

HIGH COURT OF TRIPURA
AGARTALA

Crl. Rev. P. No. 03 of 2018

1. Sri Subhash Debbarma,

Son of Late Kali Kumar Debbarma, resident of Samprai para, Chankhala bazaar,
P.S.-Khowai, District-Khowai Tripura.

2. Sri Aswini Debbarma,

Son of Sri Umesh Debbarma, resident of Gongkharbari, P.S.-Khowai, District-
Khowai Tripura

-----Petitioner(s)

Versus

The State of Tripura

-----Respondent(s)

For Petitioner(s)	:	Mr. S. Das, Advocate. Mr. S. Datta, Advocate.				
For Respondent(s)	:	Mr. S. Ghosh, Additional Public Prosecutor.				
Date of Hearing	:	24 th March, 2021.				
Date of Pronouncement	:	30 th June, 2021.				
Whether fit for reporting	:	<table border="1" style="display: inline-table;"><tr><td style="padding: 2px 10px;">Yes</td><td style="padding: 2px 10px;">No</td></tr><tr><td></td><td style="text-align: center;">✓</td></tr></table>	Yes	No		✓
Yes	No					
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HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY

JUDGMENT & ORDER

This criminal revision petition is directed against the judgment dated 30.11.2017 delivered in Criminal Appeal No. 29 of 2016 by the Sessions Judge, South Tripura, Belonia affirming the judgment and order of conviction and

sentence dated 16.11.2016 passed by the Judicial Magistrate First Class, Sabroom, South Tripura Judicial District in Case No. PRC 27 of 2015 (WP) whereby the petitioners were convicted and sentenced as follows:

<i>Sl. No.</i>	<i>Name of the Petitioners</i>	<i>Offence</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>Default Sentence</i>
1.	Subhash Debbarma	Section 420 IPC	SI for 1 year	Rs.5,000/-	10 days
2.	Aswini Debbarma	Section 420 IPC	SI for 1 year	Rs.5,000/-	10 days

[2] By means of filing this criminal revision petition the petitioners have challenged their conviction and sentence, as aforesaid.

[3] The factual background of the case is as under:

Sri Balaram Saha, Son of Sri Ranjit Saha of Sabroom lodged an FIR against the petitioners with the Officer in Charge of Sabroom police station on 14.09.2014 alleging, inter alia, that in the year 2011 he came to know accused petitioner Aswini Debbarma when said Aswini Debbarma was posted as a teacher in Baishnabpur Mogpara High School at Sabroom where the informant had a bakery. Said Aswini Debbarma used to live in the house of Tapan Bhowmik on rent and at that time he used to visit the bakery of the informant frequently. In that connection they had developed a good relationship. In the course of a parlance with the informant, accused petitioner Aswini Debbarma came to know from the

informant that he had several brothers one of whom had done post graduation who was unemployed. Said Aswini Debbarma then told the informant that he had a friend in Raj Bhavan at Agartala who managed government job for many unemployed persons in exchange of money and he told the informant that if the informant was willing to spend money he could also manage a government job for his brother. After a few days, said Aswini Debbarma brought accused petitioner Subhash Debbarma to the informant and introduced said Subhash Debbarma to the informant as a government employee of the GA(SA) department, Government of Tripura who was posted at Raj Bhavan, Agartala. Said Subhash Debbarma told the informant that he could easily manage a job for his brother because he had good terms with a lot of ministers and he managed government job for many others. Subhash Debbarma demanded a sum of Rs.90,000/- for providing a job to the brother of the informant and he assured the informant that his brother would get offer of appointment within 2(two) months. On 30.09.2011, both the petitioners met the informant in his bakery at about 8 O'clock in the evening and tried to convince the informant by saying that chance comes once in a lifetime and requested the informant to avail the chance by giving a sum of Rs.90,000/- to them. The informant gave a sum of Rs.90,000/- to Subhash Debbarma for the job of his brother and a written contract was executed between them. Nothing happened in the following 7/8 months. Whenever the informant contacted the petitioners they assured him that his brother would shortly get the job. On 20.05.2012 they demanded additional sum of Rs.20,000/- showing him a list of

