

Prabhat Kumar Bose

Vs

Tarun Kanti Bagchi and another

Criminal Appeals Nos. 152 and 153 of 1992

(S. R. Pandian, K. Jayachandra Reddy, Yogeshwar Dayal JJ)

28.02.1992

JUDGMENT

1. Special leave granted.
2. Prabhat Kumar Bose, the appellant has preferred Criminal Appeal No. of 1992 (arising out of S.L.P. No. 2211/ 89) challenging the order dated 12-7-89 of the High Court of Calcutta made in Crl. Revision Case No. 1570 / 88 whereby the High Court has set aside the order of the Metropolitan Magistrate discharging the appellant No. 1 under S.245(1) of the Code of Criminal Procedure.
3. The appellant in Criminal Appeal No. of 1992 (arising out of S.L.P. (Crl.) No. 2212/89) namely, Shibdas Dutta is challenging the above mentioned same order of the High Court reversing the order of the Metropolitan Magistrate discharging the second appellant.
4. As both the appeals arise out of a common order we make the following common judgment :

The first respondent filed a private complaint against both these appellants on the allegations that in November, 1980, the appellants in pursuance of a conspiracy induced the respondent/complainant to pay Rs. 50,000/- for purchasing the shares of the companies named as M/s. GDA Chemicals Ltd. and Ganguly Bhaduri & Co. Ltd. and also to pay further sum of Rs. 10,000/- and Rs. 2,000/- for purchasing shares in other companies on the promise of making the first respondent/ complainant as Director of the companies.
5. Accordingly the first respondent/ complainant paid the amount but was not furnished with share certificates as promised and that both the appellants have thereby committed the offence of cheating by conspiracy punishable under Ss. 420 and 420 read with 120-B, I.P.C.
6. The first respondent / complainant besides examining himself as P.W. 1 examined six more witnesses and filed Exhibits 1-16. It has been admitted by the complainant himself that he has been made as a Director of all the companies and he continued that post for about two and half years. The Magistrate found that no case against the appellants/ accused has been made out on the evidence adduced and hence discharge both the appellants. On a revision preferred by the first respondent/complainant impeaching the order of the trial Magistrate, the High Court by its order reversed the order of the Magistrate and directed the Chief Metropolitan Magistrate, Calcutta to reconsider the evidence and materials on record for the purpose of framing of charge / charges.
7. Before we proceed with the allegations regarding the payment of Rs. 50,000/ - it may be

mentioned here that the High Court on an admission of the complainant himself found :

"So far as other companies, namely, Condev & Conmec are concerned there may be evidence that the opposite parties cannot be made responsible."

Therefore, we are not concerned only with the alleged parting of the sum of Rs. 50,000/-.

8. Admittedly, the first respondent / complainant as we have mentioned above became the Director of all the companies and continue the same for two and half years and the first appellants herein, namely, Sh. Prabhat Kumar Bose became a Director of these companies nearly three years after the complainant resigned.

9. It is clear from the evidence and in fact admitted by the respondent / complainant himself in his evidence that he paid the amount of Rs. 50,000/- to a broker of stock exchange who has been examined as PW-2 but not directly to the company. P.W. 2 has admitted in his evidence before the trial Court that he received a bank draft of Rs. 50,000/- from the complainant for purchasing the shares of GDA Chemicals Ltd. and that the amount was deposited in his (i.e. P.W. 2's) account and that he (P.W. 2) encashed the bank draft. The complainant has admitted that he was a Director of the companies and he could not file any written document in support of his assertion that he took steps for issuance of the share certificate in his name from the companies during that period to the value of the amount he parted with.

10. On a careful scrutiny of the evidence let in by the first respondent / complainant, we are of the firm view that the ingredients to make out an offence within the mischief of S. 415, I.P.C. punishable under S.420, I.P.C. are not brought out for framing any charge against the appellant. The High Court on a misconception of law and wrong understanding and appreciation of the evidence has set aside the well reasoned and well considered order of the Magistrate.

11. For the reasons stated above, we are unable to agree with the order of the High Court in reversing the order of the Magistrate. In the result we set aside the impugned order of the High Court and restore the order of the Magistrate, discharging the appellants.

12. Both the appeals are allowed. Appeals allowed.

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