

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CrI. M.C. No. 2565-66/2006**

% Date of Decision: January, 2008

Ravi Kant & Anr. Petitioners

! Through Mr. R.P. Kapoor, Advocate

versus

\$ **State through C.B.I** Respondent

^ Through Mr. Harish Gulati, Advocate for CBI.

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the digest?

JUDGMENT

P.K.BHASIN, J:

This petition under Section 482 of Cr.P.C. has been filed by the two petitioners, who are husband and wife, assailing the order dated 05.08.2005 passed by the learned Additional Sessions Judge, New Delhi whereby the revision petition (being CrI. R.No. 31/5) preferred by them impugning an order dated 06.07.2005 passed by the learned Metropolitan Magistrate allowing the application of CBI under Section 362 Cr.P.C. for rectifying certain clerical mistakes in the final judgment pronounced on 25.05.2005 convicting them under Sections

120-B/406/420 IPC was dismissed. The petitioners have also prayed for setting aside of the aforesaid order dated 06.07.2005 of the Metropolitan Magistrate.

2. The facts leading to the filing of this petition by the petitioners are that the petitioners were the Directors of two Companies, namely, M/s IGF Leasing Pvt. Ltd. and M/s Instant Growth Funds Pvt. Ltd. and were alleged to have induced general public through advertisements in newspapers, pamphlets and personal contacts to invest their money with their Companies for being utilized in hire-purchase business which would yield good returns. However, the petitioners-accused after collecting lacs of rupees from various persons did not use that money for hire-purchase business and in fact used it for their personal benefit and neither the principal amount was returned to the investors nor any interest was paid to them. In fact, the cheques issued by them towards repayment of the money taken by them were also dishonoured. Two FIRs were registered by CBI and after investigation it charge-sheeted the petitioners under sections 120-B/406 IPC. Thirteen charge-sheets in all were filed in respect of different investors who had claimed to have been duped by the petitioners. The Court of Metropolitan Magistrate framed charges for the offences under Section 120-B/420 against both the petitioners and Section 420 IPC against petitioner no. 1 alone. Finally, vide judgment dated 25.05.2005 the learned Magistrate convicted petitioner no. 1 herein under "Section 120-B read with 406 IPC as well as Section 420 IPC" and petitioner no. 2 Asha Lata under "Section 120-B read with Section 406 IPC" and

vide order dated 28.05.2005 petitioner no. 1 was awarded rigorous imprisonment for two years and fine of Rs. 5,000/- each for his conviction under Section 420 IPC on 13 counts and one year's rigorous imprisonment under Section 120-B/420 IPC. Petitioner no. 2 herein was sentenced to RI for one year and fine of Rs. 5,000/- each on 13 counts.

3. Aggrieved by the judgment of conviction and order of sentence the two petitioners filed a joint appeal in Sessions Court on 23.06.2005 which is stated to be still pending. After filing of the appeal by the petitioners, an application under Section 362 Cr.P.C. was moved by CBI before the trial court alleging that in fact both the accused were convicted for the offences under Sections 120-B read with 420 I.P.C. but inadvertently Section 406 IPC was also typed in the judgment in respect of Ravi Kant and in respect of Asha Lata also Section 120-B/406 IPC was typed instead of Section 120-B/420 IPC in the concluding para of the judgment. Learned Metropolitan Magistrate allowed that application and while allowing the said application observed that this error must have crept in as charge-sheets were filed under Section 120-B/406 I.P.C. and thus accepting it to be clerical errors ordered that in the judgment and order on sentence Section 406 IPC mentioned therein would be read as Section 420 IPC. The petitioners challenged that order by filing a revision petition in Sessions Court but the same was dismissed, as noticed already vide order dated 5.8.2005. Hence, the present petition.

4. The main grievance of the petitioners is that the Metropolitan Magistrate

under the garb of Section 362 of Cr.P.C., in fact, had altered his judgement dated 25.05.2005 as well the order on sentence dated 28.05.2005 which was not permissible. It has been contended by the learned counsel for the petitioners that they were charged for the offences under Sections 120-B read with 420 I.P.C. but were convicted under Section 406 IPC also without there being any charge for that offence which was challenged in appeal and so learned Magistrate could not have converted the conviction of the petitioner Asha Lata from 406 IPC to 420 IPC and similarly in respect of the petitioner Ravi Kant Section 406 IPC could not be deleted from the concluding para of the judgment and the order on sentence as these were not clerical mistakes.

5. Per contra, learned counsel for the CBI opposed this petition stating that errors which were corrected by the learned Magistrate were only clerical in nature that is permissible under Section 362 Cr.P.C. He further submitted that bare reading of the concluding para nos. 88-90 of the judgment dated 25.05.2005 would make it amply clear that the errors sought to be corrected were merely clerical in nature and nothing more and so there was no infirmity in the order passed by the learned Magistrate allowing the application moved by the learned APP and in the order of the Revisional Court affirming that order. Learned counsel for CBI, therefore, contended that there is no valid ground put forth by the petitioners justifying interference by this Court under Section 482 Cr.P.C.