selected candidates which also contained the name of the brother of the informant. Having reposed faith in him, informant gave further sum of Rs.20,000/- to Subhash Debbarma. But, no government job was provided to the brother of the informant. Thereafter, on 19.07.2014 said Subhash Debbarma issued a cheque in the name of the informant of a sum of Rs.55,000/- drawn on SBI which was dishonoured from the Sabroom Branch of SBI for insufficient fund in the account of the petitioner. On 01.08.2014, accused petitioner Subhash Debbarma issued another cheque payable to the informant drawn on SBI, Sabroom branch. When the cheque was presented at the bank, the said cheque was also dishonoured by the bank and the cheque was returned to the informant stating that petitioner Subhash Debbarma had already closed his account in the bank. After the said incidence, informant failed to contact the petitioners despite several attempts. The informant [PW-1] then reported the matter to police by lodging the said FIR.

[4] Based on his FIR, Sabroom PS case No. 61 of 2014 dated 14.09.2014 under sections 420 read with section 34 IPC was registered against the petitioners and the case was taken up for police investigation.

[5] During investigation, police Sub Inspector Khokan Saha [PW-8] visited the place where the alleged agreement between Subhash Debbarma and informant Balaram Saha was executed on a non judicial stamp paper. He seized the said agreement by drawing up a seizure list signed by the parties [Exbt.4]. The Investigating Officer also enquired about the cheques allegedly drawn by

Subhash Debbarma and seized the photocopies of those cheques bearing No. 323660 and 323661 from the possession of the informant. Informant did not handover the original cheques to the police officer. He stated that he would produce the same before the court. The photocopies of the said cheques were then seized by the Investigating Officer by a seizure list [Exbt.9]. During his investigation, the Investigating Officer produced the cheques before the Branch Manager of the Sabroom branch of SBI to verify whether the cheques were issued by said Subhash Debbarma and whether account No.10915092014 against which the cheques were issued belonged to said Subhash Debbarma. The Investigating Officer was informed that the said account belonged to petitioner Subhash Debbarma and the account was opened at the New Secretariat branch of SBI, Agartala. Thereafter, Branch Manager, SBI, New Secretariat branch confirmed that the disputed cheques were issued by Subhash Debbarma who had the said account in SBI at New Secretariat Branch. Then the Investigating Officer examined the other material witnesses of the case and recorded their police statements under section 161 Cr.P.C. During investigation charges against the petitioners under section 420 read with section 34 IPC having been established, the Investigating Officer submitted charge sheet No.15 of 2015 dated 31.05.2015 against the petitioners for having committed offence punishable under section 420 read with section 34 IPC.

[6] The learned Sub Divisional Judicial Magistrate, Sabroom received the charge sheet and on the facts of the case took cognizance of offence

punishable under section 420 read with section 34 IPC against the petitioners vide order dated 13.07.2015 and made over the case to the court of the Judicial Magistrate, First Class at Sabroom for trial.

[7] At the commencement of the trial, the learned Judicial Magistrate First Class framed the following charges against the petitioners:

“Firstly, That both of you being a Public servant on 30.09.11 at around 8.00pm in the shop of the informant Balaram Saha at Sabroom under Sabroom PS cheated Balaram Saha by dishonestly inducing him to deliver certain property, to with (cash amounting to Rs.90000/-) and subsequently on 20.05.12 another of you in furtherance of common intention cheated him again by dishonestly inducing him to deliver certain property, to with (cash amounting to Rs.20000/-) and which was the property of the said Balaram Saha for the purpose of obtaining Govt. job of Babul Saha the brother of the informant and accordingly the informant on been induced delivered the same money to both of you are thereby committed offence punishable section 420 read with section 34.

Secondly, That you Subhash Debbarma being a Public servant on the same date, time and place executed to written agreements on non judicial stamp wherein you were entrusted with certain property to with cash of Rs.90000/- and Rs.20000 respectively that is a total of Rs.110000/- by the informant and on been entrusted you dishonestly misappropriated or converted the same to your own use in violation of the direction of the legal contract express or implied which the informant have made touching the discharge of such trust. And you thereby committed offence punishable section 406 read with section 34.

