

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL. REV. P. NO.100 OF 2007

Smt. Milan Paul,
W/O Shri Bishnupada Deb,
Resident of Ambassa Colony,
P.S. Ambassa,
District-Dhalai.

..... *Petitioner*

- *Vs* -

The State of Tripura,
(to be represented by
The Public Prosecutor,
Gauhati High Court,
Agartala Bench, Agartala)

..... *Respondent*

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the petitioner : Mr. P. Roy Barman, Advocate

For the respondent : Mr. A. Ghosh, P.P.

Date of hearing : **30.03.2015**

Date of delivery of
Judgment & order : **06.04.2015**

Whether Fit for Reporting :

Yes	No
✓	

JUDGMENT & ORDER

This revisional application under Section 397 read with Section 401 of CrPC is directed against judgment and order dated 13.06.2007, passed by learned Addl. Sessions Judge, North Tripura, Dharmanagar in Criminal Appeal No.6(1) of 2007, whereunder, the

learned Addl. Sessions Judge upheld the judgment and order of conviction and sentence, dated 13.02.2007 passed by learned Sub-Divisional Judicial Magistrate, Dharmanagar, in case No.G.R.448 of 2005 under Section 420 of IPC.

Learned Sub-Divisional Judicial Magistrate found the accused-petitioner, Smt. Milan Paul guilty of the charge framed against her under Section 420 of IPC and sentenced her to suffer SI for one year and to pay a fine of ₹5,000/- in default to suffer SI for three months.

2. Heard learned counsel, Mr. P. Roy Barman for the petitioner and learned P.P., Mr. A. Ghosh for the State respondent.

3. Prosecution case, in short, is that the informant (complainant), Manmohan Dutta (PW1) is the proprietor of a shop, namely '*M/s Bhagabati Bhandar*' at Dharmanagar East Market. Sri Bishnupada Deb, husband of the accused-petitioner, Smt. Milan Paul was a retailer of the shop of Manmohan Dutta and in that connection both Bishnupada Deb and accused-petitioner, Smt. Milan Paul used to visit the shop of Manmohan Dutta and there was good relation between them. On 18.08.2005, accused-petitioner, Smt. Milan Paul went to the shop of the complainant, Sri Manmohan Dutta at Dharmanagar and requested him to give her a loan of ₹50,000/-, to meet her some urgent necessity. The complainant, at the outset, refused the proposal but accused-petitioner, Milan Paul

insisted the complainant, Manmohan Dutta to give the loan and she proposed to return the amount within one and half month and further proposed to give a signed cheque of ₹50,000/- and that cheque can be en-cashed by the complainant in case she fails to make the payment within time. On such proposal made by the accused-petitioner the complainant agreed to give the loan of ₹50,000/- to the accused-petitioner and the accused-petitioner also handed over a cheque drawn on Tripura Gramin Bank, Ambassa Branch, vide cheque No.724236 in S.B. A/C No.4784 in the name of accused-petitioner, Milan Paul. When the accused-petitioner did not make payment of the loan amount, the complainant went to Ambassa Branch of Tripura Gramin Bank and presented the cheque to the bank for collection of the money to which he was informed by the bank staff that there was no such amount in the account of the accused-petitioner, Milan Paul to honour the cheque and so the cheque was returned. The complainant, Manmohan Dutta thereafter went to the house of the accused-petitioner on 30.09.2005 and reported the fact that the cheque has not been honoured and demanded the amount to the accused-petitioner to which accused, Bishnupada Deb, the husband of accused petitioner, Smt. Milan Paul took the cheque from the hand of the complainant saying that the complainant will not get the amount and thereafter he tore the cheque into pieces and handed over those torn pieces of cheque to the hand of the complainant again saying that he may now get the amount. The complainant thereafter came back and filed a written complaint in the Court of learned SDJM, Dharmanagar on 07.10.2005 alleging the fact that the accused-petitioner and her

husband cheated him and thereby induced him to give a loan of ₹50,000/- which the complainant otherwise would not give.

3.1. Learned SDJM forwarded the complaint to the O/C Dharmanagar P.S. under Section 156(3) of CrPC for treating it as FIR and to report and, accordingly Dharmanagar P.S. Case No.150 of 2005 under Section 420 read with Section 34 of IPC was registered and after investigation police submitted charge sheet against accused-petitioner, Milan Paul and her husband, Bishnupada Deb for the offence alleged on the basis of which cognizance was taken and in course of trial the learned SDJM discharged Bishnupada Deb from the case and on 15.07.2006 framed charge against accused-petitioner, Smt. Milan Paul for commission of offence punishable under Section 420 of IPC to which she pleaded not guilty and claimed to be tried.

