

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 961 of 2013

Saluka Deogam @ Vishal Deogam, son of Arjun Deogam, resident of
Village - Matkamhatu, P.O. - Matgkamhatu, P.S. - Muffasil, District -
Singhbhum West **Petitioner**

Versus

The State of Jharkhand **Opposite Party**

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Saurav Kumar Singh, Advocate

For the Opp. Party State: Mr. Sanjay Kr. Srivastava, A.P.P

Through Video Conferencing

10/25.06.2021

Heard Mr. Saurav Kumar Singh, learned counsel appearing on behalf of the petitioner.

2. Heard Mr. Sanjay Kumar Srivastava, learned counsel appearing on behalf of the opposite party - State.

3. This criminal revision application has been filed against judgment dated 27.08.2013 passed by learned Sessions Judge, West Singhbhum at Chaibasa in Criminal Appeal No.72 of 2013 whereby he has dismissed the appeal filed by the petitioner and upheld the judgment of conviction and order of sentence dated 05.07.2013 passed by learned Judicial Magistrate, 1st Class at Chaibasa in G.R. Case No.553 of 2010 arising out of Muffasil P.S Case No.112 of 2010 so far it relates to conviction under Section 420 of Indian Penal Code.

4. The petitioner was the sole accused, who was charged for offence under Sections 323/406/420 and 452 of Indian Penal Code and upon trial, was found guilty of offence under Sections 406/420 and 323 of Indian Penal Code read with Section 34 of Indian Penal Code. The petitioner was acquitted for alleged offence under Section 452 of Indian Penal Code.

5. The learned appellate court acquitted the petitioner for offence under Sections 406 and 323 of IPC but upheld his conviction under Section 420 of IPC.

6. The petitioner has been sentenced to undergo rigorous imprisonment for two years for offence under Section 420 of Indian Penal Code and fine of Rs.500/- and in default of payment of fine, he was to undergo simple imprisonment for one month.

Arguments on behalf of the Petitioner

7. Learned counsel for the petitioner submits that the learned trial court convicted the petitioner by referring to Section 34 of Indian Penal Code, but throughout the petitioner was the sole accused and accordingly Section 34 of Indian Penal Code could not be attracted. However, the learned appellate court upheld the conviction of the petitioner only under Section 420 of Indian Penal Code.

8. Learned counsel for the petitioner further submits that the solitary point of law involved in the present case is that the basic ingredient for offence under Section 420 of Indian Penal Code is not at all satisfied. It was specific case of the informant P.W.1 that a friendly loan of Rs.1,03,000/- was extended to the accused on different dates which was not returned and thereafter a Panchayati was held where the accused agreed to repay the amount in monthly installments of Rs.2,000/- but he did not act upon his promise. He submits that further specific case of informant P.W.1 was that the accused had taken one mobile and golden ring on the pretext that he was going to see a girl for marriage, but the same was also not returned. Learned counsel submits that there is no material on record to indicate that since beginning there was any ill intention or fraudulent intention of the petitioner and accordingly, the conviction under Section 420 of Indian Penal Code cannot be sustained in the eyes of law. He submits that the entire dispute is of pure civil nature and this aspect of the matter has not been properly considered by the learned courts below and accordingly the appellate court's judgment upholding the conviction under

Section 420 of Indian Penal Code calls for interference by this Court in revisional jurisdiction.

9. Learned counsel has also referred to judgments passed by Hon'ble Supreme Court in the case of "*Uma Shankar Gopalika Vs. State of Bihar and Another*" reported in (2005) 10 SCC 336; "*V.Y. Jose and Another Vs. State of Gujarat and Another*" reported in (2009) 3 SCC 78; "*Vesa Holdings Private Limited and Another Vs. State of Kerala and Others*" reported in (2015) 8 SCC 293; "*Hira Lal Hari Lal Bhagwati Vs. CBI, New Delhi*" reported in (2003) 5 SCC 257; "*Satishchandra Ratanlal Shah Vs. State of Gujarat and Another*" reported in (2019) 9 SCC 148.

