

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No.321 OF 2007

ORDER:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'the CrPC') by the petitioner/sole accused is directed against the judgment dated 28.02.2007 in CrI. Appeal No.93/2006 passed by the learned V Additional Sessions Judge, (Judge, Fast Track Court) Guntur.

1. (a) By the judgment dated 13.02.2006 in C.C.99/2004 the learned I Additional Magistrate of First Class, Tenali had found the accused guilty of the offence punishable under Section 420 of the Indian Penal Code (for short, 'the IPC') and convicted him of the said offence under Section 248 (2) of CrPC and sentenced him to undergo simple imprisonment for six months and pay a fine of Rs.500/- and suffer simple imprisonment for 15 days in default of payment of the said fine amount. The learned Additional Sessions Judge, while dismissing the aforementioned appeal of the accused, had confirmed the judgment of the trial Court in all respects.

2. I have heard the submissions of the learned counsel for the petitioner/accused and of the learned Public Prosecutor representing the respondent-State. I have carefully perused the material record.

3. Now the points for consideration are: -

1. **Whether the prosecution was successful in bringing home the guilty of the accused, beyond reasonable doubt, for the offence punishable under Section 420 of IPC?**
2. **Whether the petitioner/accused has made out valid and sufficient grounds for his acquittal? And, if so, whether the judgment of the Court below is liable to be set aside?**

4. POINTS :

4. (a) The case of the prosecution including the gravamen of the charge, in brief, is this: 'The accused is a resident of Ithanagar, Tenali. PW1-Sabbineni Venkateswararao is a Pastor residing in Amaravathi Plots, Chenchupet of

Tenali. The accused had approached PW1 and had introduced himself and also Kakarlamudi Raju (PW2), Kakarlamudi Mariyamma (PW3), Yarlagadda Sarojini (PW4) and Gajulavarthi Annapurnamma (PW5). At that time the accused had stated that he is the president of the SC Tenders Co-operative Society located in Kadavakuduru village, Chinaganjam Mandal of Prakasam District and that there are vacancies in the said society and that he would see that one acre and 12.5 cents of cultivable land is allotted to each member and had obtained Rs.5,625/- each from PWs 1 to 5 as installment and he had later taken Rs.15,000/- from PW5. Further, on 26.03.2000, PWs 1 to 4 had paid a cash of Rs.40,000/- towards remaining installments. The accused had neither allotted the land nor returned the amount he had received from PWs 1 to 5. Thus, the accused had cheated them for his wrongful gain. PW1 had, therefore, lodged a report with the Station House Officer of the III Town Police Station of Tenali. Based on that report, the subject crime was registered and was investigated into. After investigation, the charge sheet was laid.'

4. (b) The learned counsel for the petitioner/accused contended that the society is a registered society and is a genuine one and that the main object of the society is to provide land to the landless poor and that the allotment of land by the Government is a lengthy process and that PW1 is a Pastor and that the other witnesses PWs 2 to 5 are the members of the church and that PW4 is the sister of PW1 and that the evidence of PWs 1 to 6 suffers from several infirmities and that the Court below ought to have considered that the president of the Society is doing welfare activities for the benefit of the needy and the poor persons and that there is rivalry between PW1 and the accused and that the evidence of PWs 1 to 6 that the accused made a wrongful gain by alleging to provide Pattas to them is interested evidence and that no credible evidence is adduced to prove the complicity of the accused for the offence punishable under Section 420 of the IPC.

4 . (c) Per contra, the learned Public Prosecutor had contended that the evidence of PWs 1 to 5 coupled with exhibits P1 to P3 is sufficient by any standards to come to a safe conclusion that the accused had first promised that he would get allotted certain lands through the society to PWs 1 to 5 and had collected the amounts from them on that premise and had later failed to either return the amounts or get the lands allotted and that when they had

questioned him he had stopped attending to the church and that when a final demand was made he had stated to them that they may do whatever they liked to do and that the said acts and the conduct of the accused as spoken to by PWs 1 to 5 and as brought on record sufficiently established his guilt beyond reasonable doubt and that there is no merit in this revision case and that the well reasoned judgments of the Courts below do not suffer from any infirmities calling for interference and that the revision case is liable to be dismissed.

