

IN THE COURT OF JUDICIAL MAGISTRATE, 1ST
CLASS: TEZPUR:SONITPUR.

G.R. CASE NO 1668/06

U/S 403/406/420 IPC

PRESENT : K. K. PATHAK, A.J.S

PARTIES : STATE OF ASSAM

--V--

SANJIB GHOSH -----ACCUSED

EVIDENCE ON : 03.06.10,.3.09.10,08.11.10,23.05.12
30.06.12,16.07.12.

S/D ON : 23.07.12

ARGUMENTS ON : 27.07.12

JUDGMENT ON : 04.08.12

LAWYERS (FOR STATE) : A.P.P.

(FOR ACCUSED) : A.K. PAUL, B. MAZUMDAR

JUDGMENT

In the matter at hand, an FIR was lodged by one Mangal Mohan Das before the o/c Tezpur p.s. through court. It was inter alia alleged that the accused had gone to his house, projected himself as the son of the informant and had by unfair means misappropriated an amount of rs 5,95,000/ obtained by selling his land. Out of that amount Rs. 62,601/ had been returned but the remaining amount of Rs 5,36,399/ was not returned.

As the money was not returned, villagers were informed and in a meeting, the accused allegedly confessed to taking the money on loan and agreed to return the same in three installments and also signed an agreement in this regard. In default of payment, it was also agreed that land of the accused would be handed over to the informant. But in spite of the agreement, money was not handed over. When demand was made for repayment, the informant was allegedly threatened.

Based on these allegations, TEZPUR P.S CASE NO 690/06 U/S 420/406/294/506 IPC was registered and investigation was carried out. Post investigation, c/s was submitted against the accused u/s 420/406 IPC.

Accused entered appearance. Copies were furnished. Charges u/s 403/406/420 IPC were framed, read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

During trial prosecution adduced evidence. S/D of the accused was recorded. Defence did not adduce evidence. Arguments were heard.

POINTS FOR DETERMINATION:

1. Whether the accused misappropriated the money of the informant thereby committing an offence u/s 403 IPC?
2. Whether the accused committed criminal breach of trust in respect of the money of the informant and cheated him, thus committing offences u/s 406/420 IPC?
3. Whether the charged offences can be attributed to the accused?

DECISION AND REASONS:

Point no 1:

In this regard, I find that my learned predecessor had framed charge u/s 403 IPC against the accused in addition to sections 406/420 IPC against the accused. There is a very thin line which marks the difference between offences of criminal misappropriation u/s 403 IPC and criminal breach of trust u/s 406 IPC. The essence of criminal misappropriation of property is that the property comes into the possession of the accused in some neutral manner whereas in matters u/s 405 IPC, the property comes into possession of the accused either by an express entrustment or by some process placing the accused in a position of trust. For gainful reading on the aspect of difference between the two, one may refer to the following cases:

1. BASUDEB PATRA -V- KANAI LAL HALDAR, 1949 CRI LJ 382(DB)
2. RAM NARAIN POPLY -V- CBI ,AIR 2003 SC 2748

In view of the settled legal position, I find that the prosecution case as per the FIR itself is clear and alleges that the the accused did not come into possession of the property in some neutral manner. He was expressly entrusted with the property. Besides, the oral evidence was led to show entrustment. So , an offence u/s 403 IPC is not made out against the accused.

Point stands decided accordingly.

POINT Nos 2 and 3:

On this issue, I find that Mangal Mohan Das/ pw1 , who is the informant cum victim of this case, has during his examination in chief narrated about how the accused came to his house and treated himself like the own son of the informant. The accused then informed him that he needed rs 5,85,000/. For arranging the money the victim gave 5 kathas of land to the accused to sell and the accused informed him that money would be returned. After selling the land, the accused got rs 5 lakh but the money was not handed over to the victim/informant. On demand being made, the accused threatened him. The villagers were informed and the accused agreed to return the money in installments.

During cross examination, he stated that he did not remember the dag/ patta no and that there was no power of attorney for selling land. He also did not know as to whom the land was sold. He also stated that he signed over document and that when the registrar asked him at the time of selling the land as to whether he had received the money, he had replied in the affirmative. The land document was as per his version not shown to the police. He also could not say for how much accused sold the land.

From the evidence of pw1 including his cross examination, I find that he had at the time of registration admittedly told the registrar that he had received the money. In addition although pw 1 in his chief had stated that rs 5 lakh was obtained by selling land, during cross examination , he admitted that he did not know for how much land was sold.

Now turning to the evidence of Anjana Das/pw2, I find that her evidence in chief is more or less similar to her father's. She also did not see as to who had taken the money. She was also admittedly not present with her father when the deed was registered.

Tulsi Das /pw3 is the wife of the victim. She narrated about how land was the accused sold the land to others for Rs 5,95,000/. Part amount (Rs 62,000/) was returned while the remainder remained unpaid. During cross examination she did not know about the customer of the land and also as for how much the land was sold.

