

(2017) 12 GAU CK 0027
In the Gauhati High Court
Case No : 130 of 2006

Shri J. Kapthianga

APPELLANT

Vs

The State Through

RESPONDENT

Date of Decision : 06-12-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 420](#),
[Section 120\(b\)](#) - Cheating and dishonestly inducing delivery
of property - Concealing design to commit offence punishable with imprisonment
[Section 420](#)

Citation : (2017) 12 GAU CK 0027

Hon'ble Judges : Hitesh Kumar Sarma

Bench : SINGLE BENCH

Advocate : K Agarwal, S C Keyal

Final Decision : Allowed

Judgement

1. This is an appeal against the judgment and order, dated 15.5.2006, passed by the learned Special Judge, CBI, Assam, Guwahati, in Special Case No. 27/2004, convicting and sentencing the accused appellant under Sections 120(B)/420 IPC to rigorous imprisonment for 1 1/2 years and to pay a fine of Rs. 2,000/-, in default, further rigorous imprisonment for 3 months for offence under Section 120(B) IPC and also rigorous imprisonment for 1 1/2 years with a fine of Rs. 2,000/- , in default, rigorous imprisonment for 3 months for offence under Section 420 IPC.

2. Heard Mr. K Agarwal, learned Senior counsel for the appellant. Also heard Mr. S C Keyal, learned Standing counsel for CBI. I have also perused the record of the learned trial court including the evidences.

3. The fact, leading to the case is that, on 30.11.1979, SP, SBI, Shillong, received an information that, Shri S K Biswas, the then Director, Agriculture, Government of Mizoram, entered into a conspiracy with the proprietors of M/s Zoram Supply Agency and M/s J K Press, Shri J Kapthianga and as well one Shri

S N Agarwal and Sri M N Mishra. The conspiracy was made to cheat various persons and authorities including SAIL, at Guwahati and the Government of Mizoram. In pursuant to such conspiracy, they purchased 600 MT of various building materials including GI sheets from SAIL, which were purportedly purchased for construction of Government quarters in Mizoram although those were never brought to Mizoram and disposed of at Guwahati at a very high price.

4. On the basis of such allegation, CBI registered a case, vide case No. RC.23(A)/79-SHG, investigated into it, collected evidence and after obtaining sanctions from the competent authority against the public servant, submitted a charge under Sections 120(B)/420 IPC, read with Sections 5(2)/5(1)(d) of the Protection of Corruption Act, against the present accused appellant and others.

5. The case, as emerges from the totality of the fact is that, Shri S C Biswas, was serving as Director, Agriculture Department, Government of Mizoram and during his tenure as a Director, one P Gupta, who was the Jr. Engineer, was functioning as Subdivisional Engineer. Shri J Kapthianga, H. Zakhuma and Lambana were the brothers and partners of M/s Zorum Supply Agency and M/s J K Press, Upper Bazar, Aizwal. One Shri S N Agarwal was associated with the transport business and was the owner of the M/s Inland Transport Organization. Sri Om Prakash Jain was the proprietor of the M/s Kashiram Jain & Co. while Shri M N Mishra, one of the employees of the said firm.

6. After exhausting all the required formalities, the learned trial court of Special Judge, CBI, Assam, framed a formal charge against the present accused appellant under Sections 120(B)/420 IPC. It deserves a mention here that the present appellant is not a public servant.

7. I have perused the impugned judgment.

8. The conviction of the present accused appellant is based on the evidence on record of 4 (four) witnesses as appears from the record. They are PW5, PW6, PW13 and PW15.

9. It has come out from the evidence on record that the Government of Mizoram in the Agriculture Department, entrusted H. Zakhuma and Lalbana to collect the building materials from SAIL by making necessary payment. Thereafter, they collected the materials, but for whatever reasons it may be, the materials did not reach Mizoram and ultimately was not supplied to the government. There is no instance in the evidence on record to show that against the materials so allegedly collected, payment was made by the Government of Mizoram and rather the payment was supposed to be made by the accused H. Zakhuma and Lalbana. Now, the question is, what is the role of present accused appellant in the aforesaid transaction. The evidence on record makes it appear that the present accused appellant is the brother of the accused H. Zakhuma and Lalbana. But, the government did not entrust him and rather entrusted his brothers to collect the materials on behalf of the government. There is no official or non-official role assigned to the present accused appellant. The only evidence

that has come out against the accused appellant in the evidence of PW5 is that he received the letter, marked, Ext.8, on behalf of his brothers, namely, H. Zakhuma and Lalbana, which itself is suggestive of the fact that he has no role in the matter. Ext.8 was evidently marked to the aforesaid two accused persons H. Zakhuma and Lalbana.

10. The evidence of PW6 is that the present accused appellant stayed in a hotel at Guwahati, and vide Ext.32, it is attempted to be proved that he stayed during the period from 25.10.1978 to 31.3.1979 in the particular hotel at Guwahati. This itself does not link the accused appellant with the alleged offence. His staying in hotel at Guwahati is no way established any link on his part in the commission of alleged offence.

11. The evidence of PW13 shows that he knew the present accused appellant, who was an Ex-MLA, and he had given his specimen signature before him. There is no evidence in the record to suggest that the specimen signature and the hand writing of this accused appellant, obtained by him or put before him were utilized by the Investigating Agency to rope him to any of the offences alleged in the instant case. The evidence of PW15 is that although the present accused appellant is one of the partners in M/s J K Press, yet, there is no evidence to link him with the present accused person in the alleged offence.

12. It has brought to the notice of the court during the course of argument by the learned counsel for the appellant and agreed to by the learned counsel for the CBI that the accused H. Zakhuma and Lalbana died during the continuation of trial. Therefore, there was no trial against them in spite of the fact that they were held to be not guilty in the judgment passed by the learned trial court. Whatever it may be, if there was any conspiracy made by the present accused appellant, that was supposed to be made with the co-accused persons, particularly, accused H. Zakhuma and Lalbana. But, they were held, in-absentia, after their death, not guilty in the judgment. Conspiracy is to be made by the accused appellant with some other accused persons but there is absolutely no evidence to indicate as to how and with whom the present appellant made the conspiracy alleged. There is also no evidence as to whom, he has cheated in the instant case to attract the offence under Section 420 IPC. None of the ingredients of Section 420 IPC is attracted in this case against the present accused appellant. There is even no allegation against him of cheating any person.

13. In view of the above discussions in evidence on record, in the considered view of this court, there is no evidence to sustain the conviction of the accused appellant, and therefore, the judgment and order, dated 15.5.2006, passed by the learned Court of Special Judge, CBI, Assam, Guwahati, in Special Case No. 27/2004, requires to be interfered with.

14. Accordingly, the appeal is allowed.

15. Retain the LCR till disposal of Criminal Appeal No. 146/2006.