4. (d) Now, it is necessary to examine the evidence brought on record by the prosecution to find out as to whether or not the said evidence is sufficient to record a conviction against the accused for the offence with which he was charged.

4. (e) Coming first to the evidence of **PW1**, he had testified to the following effect: 'One Premkumar introduced the accused to him. In February 2000, the accused came to his house and introduced himself as the president of the society at Kadavakuduru village. He had stated that he would get a land through the society and that PW1 has to pay Rs.5000/- to the MRO and Rs.600/- per acre and that each member will be given Ac.1.12 ½ cents of land and that after the allotment one has to pay Rs.10,000/-. He, PWs 2 to 4 had paid Rs.5,625/- each to the accused towards the first installment on 24.02.2000 at Amaravathi Plots. Within one month thereafter, the accused had sent a letter stating that the plots were allotted to PW1 and others. Exhibits P1 and P2 are the post cards sent by the accused to PW1. He (PW1) is also called as "Abbeju". The accused also wrote that there are two more vacant plots to be allotted. Thereafter, on one Sunday the accused came to the church. On that day PW5 had paid Rs.15,000/- to the accused. PWs 1 to 4 had also paid Rs.10,000/- each to the accused on the said day. The accused had informed that he would get pattas from the District Collector within one month. He had postponed the issue and thereafter he had stopped attending the church. PW1 went to the Office of MRO and had made enquiries with the MRO. The MRO had informed that there is no allotment of plots at Kadavakuduru village and that no such transaction had taken place. Later, PW1 and others had questioned the accused. On that, he had threatened by saying that PW1 can tell the same to whomsoever he liked. Therefore, PW1 has presented exhibit P3 report to the Police.' In the cross examination done, PW1 had maintained his stand. In his

cross examination, the following points were elicited: 'There is another case in C.C. No.61/2004 on the file of the trial Court against the accused. The name of my first wife is Chalasani Lakshmi. One Srinivasarao is her brother. From the past ten years there are disputes between him and my first wife. In the year 2001, one Kishore and Mahima Kumar had mediated and settled the disputes between him and my wife. One Syamsonraju of Eluru was introduced to me through Kishore. One Venkata Nagalakshmi is my second wife. Her brother Chakka Srinivasarao is my brother-in-law. I have not enquired about the R.C.M. Tenders Co-operative Society. I have not verified about the society at Kadavakuduru village in Prakasam District. I have not verified whether the land distribution was in process or not. Except making an enquiry in the MRO's office, I did not make any other enquiries in any other office. I do not know about the process of distribution of land, if any, pending. I was told that there were 160 members. I have no immoveable property.' He had denied the following suggestions: 'It is not true to say that I used to settle the issues along with one Chalasani Venkateswara Rao @ Pandu who is the brother of my first wife. It is not true to say that I met Kishore to avoid any disputes with the said Pandu. It is not true to say that I have got contacts with Central Ministers and that we had invested lakhs of rupees and had developed the church and social organizations. It is not true to say that in my name also letters were distributed stating that I was developing the churches and organizations by getting funds from foreign countries. It is not true to say that I had paid Rs.1 lakh towards settlement to my first wife about three years back. It is not true to say that the accused resides in Karamchedu. It is not true to say that the Post Cards filed by me do not reveal that the accused is a permanent resident of Tenali. It is not true to say that I and Kishore got made settlement in respect of money collected from members. It is not true to say that a petition was filed before the II Town Police Station, Tenali and that I got it settled and that case was referred as false. It is not true to say that out of fear for my brother-in-law, I had filed this case in this area. It is not true to say that I have collected Rs.20,000/- from one P.Bhaskar. It is not true to say that I have collected amounts from the relatives of the said Bhaskar. It is not true to say that the accused has never cheated me and that I diverted the amounts and that I cheated the accused and his relatives.'

