HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.569 OF 2008

O R D E R:

This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the judgment dated 01.04.2008, passed by the I Additional Metropolitan Sessions Judge, Hyderabad, in Criminal Appeal No.129 of 2005, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Section 420 of the Indian Penal Code, 1860 (for short, 'I.P.C') vide judgment dated 11.04.2005, by the XXI Metropolitan Magistrate, Hyderabad, in C.C.No.172 of 1999, was confirmed.

2. The revision petitioner herein is A.1, whereas respondent is the complainant in C.C.No.172 of 1999 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the C.C before the trial Court.

3. The brief facts of the case are that on 05.11.1998, a complaint was lodged by PW.1-Regional Risk Manager of City Bank alleging that A.1 approached their direct Sales Agent M/s.Mahalakshmi Motors Ltd., in the month of November, 1996 representing that he was the registered owner of Maruthi Esteem Car bearing No.AP.5E.567 and requested for sanction of loan of Rs.3,76,000/- under re-finance category. He submitted his application form, photos, copies of R.C books, Insurance papers, Invoice, Income Tax returns and his signature was authenticated by Indus Ind Bank Limited of Secunderabad Branch. Believing A.1's documents, loan was released after it was processed. Subsequently, the authorities of City Bank came to know that the documents submitted by A.1 are forged and fabricated. After receiving the complaint, the police registered the same as a case in Cr.No.288 of 1998 for the offences punishable under Sections 420, 468 & 471 I.P.C and investigated the matter. During the course of investigation, the Inspector of Police recorded the statements of PWs.1 to 5, other witnesses and collected necessary documents. On 19.11.1998 the Inspector of Police-R.Rajendra Prasad apprehended A.1 at his residence, recorded his confessional statement in the

presence of PW.4 and one Md. Iqbal, and sent him to the Court for judicial custody. In pursuance of the confession, the Inspector of Police seized forged rubber stamps at the residence of A.1 on 22.11.1998 at his instance. A.1 also confessed that A.2 & A.3 co-operated him in verification and A.4 co-operated him in preparing the Insurance papers. The Sub-Inspector of Police B. Venkat Ratnam verified the particulars of the R.C book with PW.5 and found that the documents are forged and fake. PW.2 informed that A.1 opened an account in their Bank, encashed the demand draft and withdrawn the amount. The Investigation established that A.1 got prepared fake R.C book for the vehicle bearing No.AP.5E.567, Insurance papers, Income Tax returns etc., with the assistance of A.4 and submitted loan application to the said Bank; that A.2 & A.3 being the verification officers with their common intention submitted false reports and thereby assisted A.1 in getting the loan; and that after getting the car loan sanctioned, A.1 encashed the demand draft for an amount of Rs.3,76,000/- on 23.11.1996 in Indus Ind Bank in his account bearing No.202301-001, withdrawn the same through cheques and failed to repay the loan amount to the Bank. Further, the investigation also revealed that without having the car bearing No.AP.5E.567, A.1 submitted fake and forged R.C papers and thus all the accused with a common intention cheated the complainant-City Bank and caused wrongful loss. Thus, the Inspector of Police-B.Ashok Kumar after completing the Investigation arrested A.2 on 23.08.1999, separated the case against A.3 & A.4 and finally filed the charge sheet against A.1 & A.2 for the offences punishable under Sections 420, 468 & 471 read with 34 I.P.C into the Court.

4. On appearance of A.1 & A.2, the XXI Metropolitan Magistrate, Hyderabad, took cognizance of the case and framed charges for the offences punishable under Sections 420, 468 & 471 read with 34 I.P.C against them. During trial, to prove the case of prosecution, PWs.1 to 5 were examined and Exs.P1 to P13 & MOs.1 to 15 were got marked.

5. After closure of prosecution evidence, A.1 & A.2 were examined under Section 313 Cr.P.C putting all incriminating material available against them. They denied the material evidence and reported no oral or documentary evidence on their behalf.

6. The trial Court, after hearing the arguments and after perusing the record,

convicted A.1 and sentenced him to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs.3,000/-, and in default of payment, to undergo Simple Imprisonment for a period of four months for the offence punishable under Section 420 I.P.C. The trial Court acquitted A.1 & A.2 from the remaining charges with which they were charged.

7. Aggrieved by the conviction and sentence passed by the trial Court, A.1 preferred Criminal Appeal No.129 of 2005 before the I Additional Metropolitan Sessions Judge, Hyderabad, where the appellate Court after considering the oral and documentary evidence, after hearing both sides and after perusing the finding of the trial Court, dismissed the appeal by confirming the conviction and sentence passed by the trial Court.