Similarly, Ujjal Das /pw4 who is the son in law of he victim supported the other pws about the land. During cross examination has admitted that he did not know about the details of dag/patta no. He also did not know about the purchaser. He also did not know for how much the land was sold.

Cumulative reading of the evidence of pws 1,2,3 and 4 show that though their evidence regarding the amount for which the land was sold is hearsay, but the portion of their evidence regarding the accused being handed over the land for selling and obtaining money cannot be doubted. Just because some portion of the evidence of these pws is hearsay and cannot be acted upon, their entire evidence cannot be thrown overboard. Courts have to separate the chaff from grain and arrive at the truth. Further , evidence also discloses that part amount from the sale was also handed over to the complainant/victim.

It has come about in the evidence that there was no power of attorney. But there is nothing in law which says that on account of good relationship between parties, one cannot informally entrust another to sell land. Besides that ,it has been argued that the victim admitted about telling the registrar about receipt of money. Pw1/ victim is a 70 year old rustic and uneducated person. The APEX COURT in the case of STATE OF U.P. -V- KRISHANA MASTER, CRIMINAL APPEAL NO 1180 OF 2004 decided on 03.08.2010 has already laid down guidelines that evidence of rustic witness should be appreciated as a whole. The rustic and uneducated witness is not expected to remember every small details of the incident. Going by the evidence as a whole nothing much , as such, can be read in this portion.

Evidence of pw1,2,3 and 4 inspires confidence and after separating the chaff from the grain, it is clear that in order to satisfy the need of money of the accused, the victim had in good faith given him land to sell. Entrustment of the land is proved.

Further credence regarding the incident is found from the evidence of Sahabuddin Ahmed/pw5, Bablu Goswami/pw6 and Makbul Hussain/pw7. Though from their cross examination, it appears that their knowledge regarding the money involved is hearsay but their evidence regarding the calling of 'mel' over this cannot be doubted. Had there been no dispute between parties over the land, there would not have been any mel. In presence of people the accused had also agreed to repay the money. The pws regarding this part regarding the accused agreeing to pay up stood tested by cross examination.

Thus after going through the evidence in its entirety, I find that entrustment is proved. The meaning of entrustment according to law (see AIR 1972 SC 1490, SOM NATH PURI -V— STATE) covers all those cases where property is handed over for a specific purpose and is disposed of contrary to the terms. In the matter at hand, the land was handed over for a specific purpose and the accused acted contrary to the purpose. The position of law (see STATE OF HP - V--- KARANVIR, AIR 2006 SC 2211) is that the actual manner of misappropriation need not be proved. Once the misappropriation is proved, it was for the accused to prove as to how the property entrusted to him was dealt with. The accused has failed to prove as to how the property entrusted to him was dealt with and has thus failed to meet the requirement of law.

The only aspect that needs discussion is regarding whether the accused acted dishonestly. The settled position of law is that where the accused in cases of this nature fails to account for the property entrusted to him an inference of misappropriation with dishonest intention can be drawn. If any authorities on this aspect are required, one may refer to:

1. AIR 1960 SC 889, JAIKRISHNADAS MANOHARDAS DESAI -V- STATE
2. AIR 1977 SC 170, RABINDRA KUMAR DEY-V- STATE

In the present case, the accused in his statement u/s 313 Crpc has not provided any sort of explanation whatsoever for the entrusted property. As such inference, as per law, is drawn against him that he committed an offence u/s 406 IPC.

Evidence on record discloses that accused had paid a portion of the cash. As such it cannot be said that he had an intention to cheat from the very beginning. Offence u/s 420 ipc cannot be attributed to the accused.

In view of the evidence, case u/s 406 IPC is made out against the accused. Case u/s 403/420 IPC cannot be attributed to the accused.

Points stand decided accordingly.

ORDER

After going through the evidence in its entirety and after separating the chaff from the grain, I find and hold the accused guilty u/s 406 Ipc. He is acquitted of the charges u/s 403/420 Ipc.

The victim of this case is an aged man of around 70 years. The accused had no qualms in committing the offence on this aged individual. Extending the benefit of probation to individuals such as the present accused would send a wrong signal to the society of getting away with almost about anything and everything. Considering all these aspects, benefit of probation is not extended to the accused.

The accused was heard on the point of sentence. He stated that he is a poor man with a family to provide for.

Keeping in view all angles, the accused having been found guilty u/s 406 IPC is sentenced to UNDERGO 1 YEAR R.I.

Provide a copy of this judgment free of cost to the convict.

Bail bonds stand cancelled.

Given under my hand and seal on this the 04 th day of August 2012.

(K. K. Pathak),
Judicial Magistrate,
1st Class, Tezpur.