3.2. In the course of trial, prosecution examined six witnesses and also proved the FIR, the seizure list of torn cheque and other documents collected in course of investigation. The accused-petitioner was examined under Section 313 of CrPC and in her turn she adduced no evidence. Defence case is nothing but the denial of the prosecution case.

3.3. Learned SDJM at the conclusion of trial found the accused-petitioner guilty of the charge framed against her and sentenced her accordingly as stated hereinbefore.

3.4. The accused-petitioner preferred Criminal Appeal No.6(1) of 2007 in the Court of learned Addl. Sessions Judge, Dharmanagar, North Tripura and the learned Addl. Sessions Judge dismissed the appeal and upheld the conviction and sentence by impugned judgment dated 13.06.2007 and hence this revisional application is filed challenging the judgment and order of conviction and sentence passed by the Courts below.

4. Learned counsel, Mr. Roy Barman has argued that it is the case of the prosecution that the accused-petitioner proposed the complainant for a loan of ₹50,000/- and the complainant agreed to give the loan and that the accused-petitioner signed a cheque of ₹50,000/- and handed over it to the complainant. According to Mr. Roy Barman, learned counsel, there is no allegation in the complaint that there was deception on the part of the accused-petitioner at the inception when the loan was allegedly sought. There is also no evidence to show that the accused-petitioner was having with *mens rea* of deception at the very inception and hence in the given facts and circumstances of the case it may be termed as a breach of contract and no criminal offence is committed by the accused and hence both the trial Court and the appellate Court were wrong in holding the accused-petitioner guilty of the charge and therefore the judgment and order of conviction and sentence cannot stand and are liable to be set aside.

4.1. Mr. Roy Barman, learned counsel has referred the cases of ***V.Y. Jose v. State of Gujarat*** reported in ***(2009) 3 SCC 78***, ***S.V. L. Murthy v. State*** reported in ***(2009) 6 SCC 77*** and ***Joseph Salvaraj A. v. State of Gujarat*** reported in ***(2011) 7 SCC 59***.

4.2. Learned P.P., Mr. Ghosh, on the other hand, has submitted that there is clear allegation in the complaint that the accused-petitioner dishonestly induced the complainant to give her the loan of ₹50,000/-, which the complainant would not give, had the accused not given him a signed cheque drawn on Tripura Gramin Bank, Ambassa Branch but, subsequently, the accused-petitioner refused to pay back the amount and her husband tore the cheque to pieces which is proved as Exbt.3. In the given facts and circumstances of the case the criminal intention of the accused is apparent and hence both the trial Court and the appellate Court properly appreciated the evidence and the revisional Court may not interfere in the concurrent judgment and order of conviction and sentence.

5. While exercising jurisdiction under Section 397 read with Section 401 of CrPC this Court is not required to re-examine and re-appreciate the evidence on records which have been already examined and appreciated by the trial Court and the appellate Court unless it is shown that the Courts below failed to appreciate the evidence according to law or that inadmissible evidence has

been taken to consideration and thereby arrived at a perverse finding.

5.1. Since it is argued that there is no allegation in the complaint and there is no evidence to show the deception at the inception on the part of the accused, I have examined the complaint and the evidence on record. The complainant made definite allegation in the complaint that on 18.08.2005 the accused-petitioner went to the shop of the complainant and requested him to give a loan of ₹50,000/- to which the complainant initially refused to give such a big amount as loan. The accused-petitioner, thereafter, proposed to give a cheque of ₹50,000/- signed by her on the account she maintained in the Tripura Gramin Bank, Ambassa Branch and when she proposed to give the cheque, the complainant agreed to make the loan to the accused-petitioner. It is specifically stated in the complaint that the complainant believing the fact stated by the accused-petitioner that the cheque may be en-cashed and the amount may be collected if she fails to make the payment, gave the loan and so the submission of learned counsel, Mr. Roy Barman that there is no allegation that from the inception there was no element of deception in the mind of the accused-petitioner cannot stand. In his evidence also the complainant (PW1) stated—

“She promised to repay the money within 1½ months. She also told that if she failed to pay the money within 1½ month in cash I am at liberty to submit the cheque for collection of money from her account. After waiting 1½ month I went to Ambassa Gramin Bank. When I

wanted to deposit the cheque in the Bank the concerned staff informed me that there was no sufficient fund in the account of Smt. Milan Paul. Therefore I came back and met with Bisnupada Deb husband of Milan Paul at his house. It was 30.9.05 Bisnupada Deb husband of accd. Milan Paul told me that he would pay the whole amount in cash and asked me to return the cheque. Accordingly I returned the said cheque to Sri Bisnupada Deb. But Bisnupada Deb torn the said cheque and gave it again to me. Accd. Milan Paul obtained Rs.50,000/- from me dishonestly after inducing to pay the said amount by a false promise.”