Arguments on behalf of the opposite party - State

10. Learned counsel appearing on behalf of the opposite party - State, while opposing the prayer, has submitted that there are concurrent findings recorded by the learned courts below so far as conviction of the petitioner under Section 420 of Indian Penal Code is concerned. During the course of argument, learned counsel for the State also does not dispute the fact that the petitioner was the sole accused and therefore, there was no occasion for attracting Section 34 of Indian Penal Code. It has also not been disputed by the learned counsel for the State that it was the specific case of the informant, who was examined as P.W.1 that an amount of Rs.1,03,000/- was given as friendly loan on different dates to the accused and the same was not returned although subsequently an agreement to return the same by way of monthly instalment was also entered into between the parties, but the petitioner did not act upon the promise.

Findings of this Court

11. As per the prosecution case, the father of the complainant was employee of Barwari Lal Newatia Mines and after death of his father, the complainant inherited his property. The complainant and his sister had withdrawn an amount of

Rs.1,03,000/- to construct a house. In the meantime, the petitioner being a friend of the complainant approached the complainant and requested to pay him Rs.53,000/- as friendly loan and an agreement in this regard was also made on 13.12.2007. Subsequently on 24.08.2009, the petitioner again approached the complainant for a sum of Rs.50,000/- and in this regard also an agreement was made. Accordingly, the complainant paid a total of Rs.1,03,000/- to the accused. It is also alleged that the petitioner took the mobile phone and the golden ring from the complainant on the pretext that he was going to see a girl for his marriage. The petitioner had assured to return the same on arrival. It is the specific case of the complainant that the accused neither returned the mobile phone and the golden ring nor the loan amount.

It is alleged that on 22.10.2009 when the complainant approached the accused for return of the aforesaid articles and money, the accused tried to avoid the same and in spite of several requests, neither repaid the money nor returned the mobile and the golden ring. Further on 26.10.2009, the petitioner told the complainant that he would repay the amount on monthly instalments of Rs.2,000/- and in this regard an undertaking was given in writing by the petitioner to the complainant, but in spite of that the petitioner did not fulfil his promise. It was also alleged that on 28.09.2010 at about 10. p.m., the petitioner came to the house of the complainant along with 4 unknown persons and asked him to return all the documents and when the complainant denied, the petitioner assaulted him and threatened to kill. The complainant approached the concerned police station, but no action was taken and consequently, the complaint case was filed.

12. The complaint case was numbered as C/1 Case No.88 of 2010 which was sent for investigation by the police under Section 156 (3) of Cr. P.C. and consequently Muffasil P.S. Case

No.112 of 2010 dated 13.10.2010 was registered under Sections 452/ 406/ 420/ 323/ 34 of Indian Penal Code. After investigation, charge sheet was filed under Sections 452/ 406/ 323/ 420 of Indian Penal Code and cognizance was taken under the aforesaid Sections on 04.01.2011. The charges were framed under Sections 452/ 323/ 406 and 420 of Indian Penal Code.

13. After the prosecution evidence, the petitioner was examined under Section 313 Cr.P.C on 08.05.2013 and declined to adduce any defence witness. In order to substantiate the case, the prosecution had examined altogether 9 witnesses including the informant and his sister.

14. P.W.1, who is the informant of the case deposed that after the death of his father, money was received by him and deposited in Bank of India. The petitioner is the brother in relation, who took Rs.53,000/- in 2007 and Rs.50,000/- on 24.08.2009 and altogether he gave Rs.1,03,000/- to the petitioner in presence of Budhan Singh Banra (P.W.4), Dilip Deogam (P.W.5) and Sikander Deogam. The accused promised him to pay the amount, but did not return the same. A *Panchayati* was also done on 24.04.2009 where the petitioner promised to repay the amount in monthly instalments of Rs.2,000/-. It was also deposed that when the petitioner went to see a girl for his marriage, he took the mobile and golden ring from the complainant/informant, but did not return the same. It was also stated that in the year 2010, the petitioner had come to assault him. During cross examination, this witness stated that there was an agreement between him and the accused. The agreement was typed in the court, which bears the signature of Budhan Singh Banra and Sikander Deogam.

15. P.W.2 is the sister of the informant, who has supported the case of the prosecution and has also stated that the petitioner was friend of her brother.

16. Other witnesses including P.W.3, P.W.4 and P.W. 5 have supported the prosecution case. P.W.3 has also stated that the complainant and the petitioner were friend and their friendship was disrupted in the year 2009.