Thirdly, That of you Sri Ashwini Debbarma being a Public servant on the same date time and place abetted/instigated/engaged with/intentionally aided Subhas Debbarma in dishonestly inducing delivery of Rs.90,000/- and Rs.20,000/-that is a total of Rs.1,10,000/- from the informant to him and in converting the same Balaram Saha and criminal breach of trust and that you at Sabroom on the said date abetted and instigated to deliver Rs.90000/- and Rs.20000/- to the accused Subhas Debbarma in dishonestly misappropriating or converting the same to his own use in violation of the direction of the legal contract express or implied which the informant have

made touching the discharge of such trust that you have thereby committed an offence u/s 109 of the IPC.

Fourthly, That you Sri Subhas Debbarma being a Public servant, on 19.07.14 and 09.08.14 issued two nos. cheques vide no. 323660 and 323661 amounting to Rs.55,000/- each amounting in total Rs.1,10,000/- drawn on State Bank of India Agartala Branch in favour of the informant Sri Balaram Saha from your State Bank of India A/C no. 10915092014 which were dishonoured on the ground of “refer to drawer” and that you hereby committed an offence u/s 138 of NI Act.

And do hereby direct that both of you be tried on the said charge.”

The petitioners pleaded not guilty to the said charges and claimed a trial.

[8] In the course of trial, as many as 8 prosecution witnesses [PW-1-PW-8] were examined and 2 witnesses namely Sajal Kanti Das, a stamp vendor and Sri Soumik Bhaduri, the Branch Manager of SBI, Sabroom branch were examined as court witnesses [CW-1 & CW-2] respectively. Apart from the ocular testimony of the prosecution witnesses, as many as 16 documents [Exbt.1-Exbt.16/1] were introduced.

[9] After the recording of prosecution evidence was over, the petitioners were separately examined under section 313 Cr.P.C. In reply, they pleaded innocence and claimed that the charges were foisted on them. The trial court asked them whether they were willing to adduce any evidence on their defence. The petitioners declined.

[10] On appreciation of evidence the trial court by a detailed judgment held the petitioners guilty of cheating punishable under section 420 read with section 34 IPC for which the trial court convicted them and after declining to provide benefit of the Probation of Offenders Act to the petitioners heard them on the question of sentence and after such hearing sentenced both of them to SI for 1 year with a fine of Rs.5,000/- each with default stipulation.

[11] Aggrieved petitioners challenged the judgment of the trial court in appeal. The Appellate Court held that case of cheating was proved against the petitioners beyond reasonable shadow of doubt and having found no merit in the appeal dismissed the appeal and confirmed the conviction and sentence of the petitioners observing as under:

“15. 'Cheating' has been defined in section 415 IPC. According to section 415, whoever by deceiving any person fraudulently or dishonestly induces the person so deceived to deliver any property etc. or intentionally induced the person so deceived to do or omit to do anything which he would not do or omit to do if he was not so deceived and it is likely to cause harm to body, mind, reputation or property is said to commit cheating.

16. What necessarily follows is that, there is either fraudulent act or dishonest act in such deception to commit cheating. The word 'dishonestly' has been defined in section 24 IPC, it mandates that, whoever does anything with intention to cause wrongful gain to one person or wrongful loss to another person is said to have done that thing dishonestly. Wrongful loss and wrongful gain as per legislative mandates in section 23 IPC is that, any loss by unlawful means of property to which the person loosing is legally entitled and wrongful gain is that gain by unlawful means to which the person gaining is not legally entitled. The term fraudulently has been defined in

section 25 that a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

17. In the case at hand, convict-appellants Subhash Debbarma and Aswini Debbarma had a clear intention to defraud PW-1, Balaram Saha knowing fully well that Subhash had no authority to give Govt. job and that to in lieu of money which is against public policy and legally prohibited. Meaning thereby, there is no escape from the fact that the present appellant Subhash Debbarma entered into two illegal agreements vide Exbt.1 & 2 with Balaram Saha and took Rs.1,10,000/- in total on his false assurance of giving a Govt. job to the younger brother of PW-1 and subsequently under pressure or any other reason, best known by the convict appellant Subhash Debbarma, he issued two cheques for Rs.55,000/- and Rs.55,000/- i.e. Rs.1,10,000/- vide Exbt.10 & 11. In fact, he also took Rs.1,10,000/- vide Exbt.1 & 2. If convict SubhashDebbarama had any other reason for issuing those two cheques in the name of PW-1, Balaram Saha he should have discharged the burden of proof under Sec.106, Evidence Act because it is purely within his knowledge.

