

(2011) 06 CAL CK 0018
In the Calcutta High Court

Case No : C.R.R. No. 2086 of 2003 with C.R.R. No. 1965 of 2003

Bhabesh Chowdhury and Mrinal Kanti Ghosh

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 23-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 120B, 21, 408, 409, 467

Citation : (2012) 1 CHN 323

Hon'ble Judges : Kanchan Chakraborty, J

Bench : Single Bench

Advocate : S.S. Roy C.R.R. 2086/03, Asish Kumar Sanyal and Pratip Kumar Chatterjee C.R.R. 1965 of 2003, for the Appellant; Himangshu De and Mrityunjay Chatterjee, for the Respondent

Judgement

Kanchan Chakraborty, J.—The Challenge in these two revision applications is to the legality, validity and propriety of the judgement and order dated 30.6.2003 passed by the Additional Sessions Judge, 1st Court, North 24-Parganas at Barasat in Criminal Appeal No. 1 of 1996 whereby affirming the judgement and order dated 19.1.1996 passed by the learned Judicial Magistrate, 1st Class, 3rd Court at Barrackpore against the Bhabesh Chowdhury (Petitioner) and Mrinal Kanti Ghosh u/s 408/471/477A/ 120B of IPC; on the following grounds:

- i) that the learned Trial Court as well the learned Fast Appellate Court erred in holding that the provision of section 197 Cr. PC was not applicable in the case;
- ii) that the learned Trial Court as well as learned Fast Appellate Court failed to appreciate the evidence on record in its proper perspective;
- iii) that while both the Courts found the petitioners did not commit offences under sections 467/468, both of them erred in coming to a conclusion that the petitioners committed an offence under sections 471 and 477A of IPC;
- iv) that the learned Appellate Court failed to take note of the fact that the

learned Trial Court did not consider the role of the petitioners in the matter of disbursement of salary and making necessary entries thereof;

v) that the learned Appellate Court erred in upholding the judgement of the learned Trial Court without considering the fact that no explanation was given by the prosecution or non-production of some important registers;

vi) that the petitioners were not liable for making entries in the respective register in respect of undisbursed salary which was supposed to be maintained only by Mrinal Kanti Ghosh; and

vii) that the judgement impugned, being otherwise bad in law, is liable to be set aside;

Since both the revision applications are directed against same judgement and order and mainly on same grounds, both of them are disposed of by the following common judgement. The point for decision is whether the judgement impugned is sustainable in law.

2. A short reference to the factual matrix is given below :

3. The petitioner Bhabesh Chowdhury was Senior Estate Supervisor of the Indian Statistical Institute, Calcutta. During the period May, 1981 to November, 1982 he was attached to Unit 9A of the I.S.I. The petitioner Mrinal Kanti Ghosh (co-accused) was Senior Assistant (Accounts) of the Institute. They together entered into a criminal conspiracy during that period and committed breach of trust to the tune of Rs. 41,000/- of the institute by showing false disbursement of salary to the employees of Unit 9A. In doing so, they also forged and manipulated documents of the institute. One FIR was lodged with Superintendent of Police, C.B.L, A.C.E, Calcutta on 30.7.1983 against four persons including the petitioner. The case was investigated into and ended in a charge-sheet against them u/s 408/467/468/471/477A and 120B of IPC. The learned Trial Court framed charges u/s 120B/408/471/477A IPC against both of them to which they pleaded not guilty. Accordingly, the trial commenced. The learned Magistrate upon consideration of evidence on record, oral and documentary found both the accused persons guilty of offences charged with and sentenced them to suffer R.I. for one year for the offence 471 IPC, R.I. for two years for offence u/s 477A IPC and R.I. for two years for the offence u/s 120B of IPC. It was directed that all the sentences so imposed should run concurrently. The judgement of conviction and order of sentence was challenged by the present petitioners Bhabesh Chowdhury and Mrinal Kanti Ghosh in Criminal appeal No. 1 of 1996. The learned 1st Appellate Court, upon hearing of both the parties was pleased to dismiss the appeal on contest and affirmed the judgement of conviction and order of sentence passed by the learned Magistrate. The convicts have come up with this application praying for revision of the judgement on the grounds already mentioned.

