IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 613 of 2006

Sukumar Choudhury
-Vs-
The State of West Bengal

Amicus Curiae : Mr. Ramashis Mukherjee

For the Opposite Parties : Mr. Bidyut Kumar Roy
Ms. Sima Biswas

Heard on : 14.06.2023, 13.07.2023, 07.12.2023

Judgment on : 11.12.2023

Ananya Bandyopadhyay, J.:-

1. The instant criminal appeal is preferred by the appellant against the judgment dated 25th day of July, 2006 passed by Learned Additional Chief Judicial Magistrate at Kalyani, Nadia, convicting appellant under Sections 420/120B of Indian Penal Code and sentencing him to undergo rigorous imprisonment for a term of 6 years and a fine of Rs. 1,00,000/- in default to undergo rigorous imprisonment for 1 year in connection with G.R. Case No. 53/2003 and T.R. No. 63/2003.
2. The prosecution case inter alia stated that the informant Sukhen Das came to know through one Bablu Das of Kanchrapara that one Shyamal Kanti Roy could arrange for job provisions abroad and being unemployed the informant

along with his father and Bablu Das met Shyamal Kanti Roy who demanded a payment of Rs. 1,50,000/- to would procure job as aforesaid. Based on faithful assertion and verbal agreement the informant paid Shyam Kanti Roy a sum of Rs. 50,000/- for which the said Shyamal Kanti Roy handed over a receipt of Rs. 55,000/- purportedly issued by Gentec Software Private Limited of B.C. 109 Salt Lake City, Kolkata – 700064 containing the signature of Sukumar Choudhury accused appellant, being the Director of Gentec Software Pvt. Ltd. Subsequently the informant did not provide any job. Likewise large amounts were collected from different persons on the plea of providing job.

3. Based on the aforesaid complaint Kalyani P.S. Case No. 22/03 dated 01.02.03 under Sections 420/120(B)/406 of the Indian Penal Code was registered. Investigation ensued and on completion of the same Charge-sheet was submitted under the aforesaid Sections. Charges were framed to which the appellant pleaded not guilty and claimed to be tried.

4. The prosecution in order to prove its case cited 12 witnesses and exhibited certain documents.

5. Learned Advocate appearing as Amicus Curiae submitted as follows:–

    i. The order of conviction is bad in law.

    ii. The charges framed in the case are wholly illegal and the same have prejudiced the accused in defence.

iii. The examination of the accused under Section 313 of the Code of Criminal Procedure is not conformity with provision of law and the same has prejudiced the accused in his defence.

iv. The order of conviction is against the facts and circumstances of the case.

v. The Learned Court below acted illegally in convicting appellant solely on the appreciation of the prosecution witness.

vi. The Learned Court below was wrong in convicting the appellant on the same set of evidence which he had disbelieved and acquitted the other accused persons from all the charges.

vii. The Learned Court below should not have believed P.W.s who were highly interested witness and who had mortal grudge against appellant.

viii. The Learned Court below was wrong in accepting the receipts allegedly granted by the accused appellant without holding any examination of hand writing of the accused appellant or without any report of the handwriting expert.

ix. The Learned Court below was wrong in convicting the appellant, solely believing in the prosecution case without consideration of the fact of delay in lodging the First Information Report.

x. The Learned Court below was wrong in convicting the appellant without consideration that the ingredients of cheating was absolutely negative.

xi. The Learned court below illegally relied the statements made under Section 161 of the Code of Criminal Procedure.

xii. The Learned Court below was wrong in convicting the appellant without consideration the most vital fact that prosecution failed to produce the original receipt allegedly granted to the informant in course of the evidence, since the said receipt initiated the prosecution case.

xiii. The Learned Court below should have acquitted appellant from the charges.

xiv. The quantum of sentences imposed upon the appellant are much severe.

xv. The order of conviction has brought miscarriage of justice upon the appellant.

6. The Learned Advocate for the State submitted that the prosecution was able to prove its case based on corroborative evidence. Therefore the appeal shall be dismissed.

7. A circumspection of the prosecution witnesses revealed as follows:-

i. PW-1 deposed that he had become acquainted with the accused, Shyamal Roy, upon receiving information that the accused purported to act as an agency facilitating job placements in foreign countries. Subsequently, PW-1 visited the location at B-1/281, Kalyani, to meet the accused. In the course of their interaction, the accused communicated to PW-1 an offer of securing a job in America upon payment of Rs. 1½ lakhs. Approximately one month later, PW-1 and his father visited the accused again, where the accused indicated a necessity of Rs. 5000/- for passport arrangements and received a cash amount of Rs. 25,000/-. After about six months, an additional sum of Rs. 30,000/- was paid to the accused by PW-1. The accused assured PW-1 of a job placement in America within four months.