4. (f) PW2 had also stated that about four years prior to his giving evidence the

accused had stated that he would get lands through MRO, Chinaganjam and that he had paid Rs.5,000/- to the MRO and Rs.625/- for measuring the land and that he had paid Rs.5,625/- to the accused in the month of January or February 2000 and that along with him three others had also paid the amounts and that 10 days thereafter, the accused had again asked him to give another Rs.10,000/- and that he did not pay the same and that the accused used to continue to say for one year about getting the land and that later he had stopped attending the village and the church and that when he (PW2) went to his house, the accused had postponed the issue and that he did not get back his money from the accused or the land and that when he made enquiries in the MRO's Office at Chinaganjam, he was informed that there was no such transaction and that PW1 had reported the matter to the Police. He had also maintained his stand in the cross examination. In his cross examination, it was elicited that he knows the accused through PW1 and that he does not know the affairs between the PW1 and the accused. He had stated that PW1 as well as the accused informed him about the availability of plots in Chinaganjam and that he knows that the society viz., Karamchedu Roman Cathelic Mission Tenders Co-operative Society was registered in 1924 but he does not know about the previous subscription of a member in the above society but at present it is Rs.675/- for life membership. According to him, there is no correspondence between him and the accused and that he had paid the amount to the accused directly but, no receipt was obtained from the accused. When it was suggested to him that he had not paid any amount to the accused and that hence, he was not having a receipt he had denied the said suggestion as 'not true'. When it was further suggested to him that he had never paid any amount to the accused and that PW1 had foisted this case and that he is deposing falsehood at the instance of PW1, he had denied the said suggestion.' **PW3** had also deposed on the same lines and according to her, the accused told her that he is working in a society at Karamchedu and that lands are being distributed to poor persons on payment of amount and that the accused asked her to give an amount of Rs.5,600/- and odd to be paid to the MRO and that accordingly, she had paid the said amount to the accused in the year 2002 and that the accused has also informed her that he is getting orders for allotment of lands and had further demanded Rs.10,000/- to be paid within one month and that on that she had paid Rs.10,000/- but, no receipt was issued by the accused for the

amounts received from her and that along with her four other persons had also paid the amounts to the accused and that when they had questioned the accused about the lands he had stopped coming to the church and that on that a report was given to the police. In her cross examination, she had maintained her stand, but had stated that she did not enquire about the society and that she had paid the amounts through PW1-the Pastor and that she does not know any transactions between the accused and the Pastor and that she has no moveable and immovable properties. When it was suggested to her that she has no capacity to pay the amount, she has denied the said suggestion and stated that PW2 is her son and that she did not meet the MRO. When it was further suggested to her that she is deposing falsehood to support the version of PW1, she has denied the said suggestion. **PW4** had also similarly deposed that the accused told her that he is working as Sarpanch of Karamchedu and that there are vacant society lands and that they will be distributed to the landless poor and that an amount of Rs.5,625/- is to be given to the MRO for allotment and fixing boundary stones and that on that she had paid the said amount in the year 2000 along with four other members and that later the accused had told her that the land was allotted to her and that an amount of Rs.10,000/- is to be paid and that accordingly, she had paid Rs.10,000/- to the accused and that the accused was representing that he would handover the allotment papers, but, did not give any papers even after her repeated demands and going around him for about 1½ years and that later the accused told her that they did not pay any amount to him and asked them to do whatever they wanted to do and that therefore, they went to the Police Station and filed a complaint against the accused. She had maintained her stand in her cross examination, but stated that she did not enquire as to whether there was any society in existence and that she did not take any receipt from the accused for payments made to him and that she demanded the accused orally and that there is no correspondence between her and the accused. When it was suggested to her that she had never paid any amounts to the accused and that she has no capacity to pay the amounts and that she is deposing falsehood at the instance of PW1 due to her acquaintance with PW1, she had denied the said suggestions. **PW5** had also deposed that the accused told her that there are Banjar lands in Karamchedu and that the same will be distributed to the landless poor and that the accused had asked her to pay Rs.15,000/- at a time