4. I have carefully gone through the judgement passed by the learned Trial Court

as well as the learned 1st Appellate Court, the evidence on record and documents placed before the learned Trial Court by the prosecution. The petitioners were charged for committing offences u/s 120B/408/471/477A IPC. The petitioners were not charged for committing any offence u/s 409 of IPC. Although, a question was raised in the Trial Court as well as in the 1st Appellate Court that the petitioner were public servants and a sanction to prosecution u/s 197 of the Code of Criminal Procedure was required for the purpose of their trial by a Court of Magistrate and that they ought to have been tried by a Special Court in view of Criminal Law Amendment Act 1988, I find that the question was answered by both the learned Trial Court as well as the learned 1st Appellate Court correctly by saying that the petitioners not being public servants within the meaning of section 21 of IPC, they were not required to be tried by special Court and that no sanction u/s 197 of the Code of Criminal Procedure was required.

5. The Indian Statistical Institute was divided in twenty units on the relevant period of time. Salary bills of all the units were to be prepared in the accounts unit and bills were to be sent to cash department in every month. As far as disbursement of salary was concerned, there was one main disbursing officer whose function was to disburse cash to all the unit disbursements on the basis of requisitions made by each of the twenty units disbursements" salary requisition form implicated duly signed by one of the two disbursements each unit. At the relevant period of time the petitioner Bhabesh was attached to 9A unit while the Mrinal Kanti Ghosh was the main disbursing officer attached to accounts establishment unit. The main disbursing officer was supposed to receive requisition forms from each and every unit duly signed by at least one of the two units disbursements. He was supposed to check it and put his initial on that requisition forms and enter the amount requisitioned by the unit disbursements. He was also supposed to enter the names of two units disbursements against the amount requisitioned for each unit. Each unit disbursements supposed to get cash from the head cashier after fulfilling the above formalities and disburse the amount received by them amongst the employees attached to that unit after making necessary entries in acquittance roll. Non-disbursed amount was to be shown as balance in the salary disbursement register and was to be handed over to the main disbursing officer by the unit disbursement team. Upon having the same, the main disbursing officer was supposed to make necessary entries in a register known as main disbursement register. After making the necessary entries the undisbursed cash of all the units was supposed to be handed over to the main cashier by the main disbursing officer. Head Cashier, in turn, was to take note of amount disbursed and undisbursed in the cash register. The petitioner Bhabesh Chowdhury was one of the two members of the disbursement team in respect of unit 9A during the period from May 81 to November 82. The P.W. 1 and P.W. 2 made corroborating, consistent and credible statements to the effect that the petitioner Bhabesh was one of the two members of the disbursement team in respect of unit 9A at the relevant period of time. His signatures on the requisition forms for different months were admitted into evidence and marked Exhibits in view of the statements of the P.W. 1 and P.W. 2. The signatures of the

petitioners on the salary disbursement register were also admitted into evidence and marked Ex. on behalf of the prosecution. In fact, there was no scope for the petitioners to deny in the Trial Court that they were no way connected with the salary disbursement of unit 9A at the relevant period of time. On the contrary, it appears that the prosecution established clearly that the petitioner Bhabesh being the one of the two members of disbursement team of unit 9A filled in the requisition forms signed it and placed it before the main disbursing officer i.e. petitioner Mrinal Kanti Ghosh. No doubt, they were entrusted with cash of the unit 9A of the I.S.I. at the relevant period of time. Ex. A is the report of the account officer (P.W. 1) which indicates clearly that from May 1981 to November 1982 petitioner Bhabesh signed requisition forms for salary of the employees attached to unit 9A and made necessary entries in the salary disbursement register and placed it before the petitioner Mrinal who, in turn, signed those forms. There was total misappropriation of Rs. 41,000/- out of which the petitioner Bhabesh misappropriated of Rs. 20,000/- and Mrinal misappropriated the rest amount. The requisition forms containing signatures of Bhabesh Chowdhury as well as Mrinal Kanti Ghosh have established the prosecution case beyond any doubt. The monthly disbursement register was maintained by Mrinal Kanti Ghosh. Main disbursement register for four months were produced before the Trial Court and the entries therein were proved to have been made by Mrinal Kanti Ghosh. The P.W. 10 confirmed that fact. Bhabesh in collusion with Mrinal Kanti Ghosh shown inflated amount of disbursement because the rough cash book produced before the Court indicated the amount disbursed actually shown in the monthly disbursement register corroborated to each other.

