

MANORANJAN DAS  
v  
STATE OF JHARKHAND

APRIL 21, 2004

[K.G. BALAKRISHNAN AND B.N. SRIKRISHNA, JJ.]

*Penal Code, 1860:*

*Ss. 420/109—Abetting offence of cheating—An account-holder introducing a person to bank for opening an account—The person so introduced opening a current account with the bank and withdrawing certain amount from the bank by presenting fake bank drafts—Prosecution of introducer—Conviction and sentence by trial court u/s 420—Appellate court converting the conviction into one u/s 420/109—Held, trial court as well as the appellate court committed serious error in finding the introducer guilty of offence u/s 420/109—He had introduced the said person to the bank only for opening an account and that by itself does not spell out any fraud or cheating—Bank passed the cheque at a time when the new account-holder had no sufficient money in his credit, and acted on the bogus drafts given by him for which the introducer who had introduced him to bank months back cannot be made liable for abetting offence of cheating—There is nothing on record to show that the introducer was in any way related to the fraud committed by the new account-holder on the bank—Evidence of witnesses also does not show any complicity by the introducer in committing any act of cheating—Judgments of courts below set aside and introducer acquitted of charge u/ss. 420/109—Bank/Banking—Fraud committed by account-holder—Liability of introducer.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 650 of 1998.

From the Judgment and Order dated 17.10.96 of the Patna High Court in CrI. Revision No. 25/90(R).

Deba Prasad Mukherjee for the Appellant.

Krishnanand Pandeya and Gautam Prasad for the Respondent.

The following Order of the Court was delivered :

The appellant herein was tried for offences punishable under Sections

A 419/420/468/471 IPC by the Judicial Magistrate, Ist Class, Jamshedpur, Singhbhum. He was found guilty by the Magistrate for the offence punishable under Section 420 IPC and was sentenced to undergo imprisonment for a period of three years. The appellant filed an appeal before the Sessions Court challenging his conviction and sentence. The appellate Court converted the conviction of the appellant from Section 420 IPC to a conviction under Sections 420/109 IPC, however the sentence was maintained and appellant filed a revision before the High Court, though his revision petition was dismissed, the sentence of imprisonment was reduced to a period of six months. Aggrieved by the same, the present appeal is filed.

C The appellant was a businessman in Jamshedpur. On 26-5-1972, one Loknath Acharya wanted to open a current account with the Central Bank at Jamshedpur. The appellant being holder of a current account in the same bank, Loknath Acharya sought assistance of appellant for introduction to the said bank. Appellant is said to have signed a form by which he purported to have introduced Loknath Acharya to the Bank. Loknath Acharya continued to operate his current account and on 30.10.1972. He presented three demand drafts, one for Rs. 32,100, second for Rs. 78,600 and another for Rs. 90,300. After the presentation of these demand drafts the said Loknath Acharya by a self cheque withdrew Rs. 27,000. Later, he presented another self cheque for Rs. 1,40,000 to be withdrawn from the Bank. Though the cheque was passed, the Manager smelt a rat and directed the officer incharge of the Current Deposit Account to verify the drafts. The accountant incharge found certain irregularities and he suspected the genuineness of the drafts. The Manager stopped the payment of cheque of Rs. 1,40,000 and sent a telegram to the Srinagar branch of this Bank wherefrom these drafts were issued. Reply was received from the Srinagar branch that no such drafts were ever issued. The Manager searched for Loknath Acharya and it seems that by the time he disappeared. The Manager filed a complaint before the police station alleging that Loknath Acharya and the appellant who introduced him to the Bank for starting the current account and also one M.B. Chowdhury, a bank employee as parties to a fraud and cheating and it was alleged that money was illegally withdrawn from the Bank. On the basis of the complaint the police registered a case under Section 420 IPC and other allied offences against these three persons. Loknath Acharya could not be apprehended and remained as absconding and appellant and M.B. Chowdhury faced the criminal trial.

H On behalf of the prosecution three witnesses were examined, PW-1 was the Manager of the Bank, PW-2 was accountant of the Central Bank at the relevant time and PW-3 is another regional Manager of the Central Bank. The

investigation officer was not examined. A defence witness was also examined at the instance of the co-accused M.B. Chowdhury who was acquitted by the appellate court. A

We heard learned counsel for the appellant and also the counsel for the state.

The counsel for the appellant contended before us that there is absolutely no evidence produced by the prosecution to show that the present appellant committed any offence punishable under law. It is argued that the appellant had introduced Loknath Acharya to start current account in the Bank and there is no evidence to show that he had at any point of time acted in collusion with Loknath Acharya to commit any fraud. It was also submitted that introduction of the appellant in connection with Loknath Acharya to the Bank was on 26.5.72 and the cheque for Rs. 27,000 was withdrawn by Loknath Acharya only in the month of October, 1972 and there is no evidence to show that the appellant had any business connection or confusion with Loknath Acharya. We perused the evidence produced by the prosecution and there is nothing on record to show that appellant was in any way related to the fraud committed by Loknath Acharya on the Bank. The prosecution did not even produce the form in which appellant had signed for introducing Loknath Acharya for starting a current account with the Bank. The evidence of three witnesses also does not show any complicity by the appellant in committing any act of cheating. The appellant had introduced Loknath Acharya to the Bank only for opening an account and that by itself does not spell out any fraud or cheating. B  
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There is no evidence to show that the present appellant instigated Loknath Acharya to present bogus drafts before the complainant Bank. It is also not correct to say that appellant was in anyway responsible for the loss sustained by the bank. When the bank passed the cheque for Rs. 27,000 at a time when the account holder Loknath Acharya had no sufficient money in his credit. They acted on the bogus drafts given by him for which the appellant who had introduced the account holder about six months back cannot be made liable for commission of offence of abetting office of cheating. F

The trial court as well as the appellate court committed serious error in finding the appellant guilty of the offence under Sections 420/109 IPC. We set aside the judgment of the trial court, Sessions Court and the judgment of the High Court and acquit the appellant of the charge of Sections 420/109 IPC. The bail bonds shall stand discharged. The appeal is allowed. G