18. In a quest to answer, whether convict Aswini Debbarma although neither signed on Exbt.1 & 2 as one of the parties or as a witness nor even issued any cheque subsequently to PW-1, can be roped for commission of offence with the aid of section 34 IPC on the principal of vicarious liability, I consider the fact that Aswini Debbarma was posted in Sabroom and was a tenant in the house of PW-4 as I get from the evidence of PW-4. It has also been proved by the evidence of PW-1 and PW-2 that Aswini Debbarma used to visit the bakery of PW-1 regularly and appellant Aswini initiated the proposal with PW-1 that his friend i.e. convict Subhash Debbarma works in the Raj Bhawan at Agartala who can manage a Govt. job for PW-2, the brother of PW1. After that, convict Aswini Debbarma took convict Subhash Debbarma to the shop of PW-1 on 30.09.2011 at 8 p.m. and in his presence Exbt.1 i.e. agreement for giving a job to the brother of PW-1 in lieu of Rs.90,000/- was entered into. And Rs.90,000/- was paid to Subhash Debbarma in presence of convict-appellant Aswini Debbarma. Similarly, in the second agreement also vide Exbt.2 a further sum of Rs.20,000/- was paid to Subhash Debbarma in presence of Aswini Debbarma. Aswini Debbarma being a Govt. servant has the requisite knowledge that no Govt. service can be given in lieu of money and that

convict Subhash Debbarma being a Peon has no such authority or capacity to manage a Govt. job for PW-2, the younger brother of PW-1.”

[12] The petitioners have assailed the judgments of the courts below mainly on the following grounds:

(i). The basic ingredients of the offence of cheating in terms of section 415 IPC have not been established in the case and as such conviction of the petitioners under section 420 cannot survive.

(ii). The petitioners wanted to return the money to the informant for which they issued 2 (two) cheques in favour of the informant. The cheques were dishonoured by bank because those were not presented to the bank in time. From such conduct of the petitioners, the courts below should have presumed that petitioners had no intention to deceive the informant [PW-1].

(iii). In the given facts and circumstances, the trial court ought to have given the benefit of Probation of Offenders Act or Section 360, Cr.P.C to the petitioners.

[13] In the course of his arguments Mr. S. Das, learned counsel appearing for the petitioners contended that the courts below did not also consider the discrepancies appearing in the prosecution evidence and therefore findings returned by the courts below are erroneous and liable to be set aside.

[14] Mr. S. Ghosh, learned Addl. P.P. appearing for the State respondent on the other hand has argued that the courts below by their detailed judgments have held the petitioners guilty of the offence of cheating. It is contended by Mr. Ghosh, learned Addl. P.P that the petitioners have been charged with serious offence for which they have been appropriately punished by the courts below and they failed to make out any ground for interfering with the concurrent findings of the courts below. Learned Addl. P.P, therefore, urges the court to dismiss their petition and maintain their conviction and sentence.

[15] In the course of his arguments, Counsel appearing for the petitioners has taken this court to the evidence of prosecution witnesses recorded at the trial which are as under:

[16] Sri Balaram Saha [PW-1] is the complainant who lodged the FIR against the petitioners on the allegation of cheating. He gave evidence at the trial supporting the prosecution case. He has stated in his examination in chief that accused Aswini Debbarma, teacher in a government school, used to live in a rented house at Sabroom when he used to visit the bakery of the PW and in the course of such visit he developed a relationship with the PW. The PW told him that his brother Babul Saha, a post graduate, had no employment. Accused Aswini Debbarma therefore proposed to the PW to meet his friend accused Subhash Debbarma for managing a job for his brother. The accused told the PW that said Subhash Debbarma was an employee at Raj Bhavan at Agartala.