5.2. It is, therefore, evident that there was substantial allegation and evidence on record that deception was very much present in the mind of the accused-petitioner from the very inception. It is well proved by the evidence of PW2, the Manager of Tripura Gramin Bank, Ambassa Branch that the complainant presented the cheque in the bank and the cheque could not be honoured since there was no sufficient fund in the account of the accused-petitioner and that there was only a balance of ₹1,938/- in her account. The fact that the accused-petitioner operating S.B. A/C No.4784 in the Tripura Gramin Bank, Ambassa Branch is not in dispute. It is sufficiently proved that the accused-petitioner handed over a cheque of ₹50,000/- to the complainant assuring encashment of the cheque in case she fails to pay back the loan amount within the time fixed and from the evidence of PW2 it is overwhelmingly established that the complainant approached the bank for encashment of the cheque but the cheque was returned since there was no sufficient fund in the account of the accused-petitioner.

From the evidence of PW1 it is clearly established that the complainant thereafter went to the house of the accused-petitioner on 30.09.2005 and demanded the amount and at that time the cheque was torn to pieces by the husband of the accused-petitioner and those torn pieces of cheque were handed over to the complainant saying to realize the amount and those torn pieces of cheque have been proved as Exbt.3. Exbt.3 is proved to be a cheque issued in connection with the bank account of the accused-petitioner. Definitely, the accused-petitioner had the knowledge of her insufficient fund in the account and with a view to procure the loan she signed the cheque and handed over it to the complainant as a security knowing it fully well that by that cheque the complainant will not be in a position to draw the amount. Therefore, the deception was very much present in the mind of the accused-petitioner from the very inception.

6. Section 415 of IPC defines '*cheating*' thus:

"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"."

6.1. The essential ingredients of offence of *cheating* are:

(i) *deception of a person either by making a false or misleading representation or by other action or omission;*

(ii) *fraudulent or dishonest inducement of that person to either deliver any property 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.*

6.2. In the given facts of the present case I find that *Illustration (f)* to Section 415 covers the ingredients of offence. *Illustration (f)* reads as follows:

"(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and hereby dishonestly induces Z to lend him money. A not intending to repay it. A cheats."

6.3. The fact of the present case is that the accused-petitioner proposed the complainant to give her a loan of ₹50,000/- which the complainant did not agree at the outset. She, thereafter, proposed to give a signed cheque of ₹50,000/- and thereby proposed the complainant that if she fails to make the payment within time the complainant may en-cash the cheque from her account in the Tripura Gramin Bank, Ambassa Branch. She did not

make the payment as promised. The complainant went to the banker of the accused-petitioner to draw the amount but found that there was no such fund to honour the cheque. The complainant, thereafter, went to the house of the accused-petitioner but her husband tore the cheque to pieces and refused to make the payment of the loan amount. The facts, therefore, clearly cover the ingredients of cheating as defined in Section 415 of IPC.

7. Section 420 of IPC is an aggravated form of punishment than that of ordinary offence of cheating under Section 417 of IPC. The ingredients of Section 420 of IPC are that the person deceived delivers to someone a valuable security or property, that the person so deceived was induced to do so, that such person acted on such inducement in consequence of his having been deceived by the accused and that the accused acted fraudulently or dishonestly when so inducing the person.

7.1. The words, '*dishonestly*' and '*fraudulently*' have been defined in Sections 24 and 25 of IPC thus:

"24. "Dishonestly".—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

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

8. Here in this case, there is clear evidence on record that the accused petitioner approached the complainant (PW1) for a loan of ₹50,000/- which the complainant at the first instance refused but the accused thereafter proposed to give a cheque of ₹50,000/- and accordingly she had drawn a cheque in connection with her S.B. Account with Tripura Gramin Bank, Ambassa Branch and handed over the cheque to the complainant. It is the case of the complainant that the accused did not return the loan in time and therefore he went to draw the amount by presenting the cheque to Tripura Gramin Bank, Ambassa Branch and the bank officials informed him that there was no such amount in the account of the accused. This fact that the accused had no amount in her account may be presumed to be within her knowledge. Therefore, it is clear that the accused issued the cheque with the intention to defraud the complainant from the very inception. The allegation of deception shall have to be understood and/or presumed from the fact of the particular case proved before the Court. Intention since confined in the mind of a person cannot be understood unless it is expressed by some action. So the guilty intention has to be drawn from the facts proved before the Court. It is not necessary that there must be clinching evidence to prove the guilty intention. From the conduct and other circumstances of the transaction guilty intention of deception at the inception may be inferred.