8. Being aggrieved by the concurrent finding of both the Courts below, passed in Criminal Appeal No.129 of 2005 and C.C.No.172 of 1999, A.1 preferred the present revision case.

9. The learned counsel appearing for the revision petitioner/ A.1 argued that the Bank authorities have not verified the original documents at the time of sanctioning the loan; that the agents played fraud, but not the revision petitioner/A.1; that none of the Investigating Officers was examined in this case, therefore it is fatal to the prosecution case; that prosecution also not filed the material documents i.e., copies of cheques and none of the documents Exs.P2 to P9 will indicate the complicity of the accused in presenting the same before the complainant Bank and Section 420 I.P.C has no application to the facts of the present case; that the revision petitioner/A.1 was falsely implicated in this case and prosecution failed to prove the ingredients of Section 420 I.P.C and relied upon the case laws reported in (1) ***Patel Naranbhai Marghabhai and others v. Deceased Dhulabhai Galbabhai and others***, wherein it is held at para 4 as follows:

> *"4. …… The best evidence namely the notification to conduct sale for arrears; the sale proceedings and the certificate of sale have not been placed on record. A letter of 1964 purported to have been written long after the alleged sale made in 1955 that there was no need for issue of sale certificate as the appellants remained in possession. It is difficult to accept this letter. When the sale alleged to have been made for recovery of the dues, it would be governed by the Revenue Recovery Act and the procedure prescribed therein should be followed and the sale certificate would have been issued. As stated earlier this*

material evidence which clearly establishes that the said sale was withheld by the appellants and an adverse inference should be drawn against the appellants. The Civil Court, therefore, was justified in rejecting the contentions of the appellants. The resultant position would be that the appellants remained in possession as the mortgagees. Once a mortgagee always a mortgagee. Admittedly there is a charge on the property created in the award. Therefore, till the debt is discharged the property remains to be subject to the charge and the mortgagee is entitled to retain possession. The contention that the appellants are owners is not tenable and rightly was rejected by the Civil Court."

(2) ***State of Madhya Pradesh v. Sardarmal***, wherein it is held at para 9 as follows:

> *"9. There is no substance in the contention that the lower appellate Court erroneously invoked the doctrine of adverse inference. In the circumstances indicated above, there was no way out but to apply the doctrine and draw an adverse inference for non-production of a document."*

(3) ***Addagada Raghavamma and another v. Addagada Chenchamma and another***, wherein it is held at para 20 as follows:

> *"20. Now coming to the documentary evidence, as we have already indicated, all the relevant documents admitted to have been in existence have not been placed before the Court and an adverse inference has, therefore, to be drawn against the appellant……"*

(4) ***Sri Vekateswara Oil Company, Tirupathi v. Guduru Jalaja Reddy and others***, wherein it is held that

> *"If a party in possession of best evidence which throws light on the issue in controversy withholds it, the Court ought to draw an adverse inference against him notwithstanding the fact that onus of proof does not lie on him or because he was not called upon to produce it, by relying on the abstract doctrine of onus of proof. In view of the above position of law, adverse inference ought to be drawn against defendants 1 to 3 for their withholding the best evidence available with them."*

(5) ***Hazari Choubey and others v. State of Bihar,*** wherein it is held as follows:

> *"Non-examination of investigating officer is not necessarily fatal to the prosecution. However, a Court has to see whether the evidence of the investigating officer is essential for the case of the prosecution to succeed or not. In a case, where the defence can legitimately complain of denial of opportunity by non-examination of investigating officer, the situation may provide to the defence the benefit of doubt as to the veracity of the prosecution case and conviction under Section 395 of Penal Code would not be sustainable."*

(6) ***Dusasan Bhoi v. State of Orissa***, wherein it is held as follows:

> *"Non-examination of the Investigating Officer in a criminal trial cannot be lightly overlooked. It is he who visits the place of occurrence, examines witnesses and reduces their statements into writing, conducts inquest, makes seizures and takes other steps to connect the accused with the crime, apprehends the accused and places him on trial. On being examined as a witness, the defence tries to bring out contradictions while cross-examining him and attempts to find out lacunal in the investigation."*

and (7) ***Rajawa Kebat v. State of Bihar***, wherein it is held as follows:

> *"Non-examination of the Investigating Officer is a serious lacunae. We do not find any adequate explanation for non-production of this witness in court. Even the case diary has not been proved on the record and in the circumstance it has been rightly urged that serious prejudice has been caused to the appellant."*

The learned counsel also argued that prosecution miserably failed to prove the ingredients of Section 420 I.P.C, therefore, the revision petitioner is entitled for benefit of doubt and prayed the Court to set aside the judgment of the appellate Court.