Accordingly, on 30.09.2011 at around 8 pm Aswini Debbarma brought Subhash Debbarma to the PW and they met together in the bakery of the PW. Subhash Debbarma demanded Rs.90,000/- from the PW for arranging a government job for his brother. They executed an unregistered agreement on a non judicial stamp of Rs.10[Exbt.1] and a sum of Rs.90,000/- was paid in cash to said Subhash Debbarma by the PW. Therefore, on 20.05.2012, the PW paid additional amount of Rs.20,000/- in cash by executing similar unregistered agreement [Exbt.2]. In March, 2014, accused Subhash Debbarma told the PW that he would return the money to the PW. Accordingly on 19.07.2014 he issued cheque No.323660 of a sum of Rs.55,000/- drawn on State Bank of India. Again on 09.08.2014 he issued another cheque vide No.323661 of similar amount drawn on the Agartala branch of SBI. Both the cheques on presentation were dishonoured by bank for insufficiency of fund in the account of said Subhash Debbarma. When the PW contacted accused Subhash Debbarma on telephone he told that money would be credited soon in the account of the PW by him. Eventually, the PW lodged the FIR against said Subhash Debbarma and his associate Aswini Debbarma.

During cross examination of the PW, the issuance of said cheques were not denied by the petitioners. Execution of the said agreements [Exbt.1 & 2] between Subhash Debbarma and the PW was not also denied by the petitioners. The PW was made to say in the cross examination that the cheques were drawn on the Agartala branch of SBI whereas he deposited the same for encashment at the Sabroom branch of SBI. Relevant extract of his cross examination is as under:

“The cheques were issued by the accused Subhash Debbarma on his account at Agartala Branch. I have deposited the cheques to SBI, Sabroom branch. I have not instituted any money suit in connection with this incident. The agreements were made with the understanding between both sides. It is true that when the cheques were dishonoured at that time it crossed my mind that the accused persons had cheated me.”

[17] Sri Babul Saha [PW-2], brother of the complainant for whose employment the informant paid money to the petitioners had stated that in his presence his brother paid Rs.90,000/- in cash to the petitioners in his bakery on 30.09.2011 and on a subsequent date on 20.05.2012 his brother [PW-1] paid another sum of Rs.20,000/- to the petitioners for this purpose. On both occasions agreement on stamp papers [Exbt.1 & 2] was executed between his brother and accused Subhash Debbarma. Thereafter, accused Subhash Debbarma issued cheques to his brother [PW-1] to refund his money but the said cheques were dishonoured from bank as accused Subhash Debbarma had already closed his account in the bank. Thereafter his brother lodged FIR against the petitioners.

The PW has stated in is cross examination that he had done post graduation from Tripura University in 2006. After post graduation in education he applied for various jobs between the period from 2006 to 2011. In cross examination he was made to say that his brother paid a sum of Rs.1,10,000/- to accused Subhash Debbarma for official expenses for the purpose of getting a government job. He was also made to say that money was paid to the accused

without making any enquiry as to the procedure of getting government job. Nowhere in the cross examination receipt of money was denied by the petitioners.

[18] Sri Pranab Shil [PW-3] who is a neighbour of the informant stated that agreements [Exbt.1 & 2] were seized by police in his presence and he was aware that by the said agreements petitioners received a sum of Rs.1,10,000/- in cash from the informant [PW-1] in two instalments @ Rs.90,000/- and Rs.20,000/- assuring a government job to the brother of the PW-1.

In his cross examination, it was suggested to the PW that no such agreement was seized by police in his presence. The suggestion was denied by the PW.

[19] Sri Bipul Bhowmik [PW-4] in whose house accused Aswini Debbarma was a tenant stated in his examination in chief that he was also cheated by accused Aswini Debbarma. The PW stated at the trial that Aswini Debbarma had taken a sum of Rs.25,000/- from him, assuring him that he would manage a government job for him. Ultimately the accused left his house. In 2012, informant Balaram Saha [PW-1] met the PW and told him that petitioner Aswini Debbarma introduced Subhash Debbarma to him who had taken Rs.1,10,000/- in cash from him for providing a government job to his brother.

[20] Sri Thambajoy Reang [PW-5] simply stated that during investigation of the case the investigating officer met him. The PW told the

investigating officer that accused Aswini Debbarma was released from Sadai Singh Para JB School, Rupaichari, TTAADC on 28.07.2012 on his transfer to Tongbari JB School, Harepkuwar, West Tripura.