Upon the lapse of the stipulated period without the promised job materializing, PW-1 demanded reimbursement from the accused. Having paid a total of Rs. 55,000/- to the accused, PW-1 possessed a receipt issued under the name of Gentech Software Pvt. Limited, a company supposedly headed by the accused Sukumar Choudhury and located in Salt Lake. This receipt bore the signature of the accused, Sukumar Choudhury. Subsequently, the accused displayed a list suggesting PW-1's imminent job placement. However, both accused individuals, Sukumar Choudhury and Shyamal Roy, became inaccessible. PW-1 asserted that approximately 400 individuals had made payments to the accused for job placements in America, among whom PW-1 recognized PW-2, PW-3, PW-6, and PW-11.

Following the failure to receive any remuneration from the accused parties, PW-1 lodged a complaint with the Kalyani P.S. The written complaint marked as Ext.1 was submitted by PW-5, the brother of PW-1. PW-1 specified that the sum of Rs. 55,000/- had been taken by the accused individuals, namely, Shyamal Kanti Roy, Sukumar Choudhury, and Bablu Das. The accused, Shyamal Roy, had facilitated PW-1's introduction to Sukumar Choudhury at his residence in Salt Lake for negotiation purposes concerning the job.

In the course of cross-examination, PW-1 affirmed his awareness of the accused persons' job offers in foreign countries through a newspaper advertisement. He narrated a sequence of monetary transactions involving the accused individuals, citing a verbal agreement on the job's price at Rs. 1½ lakhs in March 2001. Subsequent payments of Rs. 25,000/- in February 2002 and Rs. 30,000/- in June or July were made to the accused. The accused, Shyamal, had indicated to PW-1 that prompt payment would expedite job placement, aiming for August 2001, although PW-1 was unable to make the payment in that year. The total payment of Rs. 55,000/- occurred in two installments, with receipts provided by the accused.

Moreover, PW-1 mentioned learning about Bablu Das's role as an agent through PW-7, PW-8, and PW-10, who had also paid Bablu Das. Subsequently, PW-1 heard from Bablu Das about Shyamal Roy's purported job placements in foreign countries.

ii. PW-2 affirmed that the incident occurred on 28.4.2001. He asserted that he became aware of the accused, Shyamal Roy, and his purported provision of job opportunities in foreign countries. Following this information, he made contact with the accused and was apprised of a requirement of Rs. 1½ lakhs, with Rs. 50,000/- designated as an advance. Shyamal Roy, the accused, mentioned that his Head Office was situated in Salt Lake. Approximately 20 to 21 days later, Shyamal Roy escorted PW-1 to the residence of the co-accused, Sukumar Choudhury, in Salt Lake. On 28.4.2001, PW-1 handed over Rs. 50,000/- to Shyamal at his residence in Kalyani. Subsequently, around 20 days later, Shyamal guided PW-1 to Sukumar's residence, where a receipt from Sukumar acknowledging the payment was issued to PW-1, marked as Ext. 2. The accused individuals assured PW-1 of facilitating his service in America by August, but they failed to fulfill this commitment. Consequently, PW-1 visited Kalyani P.S. and submitted a photocopy of the money receipt.

During cross-examination, PW-2 disclosed that during the payment of money to Shyamal Roy, his maternal uncle ('mama') was present, and a written note regarding the payment was prepared, bearing the signatures of Shyamal and his maternal uncle. Moreover, PW-2 admitted to not disclosing these details to the police. Additionally, he mentioned owning a shop in Market no. 2 in Kalyani, which he sold many years ago, and the proceeds were used to make payments to the accused individuals. At the time of selling the shop, PW-2 claimed ignorance about the services offered by the accused individuals.

iii. PW-3, a shopkeeper in Kanchrapara, learned about Sukumar's purported service provision in America. Subsequently, on 23.8.2001, PW-3 visited Salt Lake and handed Rs. 50,000/- to Sukumar. In return, Sukumar issued a receipt for the payment, identified as Ext. 3. PW-3 noted that during the payment, his father and his brother, PW-11, were also present. Both PW-3 and PW-11 made cash payments of Rs. 50,000/- each to the accused. The information about Sukumar came to PW-3 through Shyamal, one of the accused individuals. Despite their payments, neither PW-3 nor PW-11 received the promised services, and the accused individuals did not refund the money. Consequently, PW-3 and PW-11 submitted the money receipt to Kalyani P.S., marked as Ext.-2.

