(2012) 11 PAT CK 0036

In the Patna High Court

Case No : Criminal Appeal (U/S) No. 4 of 2002

Ramdeo Singh APPELLANT

Vs

The State of Bihar, Rameshwar Prasad, Proprietor, M/s Gopalji and Mahendra Prasad (Munshi) RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 201, 378(4)
Penal Code, 1860 (IPC) — Section 120B, 406, 415, 420

Citation : (2013) CriLJ 891

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Ratna Das, for the Appellant; S.N. Prasad, Assistant Public Prosecutor for the State and Mr. Satyendra Prasad Singh, Advocate for the Respondents, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice Ashwani Kumar Singh

1. The present appeal has been filed u/s 378(4) of the Code of Criminal Procedure in pursuance of the leave granted by this Court in S.L.A. No. 69 of 2001. The appeal is directed against the judgment and order of acquittal dated 10.8.2001 passed by Sri S.S. Giri, learned Judicial Magistrate 1st Class, Patna City in C.A. Case No. 18 of 1997, corresponding to T.R. Case No. 204 of 2001. The appellant had filed the aforesaid Complaint on 13.01.1997 against respondent nos. 2 & 3. In the complaint, the appellant has alleged that he is a farmer and produces potatoes and onions. The respondent no. 2 has a business of selling and buying potatoes and onions and works as an agent on commission. The respondent no. 3 is an employee of respondent no. 2. The appellant and the accused persons were having business relationship since long. On 1.11.1994, the accused persons came to the house of the appellant and placed order for supply of one truck of potato seeds, for which, they did not give any advance but,

promised to make payment subsequently. On the basis of the order placed by the accused persons, the appellant sent 251 bags of potato seeds on 2.11.1994. The potato seeds so sent were sold between 4.11.1994 to 7.11.1994. The accused persons were liable to make payment of the sale proceeds amounting to Rs. 59,044/-. Similarly, on the assurance of the accused persons, the appellant sent 239 packets of potato seeds worth Rs. 62,695.44/- to the accused persons. Thus, the accused persons became liable to make payment of Rs. 1,15, 103/- to the appellant. Out of that, the accused persons paid Rs. 61,980/- by way of bank drafts on different dates. The balance amount totaling Rs. 53,123/-, is still due to the appellant. Even after several reminders, the due amount was not paid by the accused persons. On 23.8.1995, a legal notice was sent to the accused persons. The accused persons promised to pay the due amount. However, on 23.11.1996 when the appellant went to the house of respondent no. 2, he and his wife Nirmala Devi misbehaved with him. It has also been stated in the complaint that on 17.12.1996 another legal notice was sent by the appellant which was received by the accused, but, respondent no 3, in collusion with the postman, got an endorsement made that the accused was absent. Hence, the appellant suspected that the accused persons have cheated him.

2. The appellant was examined on oath and witnesses were also examined in course of inquiry u/s 201 of the Code of Criminal Procedure in the said complaint case. The learned Magistrate took cognizance of the offence and summoned the accused persons to face trial. On appearance of the accused persons, charges under Sections 406, 420 and 120B of the Indian Penal Code were framed, to which, the accused persons pleaded not guilty.

3. In course of trial, altogether four witnesses including the complainant were examined in support of the prosecution case. The witnesses have, more or less repeated the things, stated in the complaint petition.

4. The trial court, after hearing the parties, held that the prosecution has failed to prove its case. It has recorded that witnesses have stated in course of trial that there was business relationship since last ten years between the appellant and the accused persons. There was no dispute between them for over a decade. The witnesses have also admitted in course of trial that there was no intention of cheating right from the beginning. Thus, the trial court came to the conclusion that there is some dispute between the parties, which arose subsequently, in course of transaction of business. There was no mens rea on the part of the accused persons and the dispute was purely of civil nature. The trial court has also come to the conclusion that the criminal prosecution had been launched in order to realize an amount which according to the appellant fell due against the accused persons.

5. The offence of cheating has been defined u/s 415 of the Indian Penal Code. The distinction between the mere breach of contract and the offence of cheating is fine one. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning

of the transaction. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating, it is necessary to show that he had fraudulent of dishonest intention, at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.

6. Thus, in my view, in the present case, when there was a long standing business relationship between the parties, the ingredients of the offence of cheating were completely missing. Similarly, to constitute the offence of criminal breach of trust punishable u/s 406 of the Indian Penal Code, there must be dishonest mis-appropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. The misappropriation or conversion or disposal must be with a dishonest intention. Every breach of trust gives rise to a suit for damages, but it is only when there is evidence of a mental act of fraudulent misappropriation that the commission of embezzlement of any sum of money becomes a penal offence punishable as criminal breach of trust. It is this mental act of fraudulent misappropriation that clearly demarcates an act of embezzlement which is a civil wrong or tort, from the offence of criminal breach of trust.

7. In the present case, apparently the prosecution has failed to establish the offence of cheating and criminal breach of trust in the absence of mens rea. In such view of the matter, the accused persons could not have convicted.

8. The trial court has recorded clear, cogent and convincing reasons in recording acquittal. The findings of the trial court are neither erroneous nor perverse. I, thus, find no merit in the present appeal. It is dismissed, accordingly.