6. I find that the learned Trial Court taken each and every instance of conspiracy into account and given satisfactory reason as to how the inflated entries were made in the register by the petitioners. The handwriting expert also proved the entries in the register were made by the petitioners. The manipulation and falsification of account was established sufficiently by satisfactory evidence. It also appears that the learned Trial Court had taken into consideration the fact of delay in lodging of the FIR. The learned Appellate Court re-appreciated the evidence carefully and discussed all the points raised before it in course of hearing of the appeal. It also appears that the learned Trial Court as well as the learned Appellate Court had rightly found that non-establishment of commission of offence under sections 467, 468 of IPC did not come in the way in holding the petitioners guilty of offence u/s 471, 477A and 408 of IPC because those offences were completely different than the offences u/s 467, 468 of IPC. The learned Appellate Court reconsidered the Ex. 6/1, 7/1, 8/1, 9/1, 10/1, 12/1 and 13/1 and came to a finding that the learned Trial Court was correct in coming to a conclusion that those signatures of the petitioner Bhabesh on the requisition slips as unit disbursing officer of 9A were tendered by him to the petitioner Mrinal Kanti Ghosh who received the same by putting his signatures thereon which were marked Ex. 6/2, 7/2, 8/2, 9/2, 9/3, 13/2 and 13/3. The learned Trial Court as well as the learned Appellate Court found that the petitioner Bhabesh did not deny

that the Ex. 26/1 to 26/11 and 27/1 to 27/23 were his signatures. The entry in the salary disbursement register of unit 9A for the month of July 1982 clearly indicated that total amount received, total amount disbursed and total amount undisbursed were Rs. 33935, Rs. 29555.43 and Rs. 4379.57, respectively. The learned Appellate while reappreciating the evidence recorded by the learned Trial Court found that the requisition slip and salary disbursement register maintained by the petitioners as unit disburser and main disburser for the month of July 1982 tallied with each other and accordingly it was expected that the relevant entries of amount received, amount disbursed and amount undisbursed as mentioned in the monthly disbursement register against unit 9A when tallied with requisition slips and salary disbursement register, the same should not have been indicated the total amount disbursed was Rs. 32555.43 in place of Rs. 29555.43. As a consequences, the cashier received Rs. 1379.57 in stead of Rs. 4379.43 as undisbursed amount of unit 9A from Bhabesh through Mrinal Kanti Ghosh.

7. On careful perusal of both the judgement, the evidence on record and document placed before the Court I find that the judgement impugned is not suffering from any infirmity, illegality or impropriety which can be interfered with by exercising revisional jurisdiction. It is settled principle of law that High Court shall not and must not interfere with a concurrent findings of fact which is based on reasoning. There is no mistake or error in law or fact resulting in gross miscarriage of justice. Accordingly, this Court finds it inexpedient to interfere with the concurrent findings of fact and upset the impugned judgement of conviction.

8. Sri S.S. Ray, learned Counsel appearing for the petitioner contended that the petitioners have retired from service long ago and already attained age of more than 75 years. In all, 27 years have already been passed since the Criminal action was set into motion against them. Not only they had suffered mental agony but socked by the delay in legal process. Therefore, Court should deal with the matter of sentence leniently in case it finds that the order of conviction under challenge is not required to be upset.

9. Mr. Himagshu Dey, learned Counsel appearing on behalf of the opposite party/ State fairly concedes to that submission of Mr. Ray. True it is that a long period of 27 years has already been elapsed since the date of filing of the case against the petitioners. They have become old men in course of time. It would be travesty of justice if they are directed to suffer R.I. as ordered by the learned Trial Court and upheld by the learned Appellate Court. Considering the facts above while upholding the judgement of conviction, I reduce the sentence of the petitioners to the extent that they are to pay a fine of Rs. 5000/- each in all, in stead of suffering R.I. In case they fail to pay the fine amount within a period of two months from the date of communication of this order, they would suffer S.I. for two months and in that case, the period they were in custody in connection with this case will not be set-off. The revision applications are disposed of accordingly