

Bhikalal Ramjibhai Zavsri

Vs

State of Maharashtra

Criminal Appeal No. 32 of 1973

(Syed Fazal Ali, P. S. Kailasam JJ)

27.04.1979

JUDGMENT

FAZAL ALI, J. –

1. The appellant has been convicted under Section 420 read with Section 34 IPC and sentenced to 18 months' rigorous imprisonment. We have gone through the judgment of the High Court and we find that the High Court has also based the conviction of the appellant merely on surmises and conjectures. There is no evidence at all to show that the appellant practised any fraud on the complainant and thereby induced him to part with the cloth nor there is any evidence that the appellant knew that the complainant was not paid the money. The only circumstance that has been relied upon by the prosecution against the appellant is that appellant 1 was a partner of accused 2 and they had hired a room where the pieces of cloth were stored. That by itself, however, is not sufficient to show that the appellant had any knowledge of the inducement practised by accused 2.

2. The evidence does not exclude the possibility that even though accused 2 may have induced the complainant to deliver the cloth but did not inform accused 1 regarding the exact state of affairs. In the circumstances, we, therefore, allow this appeal, set aside the conviction and sentence of the appellant and acquit him of the charges framed against him. The appellant will now be discharge.

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