IPC has been proved by the prosecution. The accused to whom the charges prima facie apply (Bank officials) have all been acquitted of all charges.

38. The petitioner being convicted under Section 420 IPC of which charge has not been framed nor is it a lesser charge to that of Section 477A has clearly led to failure of justice.

39. **CRA 491 of 2019 is thus allowed.**

40. The judgment of conviction dated 30th of January, 2018 and order of sentence dated 31st of January, 2018, passed by the Learned Special Court, C.B.I. at Alipore, South 24 Parganas in Special Case No. 09 of 1999, corresponding to R.C. Case No. 5(E) of 1997, thereby convicting the present appellant for committing offences punishable under Section 420 of the Indian Penal Code 1860 and sentencing him to suffer imprisonment for two years and to pay a fine of Rs.25,000/- in default

to suffer simple imprisonment for six months for the offence under Section 420 of the Indian Penal Code, 1860, is set aside.

41. The appellant is accordingly acquitted of all charge and discharged/released from his Bail bond.

42. Accused S.R. Ramamani is not before this Court. Mr. Mitra submits that an appeal by the CBI against the order of acquittal of S.R. Ramamani is pending before the Supreme Court. This Court thus makes no observation as to the judgment/order of acquittal of S.R. Ramamani in this case.

43. All connected applications, if any, stands disposed of.

44. Let a copy of this judgment along with the lower court records be sent down to the trial court immediately.

45. Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)