

**Chandra Prakash Shaw Vs. State of Bihar**

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**Court :** Jharkhand

**Decided On :** Feb-20-2017

**Appellant :** Chandra Prakash Shaw

**Respondent :** State of Bihar

**Advocate for Pet/Ap. :** Mr. R.P. Gupta

**Judgement :**

Cr. Revision No.291 of 2000(R) ----- In the matter of an application under Sections 397 and 401 of the Criminal Procedure Code, 1973. ----- Chandra Prakash Shaw, S/o Late Ganga Prasad Sao, R/o 446, G.T. Road, P.S.- Shivpur, Howrah. ... Petitioner Versus The State of Bihar now Jharkhand ... Opposite Party ----- For the Petitioner : Mr. R.P. Gupta, Advocate For the State : Mr. Nagmani Tiwari, A.P.P. ----- Present: HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY ----- By Court: Heard Mr. R.P. Gupta, learned counsel for the petitioner and Mr. Nagmani Tiwari, learned A.P.P. for the State. This application is directed against the judgment dated 03.04.2000 passed by the learned 1 st Additional Sessions Judge, Chaibasa in Cr. Appeal No. 9 of 1995 whereby and whereunder the appeal preferred by the petitioner against the judgment and order of conviction dated 14.02.1995 passed by the learned Judicial Magistrate 1st Class, Porahat at Chaibasa in C/1 Case No. 8/1984 (T.R. No. 1/1995) has been dismissed by modifying the sentence by reducing it from three years R.I. to 2 years R.I. It has been submitted by the learned counsel for the petitioner that the dispute was only with respect to the partnership business of the

petitioner and the informant. It has been submitted that none of the witnesses have alleged any criminal act on the part of the petitioner. Learned counsel for the petitioner further submits that the partnership agreement was also duly executed between the parties. In the alternative an argument has been advanced by the learned counsel for the petitioner that if this Court is not inclined to interfere in the judgment and order of conviction the period of sentence imposed upon the petitioner be modified in view of the fact that the petitioner is facing the rigors of the prosecution case for the last more than three decades and he has also remained for some time in custody. -2 Learned A.P.P. for the State has opposed the prayer made by the petitioner. It appears that the complaint case was instituted being C/1 Case No. 8/1984 in which it was alleged that the petitioner had purchased a second hand diesel truck for Rs. 1,20,000/- in the month of October, 1983. The petitioner had induced the complainant to believe that the truck was in perfect condition and believing such inducement the complainant entered into a partnership with the petitioner. It is alleged that the complainant had paid a sum of Rs. 60,000/- on 02.11.1983, pursuant to which a partnership deed was got executed. It is also alleged that as per the terms and conditions the partnership business was supposed to be carried out at Chakardharpur itself but somehow or the other the complainant was induced to further part with Rs. 7,000/- and lastly it came to the knowledge of the complainant that the truck was taken away by the petitioner and he was plying the same along with the help of a transporter namely Badri Singh. Allegation has been leveled that in spite of the efforts made by the complainant repeatedly in trying to contact the petitioner the same failed and finally the complainant was constrained to file the complaint petition. After inquiry was conducted u/s 202 of the Cr.P.C. cognizance was taken for the offences punishable u/s 420 and 403 of the I.P.C. After conclusion of trial the learned Judicial Magistrate 1st Class, Porahat at Chaibasa had been pleased to convict the petitioner for the offences punishable u/s 420 and 403 of the I.P.C and the petitioner was sentenced accordingly. The appeal preferred by the petitioner being Cr. Appeal No. 9 of 1995 was dismissed on 03.04.2000 by the learned 1 st Additional Sessions Judge, Chaibasa and only the sentence imposed upon the petitioner u/s 420 of the I.P.C. was modified and reduced to two years imprisonment. In course of trial five witnesses were examined on behalf of the

prosecution. P.W.1 Krishna Gopal Roy had typed the partnership deed which was marked as Exhibit-1. P.W.2 Kamla Prasad is the father of the complainant who had stated about -3- the partnership business entered into between the petitioner and his son. This witness has also stated that payments were made by the complainant to the petitioner. This witness has also disclosed that the finance company had approached the complainant to inform that the installment of the truck was never paid although there was an agreement of making payment of the same. P.W.3 Dilip Kumar Sarkar is the formal witness who had typed the complaint petition. P.W.4 is the complainant himself who has given a vivid description of how he was induced by the petitioner into believing that the truck was new and for which he has parted with a considerable amount of money. This witness has also stated about the agreement entered into in which the area of plying of the truck was Chakradharpur only. This witness has also stated that the petitioner had taken the truck to Jamshedpur from where it was taken to Calcutta. And ultimately on being approached by the finance company the complainant could come to know about the act of the petitioner in duping the complainant. P.W.5 Abhijit Dutta was the person who was deputed by both the petitioner and the complainant to look after the vehicle in question. This witness has stated that the ownership of the truck was never transferred in the name of the partnership firm. This witness is also a signatory to the partnership deed which was marked as Exhibit-1. P.W.5 has also stated that he had come to know that the petitioner was doing business with one Badri Prasad in Calcutta. Two witness were examined on behalf of the defence. D.W.1 Md. Mujib is an advocate clerk and a formal witness who has proved the formal FIR of Chakradharpur P.S. Case No. 89/84 and the final report submitted in the said case. D.W.2 Mohan Singh who is the driver of the truck who had stated that the truck was seized and thereafter he was asked by the petitioner to gave information to the complainant. Various documentary evidences including the registered partnership deed as well as the receipts with respect to the fuel being consumed from the pump of Mahendra Singh of Chakardharpur has been brought on record. Exhibit-2 is the receipt of payment of Rs. 7000/- by the complainant to the petitioner on -4- 01.02.1984 for payment of installment dues of the truck. The prosecution had proved its case that the amount which was taken by the petitioner from the complainant was never returned back. The oral and

documentary evidences had also conclusively proved the fact that the complainant was induced by the petitioner to enter into a partnership business and thereafter the complainant had made payment of one installment to the financiers but subsequently he could come to learn about the petitioner plying his vehicle with the help of one Badri Prasad in Calcutta. The witnesses thus having been consistent on the point of the complainant having been duped by the petitioner, the learned trial court on such consideration has rightly convicted the petitioner for the offence punishable u/s 420 and 403 of the I.P.C. The learned appellate court had appreciated the materials available on record before sustaining the order of conviction but reducing the period of sentence to two years imprisonment. The judgment of conviction passed by the learned trial court and as affirmed by the learned appellate court does not merit any interference. However, with respect to the sentence as has been awarded to the petitioner is concerned it appears that the case was instituted in the year 1984 and the petitioner is facing the rigors of the prosecution case for more than 30 years. The dispute between the parties with respect to the partnership agreement and since the petitioner has remained for some time in custody it would not be desirable at the present moment to send the petitioner in custody to serve out the rest period of his sentence. Accordingly, in such view of the matter the period of sentence awarded to the petitioner is modified to the period already undergone. This application stands dismissed with the aforesaid modification in sentence. (R. Mukhopadhyay, J.) Jharkhand High Court at Ranchi The 20th day of February, 2017 Alok/NAFR

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