and that accordingly she had paid Rs.15,000/- to the accused and that the accused used to tell PW1 that the lands will be distributed and that for two years the accused came to the church and that later he had stopped coming to the church and that finally the accused had neither paid the amount nor given papers in regard to allotment of sites and on that she and others had given a complaint to the police. In her cross examination, she had admitted that she knows the accused through PW1 and that she does not know of any transactions between PW1 and the accused and that she had not enquired about the existence of the society and that she did not make any enquiries with the MRO or RDO in regard to allotment of lands and the existence of any such scheme of distribution of lands. She had asserted that she had paid the amounts to the accused in the presence of PW1 and that she had not received any receipt for the payments made and that there was no written correspondence between her and the accused. She had stated that she gets Rs.2,000/- on her cattle besides Rs.2,500/- per month towards pension. When it was suggested to her that she did not pay any amount to the accused and that she is speaking falsehood at the instance of PW1, she had denied the said suggestion. **PW6** is the Sub-inspector of Police, who had investigated into the case and laid the charge sheet. He deposed about the manner of investigation and the arrest of the accused and about obtaining the orders of remand and filing of the charge sheet.

4. (g) Thus, I have gone through the entire evidence carefully. A plain reading of the evidence of PW1 would show that there was no cross examination on the crux of the matter and it was not even suggested to PW1 that the accused did not make any representations in regard to allotments of Government lands and did not collect any amount from PW1 and others. PWs 1 to 5 had consistently deposed that the accused, having represented to them that lands will be allotted under a scheme of the society, had collected amounts from them and that later the accused had postponed the issue when they had questioned about the allotment of lands to them and that later the accused had stopped coming to the church and that when they had questioned him, he had stated to them that they can do whatever they liked and that on that a report was given to the Police. Exhibits P1 and P2 are the letters addressed by the accused to PW1.

Regarding these letters, in the cross examination of PW1, it is only elicited that a reading of the letters does not show that the accused is a resident of Tenali. The accused did not either deny the said letters or get it suggested to PW1 in his cross examination that the letters were not written by the accused to PW1. The said letters would lay bare that the accused had addressed the letters mentioning that certain land was granted by the MRO's office and that there are 162 members and there are two plots vacant and that Rs.15,000/- is payable and that he would come and talk. The contents of the post cards fully corroborate the version of PW1 and others in regard to the aspect that the accused made a representation for allotment of lands and collected moneys from PW1 and others. As could be seen from the evidence that was extracted supra, no contradictions and omissions, much less of material nature, were brought out. On the other hand, the evidence of all the witnesses on the material aspects is consistent and cogent. The main contention of the accused appears to be that there were some transactions between him and the PW1 and that there are also financial transactions besides activities of churches and that in connection with such financial transactions and activities certain disputes had arisen between him and the PW1 and that therefore, the false case is foisted. However, the said contention cannot be countenanced in view of the evidence that was brought on record more particularly in view of the contents of the post cards admittedly written by the accused to PW1. Viewed thus, this court finds that the evidence brought on record sufficiently established the guilt of the accused, beyond reasonable doubt, for the offence under Section 420 of the IPC. Therefore, this Court finds that there is no merit in this revision. The points are accordingly answered in favour of the prosecution and against the accused.

4 . (h) Coming to the quantum of sentence, the learned counsel for the petitioner/accused had alternately contended that the accused is of 72 years of age by the year 2007 and that at this advanced age if he is sentenced to a long term of imprisonment, he would suffer hardship and that considering his advanced age and the old age ailments with which he is suffering, a lenient view may be taken.

4 . (i) Having regard to the explanatory statement offered on behalf of the accused and considering his advanced age and the health condition as a

mitigating and extenuating circumstance, this Court is of the considered view that the substantive sentence of imprisonment can be reduced to one already undergone while maintaining the fine amount.

5 . In the result, the Criminal Revision Case is dismissed. However, the substantive sentence of imprisonment is reduced from six months to one already undergone while maintaining the fine amount. It is stated that the fine amount was already paid. If that is so, the bail bonds of the accused shall stand cancelled after the further appeal/ revision time is over.

Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

M.SEETHARAMA MURTI, J

19th January 2015

MVA