[21] Sri Swapan Sutradhar [PW-6] who was the Deputy Manager of State Bank of India, New Secretariat Branch, Agartala confirmed that the two impugned cheques [Exbt.10 & 11] vide Nos. 323660 and 323661 respectively were drawn by accused petitioner Subhash Debbarma and SB account No. 10915092014 against which those cheques were drawn belonged to accused petitioner Subhash Debbarma who was a peon in the GA(SA) Department of the Government of Tripura as per record maintained in the bank.

In cross examination the PW stated that on the day on which he received requisition from the Investigating Officer for furnishing the information with regard to the authenticity of the impugned cheques, the bank account of accused Subhash Debbarma was active and in operation.

[22] SI Sri Badal Malik [PW-7] was the Officer in Charge of Sabroom police station who received the FIR of PW-1 at the police station on 14.09.2014 and registered Sabroom PS case No. 61 of 2014 under Section 420 read with Section 34 IPC against the petitioners. He stated that after registration of the case he endorsed it for investigation to police Sub Inspector Khokan Saha [PW-8].

[23] SI Sri Khokan Saha [PW-8] stated that during his investigation it was confirmed by the Branch Manager of the New Secretariat branch of SBI that the impugned cheques were issued by accused Subhash Debbarma who had an account at SBI, New Secretariat branch at Agartala. Thereafter, on the basis of materials collected by him during investigation he submitted charge sheet against the petitioners.

In cross examination he stated that from the New Secretariat Branch of State Bank of India it was informed to him that the name of the father of Subhash Debbarma was Kali Pada Debbarma whereas in the FIR his father's name was recorded as Padma Kr. Debbarma and in the charge sheet it was recorded as Kali Kr. Debbarma.

[24] Sri Sajal Kanti Das [CW-1] a stamp vendor was examined as CW-1 who stated that he was a stamp vendor in the office of SDM at Sabroom. On 24.08.2007 he sold out a non judicial stamp of Rs.10/- to a local person and the stamp was bearing No. 00A120327. He could not recollect the name of the vendee. He, however, identified his signature on the said stamp [Exbt.1].

The CW in his cross examination further stated that he was not aware as to whether the stamp was actually sold or it was missing.

[25] Sri Soumik Bhaduri [CW-2] was the Branch Manager of SBI, Sabroom Branch. He stated at the trial that the impugned cheques were not

multicity cheques. He confirmed that the said cheques were issued by accused petitioner Subhash Debbarma. The CW stated that cheque No.323660 of a sum of Rs.55,000/- was dishonoured on the ground of insufficiency of fund and the other cheque vide No. 323661 was returned on the ground “referred to drawer”. The CW stated that “referred to drawer” in banking parlance means as under:

“In banking parlance “referred to drawer” means when a cheque cannot be honoured due to one or more reasons which are not covered by other reasons and generally includes multiple grounds of return. Such as including not being a multi-city cheque.”

In his cross examination the CW stated that cheques of all branches are entertained by any branch of SBI. The PW could not say whether the said cheques after presentation at the Sabroom branch were actually sent to the New Secretariat branch of SBI for collection where accused Subhash Debbarma maintained his account. The PW could not also say as to whether on the date of return of those cheques, account of accused Subhash Debbarma was active or not.

[26] On appreciation of evidence, the trial court by its detailed judgment dated 16.11.2016 held the petitioners guilty of offence punishable under section 420 read with section 34 IPC and convicted and sentenced them. In this regard the trial court held as under:

“9.....And taking into consideration the charge of dishonour of cheque, which is framed against them, this court finds that for brining charge under Negotiable Instrument Act ,there are certain procedure which has to be

complied with and in this case such has not been complied with and in absence of such no charge under NI Act can be sustained.

Accordingly this court in its consider opinion finds that the prosecution has failed to prove the point No. 2 and point No. 3 beyond reasonable shadow of doubt and as such it is decided in negative.

In the result, this court in the light of the discussions made above, finds that the prosecution have become successful in proving that the accused persons, namely Aswini Debbarma and Subash Debbarma, in furtherance of their common intention have committed the offence of cheating by dishonesty inducing delivery of property to them and causing wrongful loss to the complainant and his brother. And as such the accused persons are accordingly convicted for the said offence.....”

[27] Keeping in view the gravity of the offence and the manner in which the informant was cheated by them, the trial court declined to release the petitioners under Probation of Offenders Act and after hearing them on sentence imposed SI for 1 year and fine of Rs.5,000/- with default stipulation on each of them.