8.1. The Supreme Court in the case of **Ram Narayan Popli v. C.B.I.** and other connected cases reported in **(2003) 3 SCC 641** in para 366 has observed:

"366. Section 420 deals with cheating and dishonestly inducing delivery of property. The offence of cheating is made of two ingredients: deception of any person and fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property. To put it differently, the ingredients of the offence are that the person deceived delivers to someone a valuable security or property, that the person so deceived was induced to do so, that such person acted on such inducement in consequence of his having been deceived by the accused and that the accused acted fraudulently or dishonestly when so inducing the person. To constitute the offence of cheating, it is not necessary that the deception should be by express words, but it may be by conduct or implied in the nature of the transaction itself."

9. The argument of learned counsel, Mr. Roy Barman that the facts of the present case do not constitute *cheating* and that it may be a *breach of contract*, if at all believed, cannot be accepted in the given facts and circumstances of the case. In my considered opinion there is consistent evidence that the accused-petitioner approached the complainant for loan of the amount of ₹50,000/- which the complainant did not first agree but subsequently he agreed to give the loan when the accused handed over a cheque of

₹50,000/-. That cheque was the document of giving the loan as said by the complainant and at the same time it was the security given by the accused to the complainant towards parting with the money. The offence of cheating has been proved when the cheque was not honoured by the bank and that fact proves the mental state of the accused at the inception when the loan was taken.

10. The case laws referred by learned counsel, Mr. Roy Barman, i.e. the cases of **V.Y. Jose(supra)**, **S.V. L. Murthy(supra)** and **Joseph Salvaraj(supra)** stand on identical facts completely different to that of the fact of the present case.

10.1. In the case of **V.Y. Jose(supra)** the Supreme Court in para 14 of the judgment has held:

"14. An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied :

(i) deception of a person either by making a false or misleading representation or by other action or omission;

(ii) fraudulently or dishonestly inducing any person to deliver any property; or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit."

For the purpose of constituting an 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. Even in a

case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code can be said to have been made out."

10.2. I have already discussed above the evidence on record wherefrom it can be gathered that the accused had fraudulent intention at the time of making the proposal for the loan and since that has been proved, the punishment under Section 420 of IPC was just and appropriate.

10.3. In the case of ***S.V. L. Murthy(supra)*** the Supreme Court in para 55 of the judgment has made similar observation. The case of ***Joseph Salvaraj(supra)*** also does not help the case of the accused in any manner.

11. The next argument advanced by learned counsel, Mr. Roy Barman is that the accused is a woman and this is the first offence alleged to have committed by her and so she may be given the benefit of the Probation of Offenders Act.

11.1. The trial Court as I find considered this aspect as to whether the accused should be given the benefit or not and considering the facts and circumstances of the case the trial Court refused to give the benefit of Section 4 of the Probation of the Offenders Act.

11.2. Learned counsel, Mr. Roy Barman referring to the case of ***State of U.P. v. Ranjit Singh*** reported in **(1999) 2 SCC 617** has submitted that in that case the accused was found guilty of committing offence punishable under Sections 466 and 468 of IPC but the trial Court allowed the benefit of *U.P. First Offenders Probation Act* and considering the ratio of that decision in the present case also the learned counsel prayed for giving the benefit of probation to the accused-petitioner.

11.3. In that reported case, as I find, the benefit was given considering the peculiar circumstance of that case and considering the long pendency of the case. No such circumstances is available in the facts of the present case. Further, the trial Court giving reason refused to give the benefit of Probation of Offenders Act though the offence is not of major punishment. In the present case, as I find, the accused-petitioner though is a woman fraudulently induced the complainant to give her loan and cheated the complainant deliberately. In her defence she has abruptly taken a stand of denying of the prosecution case and nothing else. Under the circumstances, while the accused could not come out with a reasonable stand I think she should not be dealt with leniently simply because she is a woman and that there is no evidence of previous punishment. In the given facts and circumstances of the case, in my considered opinion, for the offence alleged the accused-petitioner should suffer the sentence.

12. Accordingly, the revisional application is found to be devoid of any merit and it stands dismissed.

13. Send back the L.C. records along with a copy of the judgment.

JUDGE