During cross-examination, PW-3 mentioned that Sukumar had signed the money receipt, written in English and marked as Ext. 3. Additionally, PW-3 admitted to being unable to comprehend or understand the signature on the receipt.

iv. PW-5 affirmed that PW-1 was his brother. However, during cross-examination, he clarified that during the presentation of money to the appellants, both PW-5 and their father were present along with PW-1. PW-5 acquired information about the services offered by the accused individuals through his brother, PW-1, who, in turn, learned about these services from the accused Bablu. According to PW-5's testimony, his brother made the payments as stipulated in two separate installments to the accused individuals. Additionally, PW-5 mentioned visiting the house of the accused Shyamal on two or three occasions.

v. PW-6 recounted learning about the services offered by the accused individuals through a local acquaintance. Alongside his father, PW-6 visited the residence of accused Shyamal on 12.3.2001. Shyamal indicated a requirement of Rs. 1½ lakhs, specifying that Rs. 50,000/- should be paid in advance. He assured PW-6 that the remaining sum would be adjusted from the salary PW-6 would earn through the service Shyamal provided. PW-6 paid Rs. 20,000/- to Shyamal on 17.11.2001. Subsequently, Shyamal escorted PW-6 to Sukumar's residence, where Sukumar provided a receipt for the money, marked as Ext. 5. On 26.12.2001, PW-6 paid Rs. 30,000/- to Sukumar, who issued a receipt, marked as Ext. 6. Sukumar also handed PW-6 a selection and confirmation letter for the service in America, for which PW-6 provided his passport. However, Sukumar ceased communication with PW-6 after this.

After a two-month delay in contact, PW-6, realizing the delay tactics, decided against pursuing the service in America and demanded a refund from Sukumar. However, the accused individuals absconded without returning PW-6's passport or the money. Subsequently, PW-6 heard about Sukumar's alleged duping of other individuals and filed a complaint with Jadavpur P.S.

vi. PW-7 recounted encountering an advertisement in the Ananda Bazar newspaper about services offered in foreign countries by Sukumar. Alongside her husband, she approached Shyamal, who stated a requirement of Rs. 50,000/- to be given to Sukumar of Gentech Software Pvt. Limited, purportedly providing services abroad. Consequently, PW-7 paid Rs. 50,000/- to Sukumar and received a receipt, which remained with Shyamal and was not returned along with the money. Additionally, PW-7 mentioned that her nephew, PW-8, also handed Rs. 50,000/- to Sukumar. PW-10, her brother, was also involved in this endeavor. However, none of them received the promised services from the accused individuals. The seizure list was marked as Ext. 9.

During cross-examination, PW-7 clarified that her husband, Bablu Das, was not an agent of the accused Sukumar Choudhury.

vii. PW-8 mentioned encountering an advertisement in a newspaper promoting Gentech Software Pvt. Ltd., purportedly owned by Sukumar, offering services in exchange for payment. In response, PW-8 paid Rs. 10,000/- to Sukumar, who issued a money receipt acknowledging the payment. Later, on 3.6.2001, PW-8 visited Sukumar again and provided an additional Rs. 40,000/-. Sukumar then issued another money receipt marked as Ext. 8/2 and 8/3 for these transactions.

viii. PW-9, identifying the accused Bablu Das as her brother, became aware that PW-10, PW-8, PW-7, and Kuntal Sarkar had paid money to

Sukumar in exchange for services in America, reportedly Rs. 50,000/- each. Her signature on the seizure list was marked as Ext. 9/2.During cross-examination, PW-9 admitted to learn about the payments from her brother's wife and others, yet she could not specify the precise dates or exact amounts paid. Additionally, she mentioned that Bablu Das, the accused, had made several visits to Sukumar's residence in an attempt to retrieve the money already paid, given that the promised services had not been provided.

ix. PW-10 recounted seeing an advertisement in a newspaper from Gentech Software Pvt. Limited, purportedly offering job placements in foreign countries. As a result, PW-10 paid Rs. 10,000/- to Sukumar, who issued a receipt to PW-7. Subsequently, PW-10 accompanied PW-8 and paid an additional Rs. 40,000/- to Sukumar. Sukumar then provided a money receipt, marked as Ext. 8 and 8/1 for these transactions. Despite promises from Sukumar regarding services in foreign countries, neither was the service provided nor was the money returned.