[28] In appeal, the Appellant Court accepted the findings of the trial court and held that the two petitioners in furtherance of their common fraudulent intention deceived Balaram Saha [PW-1] and thereby committed the offence of cheating punishable under section 320 IPC. The Appellate Court, therefore, dismissed the appeal affirming the conviction and sentence of the petitioners.

[29] I have considered the arguments and counter arguments of learned counsel of the parties and perused the materials placed on record.

[30] It has not been denied by the petitioners that petitioner Aswini Debbarma developed a relationship with PW-1 while he was posted as teacher in a government school at Sabroom. It is not also denied by him that he used to meet PW-1 in his bakery frequently. By cross examination of the prosecution witnesses, the petitioners tried to establish that the cheques which were issued by accused Subhash Debbarma to PW-1 were not presented at the New Secretariat branch of SBI where the accused maintained his account and as a result the cheques were dishonoured. He also wanted to establish that accused Subhash Debbarma received the said sum of money from PW-1 as official expenses for arranging a job for his brother Babul Saha. He never denied the execution of the agreements [Exbt.1 & 2] and his signatures thereon. Petitioners did not also deny that Subhash Debbarma (one of the petitioners) received the said sum of money from PW-1 assuring him that he would arrange a government job for his brother. The learned trial court has rightly held that the facts of the case do not attract the provisions of Section 138 NI Act because in bringing the charge under NI Act the procedures prescribed thereunder have to be followed. Therefore the learned trial court proceeded to try the case under Section 420 IPC.

[31] Cheating is defined under Section 415 IPC which reads as under:

“415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”. Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

[32] Section 416 IPC defines cheating by personation. Section 417 IPC provides punishment for cheating. Section 418 IPC provides punishment for cheating with knowledge that wrongful loss may ensue to person whose interest the offender is bound to protect and Section 419 IPC provides punishment for cheating by personation. Section 420 IPC provides punishment for cheating and dishonestly inducing a person for delivery of property by such cheating. For the sake of convenience, Section 420 IPC is set out herein below:

420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

[33] From a plain reading of the statutory provision, it would emerge that in order to constitute an offence under Section 420 IPC, it has to be essentially proved that the accused has committed cheating within the meaning of

Section 415 IPC and by such cheating has dishonestly induced the persons so cheated to deliver any property to the accused or to any person, or to make alter or destroy the whole or any part of the valuable security or anything which is signed or sealed, and which is capable of being converted into a valuable security.

[34] Clearly in this case the allegations which have been brought against the petitioners are that with a fraudulent intention they allured PW-1 with a government job for his brother and dishonestly induced him to pay Rs.1,10,000/- to them and thereby committed the offence of cheating punishable under section 420 IPC.

[35] In the case of *Hridaya Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr.* reported in (2000) 4 SCC 168: AIR 2000 SC 2341 the Supreme Court has succinctly held that to establish the charge of cheating against the accused, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. Observation of the Apex Court is as under:

“13. Cheating is defined in Section 415 of the Code as: "Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.

Explanation - A dishonest concealment of facts is a deception within the meaning of this section.”

The section requires –

(1) deception of any person;

(2) (a) fraudulently or dishonestly inducing that person

(i) to deliver any property to any person, or

(ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body mind, reputation or property.

14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

[36] Similar view was taken in the case of *B. Suresh Yadav. Vs. Sharifa Bee & Anr.* reported in (2007) 13 SCC 107: AIR 2008 SC 210 wherein the Supreme Court held that for the purpose of establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making a promise or representation. The following observation has been made by the Apex Court:

“11. Ingredients of cheating are:

- (i) deception of a person either by making a false or misleading representation or by other action or omission; and*
- (ii) fraudulent or dishonest inducement of that person to either deliver any property to any person or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.*

12. While executing the sale deed, the appellant herein did not make any false or misleading representation. There had also not been any dishonest act of inducement on his part to do or omit to do anything which he could not have done or omitted to have done if he were not so deceived. Admittedly, the matter is pending before a competent civil court. A decision of a competent court of law is required to be taken in this behalf. Essentially, the dispute between the parties is a civil dispute.

