THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL REVISION CASE No.1430 of 2007

ORDER:

This Criminal Revision Case is directed against the judgment in Crl.A.No.165/2006, dated 18.10.2007 on the file of the Sessions Judge, Karimnagar, by and under which, the conviction and sentence as imposed by the trial Court was confirmed.

2. Heard the learned counsel appearing for the revision petitioner and the learned Additional Public Prosecutor, representing the State.

3. The case of the prosecution in brief is that PW 1 lodged Ex.P1 complaint before the Station House Officer, Karimnagar II Town Police Station stating that the accused is the tenant of his brother-in-law-Hanumalla Komuraiah and he introduced himself as Doctor in PIMS, Karimnagar and lured him that he will provide job to his son as Attender in PIMS, Karimnagar and collected a sum of Rs.50,000/- from him in the month of May, 2002, but he did not provide any job to his son. It is further alleged that when PW 1 demanded the accused for return of money, the accused executed Ex.P2 promissory note in his favour, for which the father of the accused stood as guarantor. Subsequently, without providing any job to the son of PW 1 and without paying the money paid by PW 1, the accused vacated the house of his brother-in-law-Hanumalla Komuraiah and fled away, thereby cheated PW 1. On the enquiries PW 1 came to know that the accused is not a Doctor in PIMS, Karimnagar.

4. Basing on the complaint of PW 1, the Station House Officer, Karimnagar II Town Police Station registered a case in Cr.No.354/2002 under section 420 IPC, conducted investigation and filed charge sheet, which was initially numbered as CC.No.744/2003

on the file of the Additional Judicial Magistrate of First Class, Karimnagar and subsequently, as per proceedings of the District Judge, Karimnagar, dated 27.08.2004, withdrawn and transferred to the Court of the Special Judicial Magistrate of First Class, Excise, Karimnagar and re-numbered as CC.No.344/2004. According to PW 4, the Investigating Officer, the accused is a habitual offender of cheating the innocent public by inducing them to provide jobs and collecting amounts from them.

5. The trial Court had taken the case on file for the offence under section 420 IPC against the accused, and on appearance of the accused, he was examined under Sec.239 Cr.P.C. and charge under Sec.420 IPC was framed, for which the accused pleaded not guilty and claim to be tried.

6. To bring home the guilt of the accused, the prosecution examined PWs 1 to 4 and got marked Exs.P1 to P3. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C putting all incriminating material available against him, but the accused denied the material evidence.

7. On appreciation of oral and documentary evidence, the trial Court found the accused guilty of the offence alleged, convicted and sentenced him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.3,000/-, in default to suffer simple imprisonment for a period of three months.

8. Challenging the conviction and sentence passed by the trial Court, the accused preferred appeal Crl.A.165/2006 before the Sessions Judge, Karimnagar, however, the same was dismissed confirming the judgment of the trial Court. Aggrieved by the same the accused filed the present criminal revision case.

9. Now the point that arises for consideration in this revision is whether the conviction and sentence imposed by the Courts below against the revision petitioner/accused is legal and sustainable.

Point:

10. The contention of the learned counsel appearing for the revision petitioner/accused is that there is no evidence whatsoever to connect the accused to the crime, PWs 1 to 3 are interested witnesses and there is no independent evidence. It is further contended that the Courts below ought to have held that there is no criminal liability against the accused and the criminal complaint is not maintainable. It is further contended that the ingredients of Section 420 IPC are not at all attracted as it is purely civil in nature. It is further contended that the Courts below ought to have considered that there was no dishonest intention on the part of the accused to cheat PW 1 and his son. It is further contended that the material witness i.e. the brother-in-law of PW 1 was not examined to prove the acquaintance between PW 1 and accused and the payment made by PW 1 to the accused, and that the evidence of PW 3 is not reliable as he did not lodge any complaint against the accused before the police.

11. On the other hand, the learned Additional Public Prosecutor submits that the prosecution has placed relevant oral and documentary evidence on record, which clearly establishes that the revision petitioner/accused collected amount from PW 1 on the pretext that he would provide job to his son PW 2 and thereby cheated PW 1, and further, the evidence of PW 3 shows that the accused is a habitual offender of cheating the innocent public, therefore, both the Courts below have concurrently found the revision petitioner/accused guilty of the offence alleged and convicted and sentenced him, as stated supra. The learned Additional Public Prosecutor submits that the judgments of the Courts below are based on proper appreciation of material on record, which do not warrant any interference.

