

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R.4100 of 2015

Tarak Nath Ghosh

Vs.

The State of West Bengal & Ors.

With

CRR 3052 of 2015

Subrata Singha Roy

Vs.

The State of West Bengal & Anr.

Mr. Sumanta Chakraborty, Adv.

Ms. Kasturi Dutta, Adv.

.....For the Petitioner in CRR 4100 of 2015

Mr. Somnath Banerjee, Adv.

Mr. Partha Sarathi Basu, Adv.

..... For the petitioner in CRR 3052 of 2015

& opposite party in CRR 4100 of 2015

Mr. Imran Ali, Adv.

Ms. Debjani Sahu, Adv.

.....For the State in CRR 4100 of 2015

Mr. Binay Kumar Panda, Adv.

Mr. Subham Kanti Bhakat, Adv.

.....For the State in CRR 3052 of 2015

Heard on : 09.08.2023, 17.08.2023, 04.09.2023,
14.09.2023, 20.11.2023, 28.11.2023

Judgment on : 11th December, 2023

Bibhas Ranjan De, J.

1. Both the revision applications were filed against the judgment and order dated 30.05.2015 passed in connection with Criminal Appeal no. 53 of 2012 by Learned Additional Sessions Judge, 3rd Court at Alipore by affirming the judgment and order dated 30.04.2012 in connection with BGR Case no. 3390 of 1999 passed by Learned Judicial Magistrate, 5th Court at Alipore by way of convicting accused Subrata Singh Roy and acquitting other accused Krishna Singh Roy.
2. In CRR 4100 defacto complainant Tarak Nath Ghosh assailed the judgment and order dated 30.05.2015 passed by Learned Additional Sessions Judge 3rd Court at Alipore, in Criminal Appeal No. 69 of 2012 whereby the judgment and order dated 30.04.2012 passed by Learned Judicial Magistrate, 5th Court

Alipore was affirmed. By this revision application defacto complainant/petitioner made a prayer for conviction of opposite party no. 3, Krishna Singh Roy who was acquitted of the charge under Section 420/120B of the Indian Penal Code (for short IPC) and also to enhance the punishment in respect of opposite party no. 2 Subrata Singha Roy.

3. On the other hand, Criminal Revision no. 3052 of 2015 assailed the same judgment and order dated 30.05.2015 passed in Criminal Appeal no. 53 of 2012 challenging the order of conviction of the petitioner, Subrata Singha Roy.

4. In the aforesaid view of the matter, both the revision applications are being taken up together for disposal by this common judgment.

Brief Facts:-

5. The case arose out of a complaint under Section 156 (3) of Criminal Procedure Code (for short CrPC) submitted by defacto complainant/Tarak Nath Ghosh before the Ld. Chief Judicial Magistrate, Alipore, alleging, *inter alia*, that both the accused Subrata Singha Roy and his wife Krishna Singha Roy were known to the complainant and his family and being neighbours shared a cordial relationship with him. In May 1995 the accused on their own, approached the complainant

by informing that they had made all the necessary arrangements for sale of the land belonging to Nemai Nath and Santosh Kumar Debnath which prompted the complainant to buy those lands after being satisfied with the visit. Both the accused came to the petitioners premises and took a sum of Rs. 1,10,625/- on the pretext of the same being as advance to the land owners and issued a receipt on a non-judicial stamp paper of Rs. 10/- on 23.06.1995 acknowledging acceptance of the money. The complainant paid a total sum of Rs. 3,70,000/- to the accused on different dates for handing over the same to the land owners as consideration money for sale of the land but accused in turn did not hand over any receipt to the petitioner. After delaying the matter for some days the accused on 19.09.1997 issued a receipt on a non judicial stamp paper of Rs. 50/- thereby acknowledging the acceptance of money in favour of the purported sale of land in presence of his wife (Krishna Singha Roy) and two of his friends. The accused in furtherance undertook to handover the possession of their own house in case of failure to complete the sale and deliver possession of the said lands to the complainant. In spite of such assurances, the accused did not comply with any of his claims and started avoiding the

complainant. The complainant thereafter directly contacted the land owners and came to learn that all the representation made by the accused were false which resulted in complainant parting with a sum to the tune of Rs. 3,70,000/- . Thereby, both the accused, who had conspired with each other in order to cheat the defacto complainant committed an offence under Section 420/120B of IPC.

6. The Learned Chief Judicial Magistrate, Alipore in turn forwarded the same to the Officer in-charge of Sonarpur Police Station for investigation. Accordingly, the case was registered as Sonarpur Police Station Case No. 221 dated 16.07.1999 under Section 420/120B of IPC and on completion of the investigation police had submitted charge sheet against both the accused under Section 420/120B of the IPC.
7. The Case was trialed by Ld. Judicial Magistrate, 5th Court, Alipore wherein prosecution, to prove the charge under Section 420/120B of the IPC examined 11 witnesses namely Tarak Ghosh/defacto complainant as PW1, Prahalad Ghosh(neighbour) as PW2, Baidyanath Ghosh (neighbour) as PW3, Saraj Ghosh (neighbour) as PW4, Sambhunath Ghosh (brother of PW1) as PW5, Krishnakanta Ghosh (brother of opposite party/ Krishna Sigha Roy) as PW6, Archana Ghosh

(wife of PW1) as PW7, Santosh Debnanth (owner of one of the alleged plot of land) as PW8, Subrata Nath (owner of one of the other alleged plot of land) as PW9, Supriya Chakraborty (the then recording officer attached to Sonarpur PS) as PW10 and S.I. Jaydeb Dey (Investigating Officer) as PW11. In course of their evidence a good number of documents i.e. written complaint, money receipts, certified copy of sale deed, formal FIR, were admitted in evidence as exhibit 1 to 7.