x. PW-11, the owner of a 'Ghugni' shop at Kanchrapara Railway Station, narrated visiting Shyamal's house on 16.6.2001, where he learned about Sukumar offering services in foreign countries for Rs. 1½ lakhs. Subsequently, on 23.6.2001, accompanied by PW-3 and Shyamal, PW-11 visited Sukumar's residence. Sukumar requested PW-11 to deposit Rs. 50,000/- for the services. Both PW-11 and PW-3 paid Rs. 50,000/- each to Sukumar, who issued a receipt marked as Ext. 10 for the transactions.

xi. PW-12, serving as the officer-in-charge of Kalyani Police Station on 1.2.2003, detailed his involvement in the investigation. He mentioned conducting various aspects of the investigation, including investigating the complainant, corroborating the F.I.R., examining witnesses and recording their statements under Section 161 of Cr.P.C., and seizing pertinent documents related to the case. This included the preparation of a seizure list and conducting a raid resulting in the arrests of accused individuals, preparing a rough sketch map of the place of occurrence which was marked as Ext. 11, and seizing identity cards referencing "Zentech Software Pvt. Limited, BC-109, SaltLake, Sector I, Calcutta-64", marked as Ext. 12, along with four money receipts marked as Ext. 15. Additionally, two money receipts seized from PW-6 were marked as Ext. 5 and 6.

During cross-examination, PW-12 admitted to being unable to present the receipt seized from PW-1. He stated that he did not consider Sukumar's signature as forged but clarified that although he was not a handwriting expert, he had not examined Sukumar's signature through an expert. He emphasized the difficulty in reproducing such receipts without authorization from a printing press due to the inclusion of specific unit names and details. PW-12 affirmed the authenticity of the money receipts but acknowledged that the seizure list witnesses were

Kalyani P.S. staff, not individuals residing near the location. Furthermore, he mentioned that while Shyamal Roy resided near the occurrence site, Jyotinmoy Roy was not specifically identified as a suspected accused despite witnesses mentioning his involvement in receiving money without a specific allegation of promising job opportunities in foreign countries.

8. In ***M N G Bharateesh Reddy Vs. Ramesh Ranganathan and Anr.***[1], the Hon'ble Supreme Court held as follows:

> *"**13**. The ingredients of the offence of cheating are spelt out in Section 415 of the IPC. Section 415 is extracted below:*
>
> > *"**415. Cheating** — Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".*
>
> *Explanation — A dishonest concealment of facts is a deception within the meaning of this section."*

[1] 2022 SCC OnLine SC 1061

14. *The ingredients of the offence under Section 415 emerge from a textual reading. Firstly, to constitute cheating, a person must deceive another. Secondly, by doing so the former must induce the person so deceived to (i) deliver any property to any person; or (ii) to consent that any person shall retain any property; or (iii) intentionally induce the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and such an act or omission must cause or be likely to cause damage or harm to that person in body, mind, reputation or property.*

15*. Section 420 deals with cheating and dishonestly inducing delivery of property.*

It reads as follows:

> *"**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 capable of converting 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."*

16. *In Hridaya Ranjan Prasad Verma v. State of Bihar, a two-judge bench of this Court interpreted sections 415 and 420 of IPC to hold* *that fraudulent or dishonest intention is a precondition to constitute the offence of cheating. The relevant extract from the judgment reads thus:*

> *"14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.*
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> *15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test.* ***Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the***

> ***intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.""***

9. The appellant's act was inculpatory from the inception. The complainant and the other prosecution witnesses viz. PW-10, PW-8, PW-7 and Kuntal Sarkar was induced to pay money the receipt of which was evident through the documents marked as Exbt. 8, 8/1, 8/2, 8/3. The aforesaid PWs were induced to pay money at the false pretext of procuring employment in a Foreign Country being aware of the fact that the appellant would never accomplish the same. The appellant intentionally deceived the aforesaid PWs to part with their money delivering the same to him in order to cause wrongful loss to the PWs as aforesaid and to subserve his fraudulent and malicious intent for wrongful gain.

10. The prosecution on the basis of oral and documentary evidence has been successful in proving its case. Accordingly the instant Criminal Appeal is dismissed.

11. I record my appreciation for the able assistance rendered by Mr. Mr.Ramasish Mukherjee, Learned Advocate, as *Amicus Curiae* in disposing of the appeal.

12. There is no order as to cost.

13. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

14. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)