12. The entire evidence on record both oral and documentary, so also the judgments of the trial Court and the appellate Court are

perused. PW.1 is the person who claims to have been cheated by the petitioner/accused on a false promise of providing job to his son in PIMS as an Attender, and on the said promise, the accused said to have taken a sum of Rs.50,000/- from him. According to PW.1, the petitioner/accused was living in the house of his brother-in-law by name Hanumanla Komuraiah as a tenant. Having developed acquaintance with him and claiming that the accused is working as a Doctor in PIMS, assured that the post of attender will be provided to his son, who is examined as PW.2. This is said to have taken place in May, 2002. When the accused was not able to fulfil his promise and when demanded, the accused is said to have executed a promissory note-Ex.P.2 promising to repay Rs.50,000/- to PW.1 and on that promissory note, the father of the accused by name Kishan Rao signed as a guarantor. Thereafter, it is in the evidence of PW.1 that the accused vacated the house of his brother-in-law/Komuraiah and though he was in contact now and then over telephone, the accused neither provided the job to his son nor returned the amount. On similar lines is the evidence of PW.2.

13. PW.3 is said to be another victim in the hands of the accused and it is in the evidence of PW.3 that he paid Rs.54,000/- to the accused on the promise that the accused will provide a job in PIMS Hospital as Computer Operator. It is in his evidence that the accused claimed that he is working as Doctor in the said hospital. On enquiries made by PW.3, he came to know that there is no Doctor by name of the accused in PIMS. PW.3, however, could not give the date or month when he is said to have paid Rs.54,000/- to the accused. PW.3 claims that he paid the said amount in the presence of PW.1, but PW.1 is conspicuously silent about it.

14. Excepting for the above three witnesses, the prosecution did not examine any other independent witnesses. Upon carefully examining the evidence of PWs.1 to 3, it is noticed that there appears

to be some financial transactions in between them and therefore the accused executed a promissory note – Ex.P.2, more particularly, with his own father signing the same as guarantor. Learned Counsel appearing for the petitioner/accused submits that by no stretch of imagination, can it be said that there was any intention on the part of the accused to cheat the complainant/PW.1 and criminal prosecution is launched only to extract money from the accused. It is submitted that if really the accused has taken the money with a dishonest intention of cheating the complainant or others falsely promising to provide jobs, he would not have executed the promissory note-Ex.P.2, more particularly, by making his own father signed the said promissory note-Ex.P.2 as a guarantor.

15. Learned Counsel further submits that even without verifying as to whether the accused was working as a Doctor as claimed by prosecution witnesses, neither PW.1 nor PW.3 would have parted with the substantial sum of Rs.50,000/- and Rs.54,000/- to the accused who had no deep acquaintance excepting for the fact that he was staying as a tenant in the house of Komuraiah. As already stated, the said Komuraiah has not been examined who is said to have witnessed the incident and his non-examination is fatal to the prosecution.

16. The prosecution alleges that the accused has cheated the complainant or victim, it is obligatory on the part of the prosecution to prove that the intention to cheat on the part of the accused should be from the inception. The essential ingredients are deception and an intention to defraud. The said conduct should be proved by direct evidence or inferred from the other evidence. In between the deception and dishonest inducement to do or omit to do a thing, there may be a conduct which would amount to breach of contract, for which remedy is in civil Court for violating the promise or assurance.

17. In the instant case, what is all that is alleged is that the

accused has promised to provide job to the son of PW.1 and with that promise took Rs.50,000/-. If really the accused had any dishonest or fraudulent intention of cheating, he would not have executed a promissory note-Ex.P2 as stated, more particularly, with his own father signing as a guarantor. What is manifest is that there is some transaction in between PW.1 and the accused other than any act of intending to cheat or deceive PW.1 by the accused. In the absence of there being cogent, convincing and reliable evidence that the accused committed a criminal offence, he cannot be said to have committed the same and the burden is heavily upon the prosecution to prove the same. In the instant case, the prosecution has failed to prove that the accused has committed the offence of cheating and therefore the benefit thereof should be given to him.

18. Both the Courts below have not appreciated the said aspect in proper perspective and have erroneously convicted the petitioner/accused. Therefore the said conviction is liable to be set aside.

19. For the reasons stated above, the Criminal Revision Case is allowed. Consequently, the judgment of the appellate Court dated 18.10.2007 in Crl.A.No.165 of 2006 as well as the judgment of the trial Court dated 28.10.2006 in C.C.No.344 of 2004 are set aside and the petitioner/accused is acquitted of the offence for which he was found guilty and convicted. The bail bonds of the petitioner/accused shall stand cancelled. The fine amount, if any paid, shall be refunded to the petitioner/accused.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 03.11.2015

Dsr/Smr