17. P.W.6 had also supported the prosecution case, but has further deposed that at the time of *Panchayati*, Rs.5,000/- was given by the petitioner to the complainant and Rs.98,000/- remained as balance.

18. P.W.8 is the Investigating Officer of the case and P.W. 9 is the doctor, who had exhibited the injury report as Exhibit 8. Before the learned trial court, the defence had taken a specific stand that none of the ingredients for offence under Sections 452/323/406 of Indian Penal Code was made out and so far as offence under Section 420 of Indian Penal Code is concerned, there was an agreement in connection with money transaction and therefore, no criminal liability could be fastened upon the petitioner and that the ingredient for offence under Section 420 Indian Penal Code was not made out.

19. The learned trial court vide para 18 of its judgment found that there is no evidence on record to show that the accused had entered into the house of the informant and accordingly was of the view that no case under Section 452 of Indian Penal Code was made out and acquitted the petitioner for offence under Section 452 of Indian Penal Code. The learned trial court considered the offence under Sections 406, 420 and 323 of Indian Penal Code from para 19 onwards and recorded a finding that it was crystal clear that there was delivery of Rs.1,03,000/- by the informant to the petitioner and delivery of mobile and golden ring to the petitioner which the petitioner did not return and that the informant had sustained simple injury. The learned trial court considered the question as to whether the dispute between the parties was a civil dispute or a criminal offence and framed the question at para 21 of its

judgment and recorded its finding at para 22, 23 and 24 as follows:

“22. In the instant case there is no doubt that there was delivery of Rs.1,03,000/- and delivery of Mobile Phone and Golden Ring. The informant of the case in para 30 of the cross examination has deposed that the accused did not returned the money in the year 2007 despite of demand. The witness has further deposed in his cross-examination that there was an agreement before filing of the case. Ext.2 is the agreement dated 24.08.09 suggest that the agreement was made after delivery of payment. Ext.3 is the undertaking of the accused dt. 24.09.09, he suggest that the accused undertake to return Rs.1,03,000/- in monthly instalment and also to return the Ring and Mobile.

23. Considering the aforesaid facts I find that at the time of taking the amount there was no agreement and subsequently to avoid the payment the accused entered into an agreement to repay the amount and also undertake to repay the amount in monthly instalment of Rs.2,000/- per month and also to return ring and Mobile.

24. These facts clearly suggest that the accused had intention to cheat the informant from the inception of the transaction and to fulfil this object the accused entered into the agreement and gave undertaking at later stage.”

The learned trial court ultimately convicted the petitioner for offence under Sections 406/420 and 323 of Indian Penal Code read with Section 34 of Indian Penal Code.

20. The learned appellate court after considering the materials on record, acquitted the petitioner for offence under Sections 406 and 323 of Indian Penal Code and upheld the conviction under Section 420 Indian Penal Code. The learned appellate court was of the view that the learned trial court had rightly convicted the petitioner under Section 420 of Indian Penal Code. The learned appellate court recorded its finding in para 14, 15 and 16 as follows:

“14. Thus, the first element necessary for constituting an offence of cheating, is a ‘deception’ of the informant by the accused. Unless there is deception, the offence of cheating never gets attracted. After deception has been practiced the person deceived should get induced to do or omit to do something. Then, the question arises as to what was the deception.

15. *In the ordinary sense, deception has in it the element of misleading or making a person believe something that is false, or inculcating of one so that he takes the false as true, the unreal as existent, the spurious as genuine and it is also necessary that deception should be right from the beginning of the contract.*

16. *Applying the principle constituting the criminal offence of cheating in the context of the alleged allegation, it does appear that element of deception constituting an offence of cheating was from the very beginning. Therefore, accused has cheated the informant. Informant had received the money from the death of his father, who was an employee and that money was deceived by the accused giving a false promise from the very beginning that he would return the money. Deception was in the earlier stage, is clear from the fact that even after the panchayati to pay the money in an monthly installment of Rs.2,000/-, not a single installment has been given by the accused. Deception is a thing, which can be gathered from the facts and circumstances of the case. Therefore, I am of the opinion that the accused has cheated the informant to a tune of Rs.1,03,000/-, a mobile and golden ring. As per the case of the defence, there was an agreement to return it and decision has been referred that where there is agreement, there cannot be element of cheating. As a principle, there is no doubt, but when I test it from the facts of this case, it is clear even after deceiving Rs.1,03,000/-, the accused was not satisfied and he further deceived the informant by taking his mobile and golden ring. Therefore, from all corner, the prosecution has been able to prove the charge u/s 420 I.P.C."*