- 8.** Ld. Trial Judge after evaluation of evidence on record found accused Subrata Singha Roy guilty of committing an offence under section 420 of IPC and sentenced him to undergo simple imprisonment for the period of two years and to pay a fine of Rs. 10,000/- in default to suffer further simple imprisonment for three months and the accused Krishna Singha Roy was acquitted of the charge.
- 9.** The aforesaid judgment was challenged in appeal being no. 69 of 2012 in the court of Additional Sessions Judge, 3rd Court, Alipore where evidence was further evaluated and no infirmity was found in the judgement passed by the Ld. Judicial Magistrate, 5th Court at Alipore and in the result the Trial Court judgment was affirmed.

- 10.** Being aggrieved, revision application being no. CRR 4100 of 2015 was filed by the defacto complainant/ Tarak Nath Ghosh challenging the acquittal of the accused Krishna Singha Roy and insufficient sentence in respect of the other accused Subrata Singha Roy. Criminal Revision being no. CRR 3052 of 2015 was also filed by the convict Subrata Singha Roy challenging self same judgment.

Argument Advanced:

In CRR No. 4100 of 2015

- 11.** Ld. Advocate, Mr. Sumanta Chakraborty appearing on behalf of the petitioner has referred to the evidence recorded during trial and submitted that there is sufficient evidence duly ratified by the exhibited documents to clearly prove the charge under Section 420/120B of the IPC against both the accused (opposite party no. 2 & 3). Thereby, Mr. Chakraborty prayed for reversal of judgment of acquittal in respect of opposite party no. 3. It is further contended that Ld. Judge imposed lesser sentence without considering the gravity of the offence. In support of his contention he relied on the following cases:-

- ***N.V. Subba Rao Vs. State, through Inspector of Police, CBI/SPE, Visakhapatnam, Andhara Pradesh*** reported in ***(2013) 2 Supreme Court Cases 162***
- ***Bakhshish Singh Dhaliwal Vs. State of Punjab*** reported in ***(1967) 1 SCR 211***
- ***Tulsi Ram Vs. State of Uttar Pradesh*** reported in ***AIR 1963 Supreme Court 666***
- ***N Deveindrappa Vs. State of Karnataka*** reported in ***AIR 2007 SC 1741***

12. Ld. Advocate, Mr. Somnath Banerjee appearing on behalf of the opposite party has contended that there is no evidence on record to attract the offence under Section 420 against Krishna Singha Roy/opposite party no. 3 and therefore question of reversal of the judgment of acquittal does not arise. Mr. Banerjee further argued that Ld. Judge, exercised his discretion, given by the statute, particularly Section 420 of the IPC whereby accused can be sentenced to suffer imprisonment of '**either description**' for a term which may extend to **seven years**. In support of his argument he relied on a case ***M.N.G. Bharateesh Reddy Vs. Ramesh***

***Ranganathan and another reported in 2023(1) AICLR
199 (S.C.)***

- 13.** Ld. Advocate, Mr. Imran Ali, appearing on behalf of the State has supported the impugned judgment.

In CRR no. 3052 of 2015

- 14.** Ld. Advocate, Mr. Somnath Banerjee, appearing on behalf of the petitioner has contended that ingredients to constitute an offence under Section 420 of IPC have not been substantiated by the evidence adduced on behalf of the prosecution. It is particularly submitted that the failure to return money being a civil dispute does not attract any offence under Section 420 of the IPC.

- 15.** In opposition to that, Ld. Advocate, Mr. Binay Kumar Panda appearing on behalf of the State, has submitted that all the witnesses examined in the case have stated in their respective evidences that Subrata Singha Roy (opposite party no. 2) received all the money by installment from Defacto complainant/ Taraknath Ghosh on the false plea of selling two plots of lands by the respective owners. Mr. Panda further contended that the oral evidence of giving money has been

substantiated by the documents admitted in evidence as exhibits.

Decision:-

- 16.** After thorough analysis, I am of the opinion that the facts and circumstances of the cases relied on by both the parties is not at all identical with the matter in hand.

CRR No. 4100 of 2015

- 17.** This appeal was preferred on two fold grounds. One is for conviction of acquitted accused/opposite party no. 3 and other is for enhancement of punishment of the convict/opposite party no. 2.
- 18.** Before advertng to the evidence on record let me have a look on the ingredients of Section 420 of IPC. The following elements must be shown to establish the offence of cheating under Section 420 of IPC in inducing the delivery of property as highlighted in respect to the terms of ratio of the cases relied on behalf of the parties:-
- The claim made by individual must be false.
 - The accused was aware that the claim he made was false and untrue.