13. For the purpose of establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation.....”

[37] In the given factual context, it can be safely held that the accused petitioners committed the offence of cheating by dishonestly inducing PW-1 to deliver a cash sum of Rs.1,10,000/- for providing a government job to his brother.

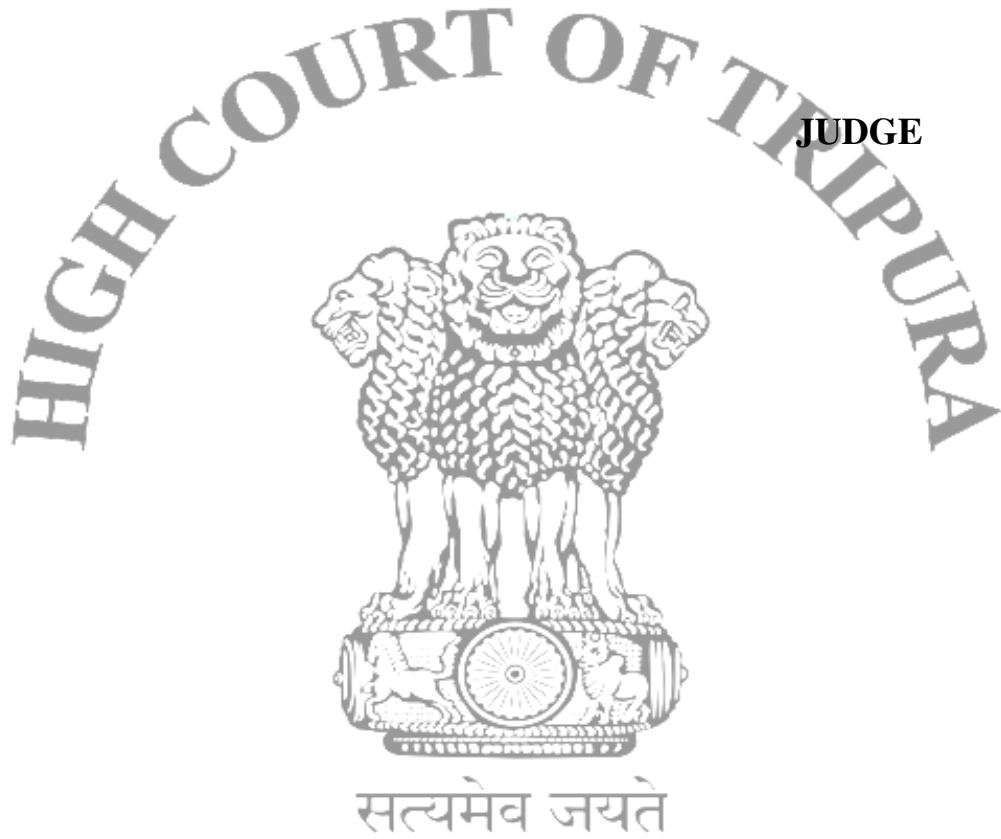
The receipt of the money is not denied by the petitioners. Rather they tried to establish that they had taken the money from PW-1 for processing his application for a government job and they also tried to refund the money when they failed to keep their promise by issuing cheque in favour of the complainant [PW-1] which was eventually dishonoured for the fault of the complainant. The facts and circumstances emerging from the record would make it clear that the accused petitioners made a promise to the complainant that they would procure a government job for his unemployed brother for which they had received cash sum of Rs.1,10,000/- from him knowing it fully well that they were making a false promise to the complainant because a government job is not purchasable. Therefore, it is quite clear that both of them had a fraudulent intention while the promise was made by them. Conduct of the complainant is also deplorable because knowingly he entered into an illegal transaction with the petitioners.

[38] In view of what is discussed above this court is of the view that there is no infirmity with regard to the conviction and sentence of the petitioners. Their conviction and sentence passed by the trial court has been rightly affirmed by the learned appellate court. Resultantly, the criminal revision petition stands dismissed.

[39] Both the convict petitioners are directed to surrender at the trial court (Court of the Judicial Magistrate First Class, Sabroom, South Tripura Judicial District) within a period of 2 (two) months from today to serve out the

sentence failing which the trial court shall take appropriate steps in accordance with law to make them suffer the sentence.

In terms of the above, the criminal revision petition stands disposed of. Pending application(s), if any, also stands disposed of.



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