21. This Court finds that a number of judgments were relied upon by the petitioner before the learned trial court and also certain judgments were relied before the learned appellate court *inter alia* on the point of ingredients of offence under Section 420 of Indian Penal Code, but those judgments have not been dealt with by both the learned courts below.

22. The learned trial court, while convicting the petitioner under Section 420 of Indian Penal Code recorded that, at the time of taking the amount there was no agreement. Subsequently, to avoid the payment, the petitioner entered into an agreement to repay the amount and undertook to repay the same in monthly instalment of Rs.2,000/- and also to return the ring and the mobile. Thereafter, the learned trial court recorded that this fact clearly suggests that the petitioner had intention to

cheat the informant from the inception of the transaction and to fulfil this object, the petitioner gave undertaking at a later stage. This Court finds that it was the specific case of the informant that the informant had given friendly loan of an amount of Rs.1,03,000/- and further had also given a mobile and golden ring on the pretext that the petitioner was going to see a girl for marriage. It was never the case of the prosecution that at the time of extending friendly loan and parting with the mobile and golden ring, the petitioner had any intention to cheat. The learned trial court while convicting the petitioner under Section 420 of Indian Penal Code miserably failed to consider that the inception of the transaction was the act of extending friendly loan and subsequently, parting with the mobile and golden ring and there was no evidence on record that at the time of aforesaid parting with money /articles, the petitioner had any intention to cheat. Rather, the prosecution witness P.W-6 has stated that the petitioner had to pay Rs.2,000/- per month as instalment and in his cross examination, he has deposed that at the time of *Panchayati*, an amount of Rs.5,000/- was given by the petitioner to the complainant and Rs.98,000/- remained as balance although the petitioner did not make any further payment pursuant to the agreement. This Court finds that the finding recorded by the learned trial court that the petitioner had intention to cheat the informant from the inception of the transaction, is perverse and is not based on any prosecution evidence, rather the prosecution evidence is that a friendly loan was extended and the accused took the mobile and golden ring of the informant on the pretext that he was going to see a girl, but there is no allegation from the side of the prosecution that at the time of extension of friendly loan or at the time of taking mobile and golden ring, the petitioner had any intention to cheat the informant. It has also come in the evidence of the P.W-

1 itself that the accused is the brother of the informant in relation.

23. So far as the learned appellate court is concerned, the learned appellate court recorded that informant had received the money after death of his father, who was employee and that money was deceived by the petitioner giving false promise from the very beginning that he would return the money. It further held that the deception was in the earlier stage, which is clear from the fact that even after the *Panchayati* to pay the money in a monthly instalment of Rs.2,000/- not a single instalment has been given by the petitioner. The learned appellate court while recording the aforesaid findings failed to consider that there was no evidence and it was never the case of the informant that the petitioner had intention to cheat the informant right from the date, he received the money and the articles, rather it was the specific case of the informant that the informant had extended friendly loan to the petitioner. The learned appellate court has totally ignored the evidence of P.W.6 that at the time of *Panchayati*, an amount of Rs.5,000/- was given by the petitioner and what remained was only Rs.98,000/- as balance and that the petitioner agreed to pay Rs.2,000/- per month as instalment, but no instalment was paid by the petitioner to the informant after the agreement.

