



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 165 OF 2019

Rajiv Virendra Bhatia	..Applicant
VS.	
The State of Maharashtra	..Respondent

Mr. Karan L. Jain, for the applicant.
Ms. S. D. Shinde, APP for the State.
HC-Mr. Ravindra Pawar, Khar police station present.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 12, 2024

ORAL JUDGMENT :

1. Heard learned counsel for the applicant and learned APP.
2. The grievance of the first informant was that the applicant cheated the first informant and further committed criminal breach of trust. The cheating involves an amount of Rs. 1 Crore. The applicant issued cheques in favour of the complainants which came to be dishonoured. Hence, proceedings before the trial Court for the offences punishable under sections 406 and 420 of the Indian Penal Code, 1860 (for short, "IPC") was filed. The applicant was convicted for the offences punishable under sections 406 &

420 of the IPC and sentenced to suffer rigorous imprisonment for 2 years and 18 months respectively. Considering the fact that the applicant is a practicing advocate and having regard to the nature of the accusations, the trial Court directed the sentences to run consecutively. The applicant was ordered to pay compensation of Rs.2 lakhs payable to the first informant and in default, to suffer imprisonment of 6 months. The period of 10 months and 28 days was given as set off. The appeal was filed before the Appellate Court.

3. The Appellate Court in paragraphs 10 and 12 observed thus:

“10. The abovementioned provision contains the legal provisions about the quantum of the punishment. Section 406 and 420 of the Indian Penal Code in the present case are distinct. The ingredients of dishonestly inducing the informant and her uncle and thereby making them to part with the said amounts are not common ingredients with the offence punishable under Section 406 of the Indian Penal Code. Therefore, law permits separate punishments for both these offences. Section 406 of the Indian Penal Code has the ingredients of misusing the funds for own purpose by committing criminal breach of trust. Therefore, the arguments of the learned Advocate that since it is a case of single transaction, the sentence should be concurrent, cannot be accepted.

12. In the given set of facts, I do not find that the sentences awarded by the learned Trial Court are result of any wrong interpretation of these observations of our Hon'ble High Court. The quantum of sentence has to be decided based on

the aggravating and mitigating circumstances. The age of the accused and period of incarceration are also not the sole criteria for determining the quantum of sentence. By giving the cheques to the informant and her uncle, the offences were not mitigated. Those cheques were dishonoured. There were no mitigating circumstance. Therefore, in absence of any mitigating circumstances, I find that the quantum of sentence is neither excessive nor disproportionate. No fine was imposed. The direction was to pay the compensation. Therefore, though the accused sought reduction of fine, since there is no fine at all, there is no question of reduction of the fine. Even the quantum of compensation also needs no interference. Hence, I answer points No.1 and 2 in the negative. In result, the appellant is not entitled for any relief. The Appeal is liable to be dismissed."

4. The appeal came to be dismissed and the order of the trial Court was maintained. Learned counsel for the applicant relied upon the decision of the Supreme Court in ¹**V.K. Bansal Vs. State of Haryana & Ors.** to submit that even present is the offence out of a single transaction and the quantum of imprisonment may be reduced and the sentences be directed to run concurrently instead of consecutively.

5. Learned APP opposed the application. She argued in support of the impugned order. It is submitted that the manner in which the offence is committed by the applicant justifies the concurrent orders of the Courts below directing

¹ 2013 AIR (SC) 3447

the sentence to run consecutively. It is submitted that the impugned order should not be interfered with.

6. The Appellate Court has proceeded on the footing that law permits separate punishments for offences under sections 406 and 420 IPC. The Appellate Court did not accept the case of the applicant that this is a case of single transaction for the reason that section 406 of IPC has ingredients of misusing the funds for own purpose by committing criminal breach of trust and that a separate offence as regards section 420 of IPC is made out.

7. No doubt, this Court in Notice of Motion No.1276 of 2014 and 1336 of 2013 directed the Bar Council to take appropriate action in the matter against the present applicant for such misconduct. The Bar Council will undoubtedly take the proceedings to the logical conclusion in compliance of the orders passed by this Court in Notice of Motion No. 1276 of 2014 and 1336 of 2013.

8. It however needs to be considered that the allegation of the complainants was that a sum of Rs. 1 Crore was paid by them to the applicant which the applicant had assured to invest in purchase of property. It was assured by the

accused that the property upon being sold, the profits could be shared. It needs to be considered that the applicant had pleaded guilty before the trial Court. In my opinion, the Appellate Court has committed an error in coming to the conclusion that there are 2 different transactions, one relating to section 406 and the other relating to section 420 of IPC having regard to the facts and circumstances of this case. The Courts below committed an error directing the above sentences shall run consecutively instead of concurrently. Learned counsel for the applicant has submitted that the compensation amount of Rs. 2 lakhs has been deposited in this Court which he has no objection to the first informant withdrawing the said amount. The statement is accepted as an undertaking to this Court. I am informed by learned counsel for the applicant that the applicant has already served the sentence if the same is to run concurrently. In this view of the matter, the application is accordingly allowed in terms of prayer clause (a).

(M. S. KARNIK, J.)