- In an effort to mislead the recipient, the accused made false statement with malice.
- The act in which accused persuaded the subject to deliver the object or to carry out or refrain from acting in a way that the subject would not have done or would have otherwise committed.
- There must be mens rea, which is a legal term that denotes a person's mental condition when committing a crime.

19. To constitute an offence under Section 420 IPC there must be a false representation which the accused knew to be false and that it was made with the intent to deceive the complainant.

20. On careful scrutiny of the evidence of all eleven witnesses particularly the evidence of PW1(defacto complainant) it is found that opposite party Subrata Singha Roy received the money on several occasions from the defacto complainant in lieu of receipts (exhibit 2 to 5) . Nowhere from the evidence it is found that Krishna Singha Roy /opposite party no. 3 had ever received any money from the defacto complainant in lieu of receipts. Such fact was further ratified by the document executed by both the opposite party no. 2 & 3 whereby they

promised to return the money. Therefore, it cannot be argued that Krishna Singha Roy /opposite party no. 3 has committed any offence under the Sections for which she was charged due to lack of any accusation of dishonest inducement by Krishna Singha Roy /opposite party no. 3. Therefore, Krishna Singha Roy /opposite party no. 3 cannot be said to have dishonestly persuaded the defacto complainant to deliver money on the pretext of transferring ownership of land.

21. That apart, it is now settled that it is not safe to hold a person guilty for offences under Section 120B of IPC in absence of any evidence to show a meeting of minds between the conspirators for the intended object of committing an illegal act. In the aforesaid view of the matter, it is not at all intelligible to convict Krishna Singha Roy/ opposite party no. 3 with assistance of Section 120B of the IPC, in absence of any specific evidence in this regard.

22. Now coming to the prayer for enhancement of punishment imposed against opposite party no. 2, I find it convenient to delineate the Provision of Section 420 IPC as follows:-

“ Section 420 in The Indian Penal Code

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.”

23. The words ‘**either description**’ and ‘**may extend to seven years**’ clearly denote that nature and extent of sentence depends on discretion of the trial judge. Ld. Trial Judge exercised his discretion considering the balance of mitigating and aggravating circumstances appearing in the evidence. From the evidence together with exhibit 6 it is found that both the opposite parties made an effort to reimburse the money even by transferring their own household property in the name of the defacto complainant. However, considering the transaction amount as well as other facts and circumstances, I find no reason to interfere with the quantum of punishment imposed by the Ld. Trial Judge.

CRR 3052 of 2015

24. This appeal challenged the conviction of Subrata Singha Roy/ petitioner. After re-appreciation of evidence it has come

to my notice that PW1 (defacto complainant) has stated in his evidence that Subrata Singha Roy received money on different dates in lieu of receipts on the pretext of transferring ownership of two plots of land and ultimately Subrata Singha Roy and his wife Krishna Singha Roy had to execute one written undertaking to reimburse the total amount received by Subrata Singha Roy and in case of failure, by transferring their own household property in the name of the defacto complainant.

25. During cross-examination of PW1, one question was put to PW1 suggesting that all money receipts were forged but no steps were taken to get those documents examined by any expert. Therefore, only by putting suggestion in cross-examination cannot be said to have been discredited the evidence adduced by PW1.

26. Evidence of PW1 was further corroborated by evidence of other witnesses examined in this case. PW8, owner of one of the plots, has testified that he expressed his willingness to Subrata Singha Roy for selling his land but Subrata Singha Roy could not sale his land and ultimately he sold his land to the defacto complainant directly. PW9, owner of the other plot of land, also deposed that Subrata Singha Roy received

3,70,000/- from defacto complainant in order to sale his land as well as land of PW8. He also attended meetings at club room regarding return of money to defacto complainant.

27. All the evidences of witnesses including PW1 was perfectly corroborated by the written undertaking of Subrata Singha Roy and his wife (exhibit 6).

28. Therefore, Subrata Singha Roy is found to have dishonestly persuaded the defacto complainant to deliver money in false pretext of transfer of ownership of PW8 & PW9's lands in favour of the defacto complainant. Thereby, the petitioner met with all the necessary components which were required to constitute an offence to be classified as cheating within the domain of Section 420 of the IPC.

29. Thus, I find no reason to interfere with the judgment and order of conviction dated 30.05.2015 in Criminal Appeal no. 53 of 2012 confirming the judgment and order of conviction dated 30.04.2012 in connection with BGR Case no. 3390 of 1999.

Result:-

30. In view of the discussion hereinabove both the Criminal Revision being Nos. CRR 4100 of 2015 & 3052 of 2015 stand dismissed.

- 31.** Subrata Singha Roy, petitioner in CRR 3052 of 2015, is directed to surrender before the Ld. Trial Court within 15 days from date to serve sentence, failing which Ld. Trial Court shall have to take appropriate steps to secure his attendance before the Court to serve sentence.
- 32.** All pending application, if there be any, stand also disposed of accordingly.
- 33.** Lower Court Record be transmitted back immediately.
- 34.** All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.
- 35.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]