24. In the case of "*V.Y. Jose and Another Vs. State of Gujarat and Another*" reported in (2009) 3 SCC 78, the Hon'ble Supreme Court has considered the basic ingredients of offence under Section 420 IPC and held that:

"14. An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

- (i) deception of a person either by making a false or misleading representation or by other action or omission;*
- (ii) fraudulently or dishonestly inducing any person to deliver any property; or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.*

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had

fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code can be said to have been made out”

25. In the case of **“Uma Shankar Gopalika Vs. State of Bihar and Another”** reported in (2005) 10 SCC 336, the Supreme Court considered the legal position as to when the breach of contract would give rise to offence of cheating and held as under:

“6..... It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC”

26. In **“Vesa Holdings Private Limited and Another Vs. State of Kerala and Others”** reported in (2015) 8 SCC 293, the Hon’ble Supreme Court considered the legal position if the intention to cheat developed after the transaction has held as under:

“12.....,the settled proposition of law is that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In other words, for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation.....”

27. In **“Hira Lal Hari Lal Bhagwati Vs. CBI, New Delhi”** reported in (2003) 5 SCC 257, the Hon’ble Supreme Court reiterated the legal position as under:

“40. It is settled law, by a catena of decisions, that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention

right at the beginning that is at the time when the promise was made cannot be presumed...."

28. In the case of "*Satishchandra Ratanlal Shah Vs. State of Gujarat and Another*" reported in (2019) 9 SCC 148, the Hon'ble Supreme Court considered the legislative intent to criminalize the nature of breaches of contract as under:

13. Now coming to the charge under Section 415 punishable under Section 420 IPC. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea. (See Hridaya Ranjan Prasad Verma v. State of Bihar [Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168: 2000 SCC (Cri) 786].)"

"14..... The legislature intended to criminalise only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and inefficient transfers, under Section 415 IPC."

29. It is a well-established principle of law that every breach of contract or every dispute under an agreement does not amount to the offence of cheating. It would amount to cheating only in those cases where there was any deception played at the very inception. To establish the offence of cheating, the accused should be shown to have had fraudulent or dishonest intention at the time of making promise or representation.

30. This Court finds that there was no allegation that the petitioner has played deception or has ever made any false promise or inducement causing the informant to part with the money and in the absence of such allegation, no offence under Section 420 of Indian Penal Code can be said to be made out. This Court finds that the breach of undertaking to repay the loan/return the articles in the manner claimed cannot be a basis for prosecuting or convicting a person under Section 420 of the Indian Penal Code. Even as per the statement of the prosecution witness, P.W-6, the petitioner repaid the part of the amount and the balance remained unpaid and the articles were not returned. In view of the aforesaid findings, this Court finds that

basic ingredients of offence under Section 420 of Indian Penal Code are totally absent in the present case.

31. This court finds that the breach of undertaking to repay the loan/return the articles in the manner claimed cannot be a basis for prosecuting or convicting a person under Section 420 of the Indian Penal Code in absence of any allegation that the petitioner has played deception or has ever made any false promise or inducement at the time of the transaction of taking money/articles from the informant causing the informant to part with the money/articles.

32. This Court also finds that the dispute between the petitioner and the informant was essentially in the realm of civil dispute and there being no evidence on record that the petitioner had the intention to cheat the informant right from the inception of the transaction of extending friendly loan/handing over mobile and golden ring to the petitioner, the conviction of the petitioner under Section 420 of Indian Penal Code cannot be sustained in the eyes of law. The conviction of the petitioner under Section 420 of Indian Penal Code by the learned trial court which has been upheld by the learned appellate court calls for interference in revisional jurisdiction of this Court to meet the ends of justice and rectify the illegality and perversity committed by the learned courts below in convicting the petitioner under Section 420 of Indian Penal Code. Accordingly, the conviction and sentence of the petitioner for alleged offence under Section 420 of Indian Penal Code is hereby set-aside.

33. Consequently, the judgment dated 27.08.2013 passed by learned Sessions Judge, West Singhbhum at Chaibasa in Criminal Appeal No.72 of 2013 upholding the judgment of conviction and order of sentence dated 05.07.2013 under section 420 IPC passed by learned Judicial Magistrate 1st Class at Chaibasa in G.R. Case No.553 of 2010 arising out of Muffasil P.S

Case No.112 of 2010 is hereby set-aside and the petitioner is acquitted. This criminal revision petition is allowed.

34. The petitioner is discharged from his liabilities under the bail bond.

35. The office is directed to send the records of the court below to the concerned court.

36. Let this order be communicated to the court concerned through "FAX /e-mail".

(Anubha Rawat Choudhary, J.)

Saurav/Pankaj