
(2011) 01 JH CK 0084

In the Jharkhand High Court

Case No : Criminal Rev. No. 334 of 2009

Anjan Kumar Sinha @ Anjan Sinha

APPELLANT

Vs

State of Jharkhand and Shankar Das

RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 341, 406, 420

Citation : (2011) 01 JH CK 0084

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.K. Sinha, J.—This criminal revision is directed against the judgment impugned dated 18.2.2009, passed by the learned Sessions Judge, Dhanbad in criminal appeal No. 241 of 2008, by which judgment recorded in T.R. No. 394 of 2008, arising out of Jorapokhar P.S. Case No. 121 of 2003, by Sri Ravi Ranjan, Judicial Magistrate, 1st Class, Dhanbad was affirmed and thereby the appeal was dismissed.

2. In T.R. No. 394 of 2008, charge was framed against the accused-opposite party No. 2 Shankar Das by the Trial Magistrate for the alleged offence under Sections 323, 341, 406 and 420 of the Indian Penal Code but he was acquitted by the Trial Magistrate which was affirmed in the criminal appeal.

3. Prosecution story in short was that the Petitioner-informant Anjan Kumar Sinha @ Anjan Sinha had presented a written report before the Jorapokhar Police Station alleging therein that the opposite party No. 2 Shankar Das had obtained Rs. 25,000/-by way of friendly loan from him on 4.12.2002, to which an agreement was reduced into writing, wherein Shankar Das had promised to return the money lent to him within six months, failing to which liberty was given to the Petitioner to take action against the borrower. It was alleged that in spite of assurance given by the borrower-opposite party No. 2, he (opposite party No.

2) did not return the money and that on 4.6.2003 at about 7:30 p.m. when the Petitioner-informant went to the house of the opposite party No. 2 asking him to return his money, it was alleged that he was mishandled and threatened of dire consequences. A case was registered by the Petitioner and the police after investigation submitted charge sheet against the opposite party No. 2 under Sections 323, 341, 406 and 420 of the Indian Penal Code and he was put on trial for the said charges.

4. Learned Counsel appearing on behalf of the Petitioner-informant assailed the judgment of the trial court that the accused was acquitted only by observing that he had no mens rea of causing deception to the informant. No doubt the agreement was entered into (Ext.1) between the parties, which was duly signed by them in presence of the witnesses, but the conduct as well as behaviour shown by the accused, who not only scuffled but also threatened of dire consequences to the informant, clearly revealed his malafide intention that he was not inclined to return the money to the informant what he had borrowed.

5. On the other hand, the learned Counsel appearing on behalf of the opposite party No. 2 submitted that trial court as well as the appellate court by the concurrent findings observed that taking of loan and not returning it to the lender as per the agreement would not amount to an offence of cheating u/s 420 of the Indian Penal Code. It was observed by the trial court that if one of the parties to a contract failed to observe its terms and conditions, such failure would give rise to a civil dispute and for bringing the alleged conduct of the accused within the mischief of Section 420 of the Indian Penal Code, the prosecution had to prima facie prove the mens rea that the accused from the very beginning had intention to deceive the informant and that he fraudulently and dishonestly induced the informant to deliver the money. It was further observed by the trial court that P.W. 5 and other P. Ws. had simply stated that the accused did not return the money as per the agreement and in that view of the matter, the learned trial court found it to be a simple case of breach of contract and other allegations could not be proved to substantiate the charge under Sections 323/341/406 of the Indian Penal Code besides charge u/s 420.

6. I find from the judgment recorded in Criminal Appeal No. 241 of 2008 that the Sessions Judge, Dhanbad reiterated that for the charge u/s 420 of the Indian Penal Code against the opposite party No. 2 there was no material on the record to show that at the time of taking loan he did not intend to return the same. The witnesses were silent about the other charges framed under Sections 323, 341 and 406 of the Indian Penal Code alleged to have been taken place on 4.6.2003.

7. Having regard to the facts and circumstances of the case, I do not find merit for admission of the instant criminal revision which has been preferred against the judgment recorded in criminal appeal No. 241 of 2008 for the reasons that the courts below by its concurrent finding observed the dispute between the parties is of civil nature and the counsel appearing on behalf of the Petitioner failed to show any cogent ground so as to reverse the concurrent findings of the

trial court and the appellate court.

8. This criminal revision is devoid of merit and hence, it is dismissed, but this does not preclude the Petitioner from agitating the matter before civil court.