
(2019) 09 JH CK 0077

In the Jharkhand High Court

Case No : Criminal Revision No. 68 Of 2013

Budhan Munda And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 20-09-2019

Acts Referred:

Indian Penal Code, 1860 — Section 409, 420

Citation : (2019) 09 JH CK 0077

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Dhiraj Kumar, Moti Gope

Final Decision : Dismissed

Judgement

1. The instant application is directed against the common judgment dated 18.10.2012, passed by the learned District Additional Sessions Judge-cum Special Judge, Land Acquisition, Hazaribagh in Criminal Appeal No. 18 of 2012 alongwith Criminal Appeal No. 20 of 2012, whereby the learned appellate court modified the judgment of conviction and sentence passed by the learned Judicial Magistrate, 1st, Hazaribagh in G.R Case No. 2277 of 1996 (T.R. Case No. 1527 of 2011) whereby the petitioners were convicted for the charge under Sections 409 and 420 IPC and were sentenced for R.I. of 3 years under Section 409 IPC with fine of Rs.4,000/- each and R.I. for 2 years under Section 420 IPC with fine of Rs.1,000/- each.

2. The brief facts which are necessary for adjudication of this case is that, different agreements were signed by the petitioners with the Mukhiya for construction of road and other items as per the scheme of Jawahar Rojgar Yojna. It has been alleged that the respective petitioners though have taken the advance but did not complete the work which can commensurate to the advance. It has been alleged that petitioner No. 1 did not complete the work to the tune of Rs. 24,653/-, petitioner No. 2 did not complete the work to the tune of Rs. 7,302/-, petitioner No.3 did not complete the work to the tune of Rs. 5,814/-,

petitioner No. 4 did not complete the work to the tune of Rs.1,690/- and petitioner No. 5 did not complete the work to the tune of Rs. 55,000/-. It has further been alleged that when the petitioners were asked to refund the amount for which the work was not completed by them, they did not refund the aforesaid amount and as a result, the prosecution case has been lodged on the basis of information of the Mukhiya of village panchayat.

3. Based upon the evidences, both oral and documentary, placed before him, the learned trial court convicted the petitioners for the offence under Section 409 and 420 IPC and sentenced them accordingly.

4. On appeal filed by the petitioners before the District and Additional Sessions Judge, Hazaribagh, the appellate court with specific finding acquitted the petitioners from the charge under Section 420 by holding that prosecution has not been able to prove the charge under Section 420 beyond all shadow of reasonable doubt. However, the learned appellate court did not interfere with the charge of conviction under Section 409 IPC.

5. The learned counsel for the petitioners has strenuously submitted that the petitioners were poor persons and they were not aware of the agreement and it is not the case of the prosecution that the petitioners have defalcated the amount rather it is a specific case of the prosecution that some work were not completed and for that, they did not refund the amount. It has been stated by the petitioners that after conviction, the petitioner No.1 has refunded the amount, for which, the receipt has also been given to him as such, he may be acquitted. He further submits that at best, the Government could have filed money suit for recovery of money or they could have filed certificate case as per the terms of the agreements. In view of the aforesaid facts, the petitioners may be granted some leniency by this Court.

6. Per contra, the learned APP submits that there is concurrent finding by the courts below and any interference by this Court is not warranted. It is further submitted by the learned APP that it was government money and it should go back to the government custody.

7. Having heard learned counsels for the parties and after going through the impugned orders and lower court records and keeping in mind the limited scope of the revisional jurisdiction, I am not inclined to interfere with the finding of the courts below and as such the judgment of conviction passed by the learned trial court and upheld by the learned appellate court with respect to Section 409 IPC is, hereby, confirmed. It also appears from the impugned order that there is concurrent findings of the courts below that the work awarded to the petitioners were not completed and there is loss of money to the government.

8. However, so far as sentence is concerned, it is apparent from record that the incident is of the year 1996 and 23 years have elapsed and the petitioners must have suffered the rigors of litigation for the last 23 years and also remained in custody since 21.01.2013. It is not stated that the petitioner have ever misused

the privilege of bail. Further, the incident does not reflect any cruelty on the part of the petitioner or any mental depravity. In a situation of this nature, I am of the opinion that it may not be proper for this Court to send the accused person back to prison. In this way, I find it is expedient in the interest of justice that the sentence already undergone will suffice for the ends of justice for the alleged offence. It is also a fact that the petitioner No. 1 is aged about 66 years, petitioner Nos. 3 and 5 is aged about 50 years whereas petitioner No. 4 is aged about 58 years and petitioner No. 2 is aged about 38 years.

9. In this view of the matter, the sentence passed by the learned trial court and concurred by the learned appellate court is hereby modified to the extent that the petitioners are sentenced to undergo for a period already undergone, subject to the payment of costs by the respective petitioners stated hereinbelow:

- (i) The petitioner No. 1 is directed to pay fine of Rs.20,000/-.
- (ii) Petitioner No. 2 is directed to pay a fine of Rs.5,000/-
- (iii) Petitioner No. 3 is directed to pay a fine of Rs. 4,000/-
- (iv) Petitioner No. 4 is directed to pay a fine of Rs. 1,500/- and
- (v) Petitioner No. 5 is directed to pay a fine of Rs. 35,000/-,

10. It is made clear that all the petitioners are directed to pay the fine as mentioned hereinabove within a period of three months from today failing which, they shall serve rest of sentence as awarded by the learned appellate court in connection with Section 409 IPC.

11. With the aforesaid modification in sentence only and directions, the instant revision application is dismissed and the petitioners are discharged from the liability of the bail bonds.

12. Let the lower court record be sent to the concerned court forthwith.