5. The Apex Court in “**Master Construction Co. (P) Ltd. v. State of Orissa**”, AIR

1966 SC 1047 has considered as to what clerical errors/arithmetical mistake are and in para 9 of the said judgment it was observed as under :-

“9. An arithmetical mistake is a mistake of calculation; a clerical mistake is a mistake in writing or typing. An error arising out of or occurring from an accidental slip or omission is an error due to a careless mistake or omission unintentionally made. There is another qualification namely, such an error shall be apparent on the face of the record, that is to say, it is not an error which depends for its discovery, on elaborate arguments on questions of fact or law. The accidental slip or omission to embody in the order something which the court in fact ordered to be done. This is sometimes described as a decretal order not being in accordance with the judgment. But the slip or omission may be attributed to the Judge himself. He may say something or omit to say something which he does not intend to say or omit. This is described as a slip or omission in the judgment itself. The cause for such a slip or omission may be the Judge's inadvertence or the advocate's mistake. But, however wide the said expressions are construed.....”

6. Keeping in mind these observations of the Supreme Court I will now proceed to consider whether what the learned Magistrate in the present case did invoking Section 362 Cr.P.C. while allowing the application of CBI under Section 362 Cr.P.C can be said to a correction of some clerical error in his judgment of conviction and order on sentence or not. In order to appreciate the controversy the concluding paras of the judgement dated 25.05.2005 passed by the learned Metropolitan Magistrate need to be noticed and they are reproduced as under:

“88. Thus, on considering the totality of circumstances, I am satisfied that both the accused had entered into criminal conspiracy for committing offences of cheating in pursuance of

the said criminal conspiracy floated a non-banking financial company M/s IGF Leasing Pvt. Ltd. and induced investors to deposit their money in the company while offering interest at the 30-40% per annum and assuring that the money deposited will be utilized in hire purchase business within 30 days of encashment of cheque or draft which is not done. Accused have failed to repay despite promise to refund the amount with principle and the interest invested by the investors. The statement of at least Veena and Sameer Bhatnagar clearly speaks about the active role of accused Asha Lata as a member of the Company.

89. The material on record establishes that accused that deceived many investors in the aforesaid cases mentioned above dishonestly to invest with the accused and to consent that this company M/s IGF Leasing retained their amount and he had concealed the fact that the amount would be invested in the Hire Purchase agreement which was dishonest concealment and the accused misrepresented the investors. Some of whom he knew earlier by advertising in the newspapers assuring heavy returns and the PDC which were given mostly were dishonoured and he had stopped the a/c thereby he had caused wrongful cause to the investors mentioned above and wrongful gain to the investors and the amount had been withdrawn. The evidence on record establishes that they were given the assurance that they will sign the agreement which was not signed and the invested amount was personally used by these accused and accused were the Managing Directors and the director. Later on investors were told that they can recover their money from the OL and the withdrawals were made by the accused. Accused has failed to show that withdrawals were made in the ordinary course of business and invested in the Hire Purchase Agreement. Accused were failed to show that the money was available with the OL. Simply, saying that investors had not claimed before the OL will not be enough. The legal position is well settled that criminal and civil proceedings both can simultaneously be proceeded where several complaints were lodged. Earlier the High Court seeing the gravity of offence had directed CBI to register the case. Simply, consumer firm or u/s 138 NI Act for dishonourment of the cheque is no defence. The evidence on record establishes that accused had allured the investors mentioned above and misused their payments. He has admitted that investments were made in advance cheques even PDCs were dishonoured which shows the intension of the accused are dishonest at the outset, accused has

failed to show, as submitted, there were much more money in the hand of OL or investors did not contact OL for payment. Even otherwise, several cheques namely, Ex. PW8/D1 to D18 and Ex. PW8/D3 also dishonoured due to funds were insufficient and not for closure of the a/c. This will not help the accused that he had closed the a/c due to business crises.

90. On considering the totality of evidence on record, I am satisfied that prosecution has succeeded to bring home the guilt of the accused beyond reasonable doubt. Accused has failed to prove its defence.

Accordingly, accused Ravi Kant is convicted u/s 120B r/w 406 IPC as well as Section 420 IPC and accused Asha Lata is convicted 120B r/w 406 IPC for each of the count of charges in the aforesaid 13 charges in two RCs in 7E/95 and 8E/95."

7. From the aforesaid paragraphs of the judgment of the learned Metropolitan Magistrate which have been relied upon by the Magistrate also while allowing CBI's application under Section 362 Cr.P.C. clearly show that the petitioners-accused were in fact held guilty for the offence of cheating punishable under Section 420 IPC for which they were charged also. Section 406 appears to have been typed in the judgment and order of sentence inadvertently and it could be due to the fact that CBI had filed charge-sheets under Section 120-B read with 406 IPC. The learned Metropolitan Magistrate had also observed so in his order under challenge and I see no reason to take another view in the matter, particularly when even the Sessions Court has also found the aforesaid mistake in the judgment and order of sentence to be a clerical error. A perusal of the order of sentence passed by the learned Metropolitan Magistrate also shows that the court had awarded sentence to the petitioners considering their conviction to be for the offence under Section

420 IPC since petitioner-accused Ravi Kant was awarded sentence of imprisonment under Section 120-B read with 420 IPC and not under 406 IPC. I do not agree with the submissions of learned counsel for the petitioners that passing of the said order by the trial court correcting the clerical error in its judgment of conviction during the pendency of the appeal has caused any prejudice to them inasmuch as they are still at liberty to impugn their conviction under Section 420 IPC by filing additional grounds of appeal before the Appellate Court where the appeal is still stated to be pending.

8. This petition is accordingly dismissed being devoid of any merits.

January 18, 2008

P.K.BHASIN, J.