
(2019) 08 JH CK 0093
In the Jharkhand High Court
Case No : Criminal Revision No. 512 Of 2013

Lusa Mahato And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 02-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 406, 420

Citation : (2019) 08 JH CK 0093

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : N.N.P. Choudhary

Final Decision : Allowed

Judgement

1. The instant application is directed against the judgments passed by the learned District & Additional Sessions Judge-1st, Jamtara, in Criminal Appeal No. 07 of 2012 and Criminal Appeal No. 08 of 2012, whereby the learned appellate court has dismissed both the appeals by its separate judgment, both dated 29.04.2013, and confirmed the sentence of the petitioners namely, Lusa Mahato and Manoranjan Rai, passed by the learned Judicial Magistrate-1st class, Jamtara vide its judgment and sentence dated 13.01.2012 in G.R. Case No. 497 of 1998 (T.R. No. 316 of 2012), whereby both the petitioners have been found guilty, for the offence under Section 406 IPC and awarded sentence to undergo R.I. for one year.

2. The prosecution case is based upon the written application of the informant-Parash Nath Choudhary, the then B.D.O. of Jamtara. It has been stated that petitioner No. 1 namely, Lusa Mahato had undertaken contract work for construction of primary school building at village Barjora, under the Sunischit Rozgar Yojna, vide scheme No. 66/95-96 and for that an agreement was executed and as per agreement, the petitioner No. 1 was to complete the entire work by 20.06.1996. However, the same was extended till 30.09.1996, but in spite of the extension till 30.09.1996, the work undertaken by the petitioner No.

1 could not be completed. It has been further alleged that the total contract amount was of Rs. 76,300/- and out of which Lusa Mahato took advance of Rs.63,500/- and the work was done for only Rs.33,019/-. The similar allegation has been made in the said report against the petitioner No. 2-Manoranjan Rai. It has been alleged that petitioner No. 2 took advance of Rs.1,16,725/-, out of Rs.1,73,600/-, but he completed the work only to the tune of Rs.87,534/- and the work to the tune of Rs. 29,191/- was not completed. In this way, both the contractors have misused the Government's amount to the tune of Rs.30,481/- and Rs.29,191/- respectively.

3. On the basis of written report of the informant, formal FIR was registered and after completion of investigation, police submitted the charge-sheet, under Section 420 and 406 of the Indian Penal Code against the petitioners and cognizance was taken. The petitioners pleaded not guilty and sent up for trial.

4. On the basis of evidences, both oral and documentary, laid before him, the learned trial court found the petitioners guilty for offence under Section 406 of the Indian Penal Code. However, the petitioners were acquitted from the charge under Section 420 IPC.

5. Separate appeals were filed by the petitioners before the learned appellate court, and the learned appellate court dismissed both the appeals and upheld the judgment of the conviction and order of sentence.

6. Learned counsel for the petitioners submitted that it is an admitted fact that there was an agreement between the petitioners and the Block Development Officer (BDO), Jamtara and the work was allotted to them, in which, there was a condition that if the work will not be completed within the stipulated period, then the B.D.O can recover the amount, taken in advance by them by filing a certificate case, under the provisions of Bihar and Orissa Public Demand Recovery Act. He has further submitted that no where it was stipulated that for non-completion of work, they will be prosecuted. Both the courts below have failed to appreciate that at best the petitioners have committed wrong for non-fulfillment of work, awarded to them, but no where, they have committed breach of trust. As such, the impugned order has been passed mechanically without application of judicial mind. The learned counsel for the petitioners further submits that the petitioner No. 2-Manoranjan Rai remained in custody since 05.07.1999 to 13.12.1999 and again from 18.07.2013 till 25.07.2013, and as such, he remained in custody for 5 months and 15 days. Learned counsel further submits that the petitioner no.1 remained in custody for about a week. It has also been informed that they never misused the privilege of bail and the age of petitioner no. 1 is more than 60 years and age of petitioner no. 2 is approaching about 45 years, as such, some leniency may be granted by this Court.

7. Per contra, the learned APP has fully supported the prosecution case and submitted that there is no error whatsoever in the orders passed by the learned courts below and the petitioners should not be granted any relief by this Court.

8. Having heard learned counsels for the parties and perusing the documents including the lower court record, it appears that admittedly there was an agreement and as per one of its clauses, the punishment for non-completion of work, was recovery of the amount, for which, the work was not completed. However, keeping in mind, the scope of revisional jurisdiction, I am not inclined to interfere with the judgment of conviction and as such, the same is confirmed.

9. So far as sentence is concerned, it has been stated that the petitioner No. 1 who is aged about 62 years, has remained in custody for about a week and petitioner no. 2 has remained in custody for more than 5 months and both the petitioners never misused the privilege of bail, so interest of justice would be sufficed, if the period of sentence is modified to the extent that the petitioners are sentenced for the period, which they have already undergone. Thus, the sentence passed by the learned trial court and affirmed by the learned appellate court is modified to the extent that both the petitioners are sentenced to undergo imprisonment for a period already undergone.

10. However, in the interest of justice, it is necessary that both the petitioners should be imposed cost. As such, the petitioner No. 1 is directed to deposit Rs.25,000/- as cost before the learned trial court which shall be deposited in the Government treasury. Similarly, the petitioner no. 2 is also directed to deposit Rs.5,000/- before the learned court below, which shall also be deposited in the Government treasury. The aforesaid amount shall be deposited by both the petitioners within a period of 4 months from today, failing which, both the petitioners will serve the rest of the sentences, as passed against them by the learned trial court.

11. As a result, this revision application is dismissed with the aforesaid directions.

12. It has been brought on record that the petitioners have been granted bail vide order dated 25.07.2013 by this Court, hence they are discharged from the liability of the bail bonds.

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