(2012) 07 BOM CK 0159

In the Bombay High Court

Case No : Criminal Appeal No. 236 of 1998

Ashok Pundlik Wajge — APPELLANT

Vs

Manohar Ingle and Ms Kumudini Ingle — RESPONDENT

Date of Decision : 16-07-2012

Acts Referred:
Penal Code, 1860 (IPC) — Section 34, 406, 420

Citation : (2012) BomCR(Cri) 734

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : R.M. Daga, for the Appellant;

Final Decision : Dismissed

Judgement

A.P. Bhangale, J

1. Feeling aggrieved by the judgment and order 25.5.1998 passed by the Judicial Magistrate, FC, Achalpur in Regular Criminal Case No. 101 of 1987 acquitting the respondents of the offences punishable under Sections 406 and 420 of the Indian Penal Code and thereby dismissing complaint of the appellant, appellant has filed present appeal. Originally, the complaint was filed against one P. Patra, Managing Director; M. Chakravarti, Director of Busy Land Development Corporation, Midnapur (WB) and present respondents who are said to be respectively the Manager and Divisional Manager of the said Corporation. However, during the pendency of complaint, appellant/complainant deleted the names of P. Patra and M. Chakravarti (original accused Nos. 1 and 2) from the array of parties. Thus, the complaint was prosecuted only against present respondents.

2. One Busy Land Development Corporation opened its office Paratwada. They floated two schemes - one of accepting recurring deposits and the other by providing loan for purchase of vehicles to its clients under a hire-purchase agreement. Complainant opened RD Account with the said Corporation by depositing Rs. 10/per day from 6.3.1986 and his deposit accumulated to Rs.

2610/. Respondents represented to the complainant that if he makes down payment to the extent of 30% of the cost of vehicle, he would be provided loan of rest of the consideration amount. Complainant wanted to purchase a motorcycle, having "Indo-Suzuku" Make and he made a deposit of requisite amount. He did not receive delivery of vehicle by 1.10.1986 which was a date assured by respondents and, therefore, he started contacting them. It was assured by respondent No. 2 that if complainant did not get delivery of vehicle by 3.11.1986, he would get refund of amount of down-payment. Respondents did not refund the amount of downpayment and return of money in his RD Account. On the contrary, they closed down the office at Paratwada. According to the complainant, respondents/accused cheated him in this manner and indulged into commission of offences punishable under Sections 406 and 420 read with Section 34 of the Indian Penal Code.

3. Learned Magistrate, after going through the evidence and hearing the parties, recorded a finding that loss caused to the complainant cannot be attributed to the accused who simply acted as agent of the Corporation without any intention to deceive, defraud or induct the complainant. Learned Magistrate ultimately dismissed the complaint and acquitted the respondents of the offences with which they were charged. Hence, this appeal.

4. Learned counsel for the appellant contends that entrustment of money by complainant to the accused is duly proved. He submits that respondents jointly and severally deceived the complainant by not returning the amount of recurring deposit and refunding 30% down payment and, therefore, order of acquittal needs to be set aside and respondents deserve to be convicted for the offences with which they were charges.

5. It appears from the evidence of complainant that he had filed Regular Civil Suit No. 143 of 1987 before the Civil Court for recovery of money. When I asked learned counsel for the appellant as to what has happened to the suit, he was unable to answer. In his cross-examination, complainant deposed that civil suit is decided. He denied the suggestion that the suit was dismissed against respondent No. 1. Be that as it may, it further appears from record that when the Corporation was closing its Office at Paratwada, depositors by a public notice, were called upon to take back their money. However, it seems that complainant did not take steps to receive his money back in pursuance to the said public notice. Complainant in his crossexamination has admitted that the amount of recurring deposit was given by him to one S.M. Karale and Gorlekar.

6. From the facts gathered from record, it appears that complainant wanted to procure a vehicle on loan under a hire purchase agreement not with the respondents/accused, but with the Busy Land Development Corporation. The transactions of recurring deposits and non-refund thereof as also rights and liabilities under the hire purchase agreement were thus the disputes of purely civil nature and no criminal liability can be imputed to either of the respondents/ accused, as alleged. Complainant was not fair enough to disclose the fate of civil

suit before the learned Magistrate nor he has made any averment in memo of appeal before this Court.

7. In the facts and circumstances, the conclusion drawn by the learned Magistrate is correct and needs no interference. In the result, appeal fails and is accordingly dismissed.