10. On the other hand, the learned Public Prosecutor appearing for the State of Telangana argued that as per the evidence of PWs.1 to 5, the prosecution able to prove that the revision petitioner/A.1 availed the loan from the City bank amounting to Rs.3,76,000/- under the refinance category and submitted the relevant papers but showing that he is the owner of Maruthi Esteem Car bearing No.AP.5E.567 and drawn the entire amount from his account from Indus Ind Bank Ltd., the prosecution able to prove the ingredients of Section 420 I.P.C against the revision petitioner/A.1 and non-examination of the Investigating Officer is not fatal because PWs.1 to 5 clearly stated the entire transaction done by A.1 along with other accused; that it is also revealed that revision petitioner/A.1 does not have any car and the car number mentioned belongs to some other person as per the evidence of PW.5, therefore the trial Court as well as the appellate Court gave a concurrent finding that accused committed the offence punishable under Section 420 I.P.C and that finding needs no interference.

11. Now, the point for determination is --

> Whether the revision petitioner herein is entitled to set aside the concurrent finding given by both the Courts below for the offence punishable under Section 420 I.P.C, as prayed for or not?

12. **P O I N T**: A perusal of the evidence of PW.1 shows that he is working as Regional Manager, City Bank, in the year 1994 and the said Bank is an international Bank dealing in advancing loans and other banking activities. According to him, there are two categories of advancing loan in relation to automobiles and one is new car finance and other is refinancing category. PW.1 deposed that in Hyderabad, they operate through direct Selling Agents i.e., M/s.Amlok Singh Company, Rudin Credit Services, Mahalakshmi Automobiles etc., and those Selling Agents go out for prospective customers for loans and customers submit necessary documents like Xerox copies of R.C book, Insurance papers, Income Tax documents etc.,; that thereafter, the file will be forwarded to the Chartered Accountant and the Chartered Accountant checks the credentials of the prospective customers and after checking, he forwards the same to Chennai to their Regional Office and after processing the file, the Chennai Office advances the loan. PW.1 stated that PW.3 is the Chartered Accountant, who processed the application of A.1 and after availing the loan, A.1 paid only one instalment and thereafter committed default and subsequent verification of the documents revealed that they are forged and fabricated documents.

13. PW.2 is working as Vice President, Corporate Officer of Indus Ind Bank, Bombay. Earlier, he worked as Assistant Vice President, Operations, Indus Ind Bank Limited, Secunderabad Branch from 1995 to 2000. According to him on 14.10.1996, A.1 approached their Bank for opening of Savings Account and submitted an application and deposited Rs.1,00,000/- and one B.V.Ramana, who was the account holder in the Bank introduced A.1. After one month, a cheque for Rs.3,76,000/- was deposited into the account of A.1 on 23.11.1996 and thereafter A.1 withdrawn the said amount through different cheques by cash and through clearance and stated that he can identify A.1, who opened the account in their Bank.

14. A perusal of the evidence of PW.2 clearly confirmed the transaction covered under Exs.P4 to P9. According to him, his subordinates had opened the savings account and also attended the cheques, through which A.1 drawn

the amount by way of cash and through clearance. PW.3 is the Chartered Accountant of City Bank, who processed the loan application of A.1 to the Regional Office. PW.4 is the panch witness, in whose presence the police seized the fake rubber stamps and other material objects under the cover of panchanama.

15. The evidence of PW.5 is important because he is working in Regional Transport Authority, Rajahmundry. As per his evidence the Central Crime Station Police visited him and enquired about the ownership of the vehicles including the vehicle i.e., Maruthi Esteem Car bearing No.AP.5E.567. PW.5 stated that as per the record available in their office, the said vehicle stands in the name of one Ramesh Chandra, S/o T.L.B.Narayana. Therefore, the particulars given by A.1 regarding the vehicle bearing No.AP.5E.567 does not belong to A.1 and by forging the documents, A.1 induced the Bank to sanction a loan of Rs.3,76,000/- by producing the false documents.

16. The main contention of the learned counsel for revision petitioner/A.1 is that the prosecution has not examined the Investigating Officer and therefore it is fatal to the case of prosecution. In the present case, except PW.4 other witnesses were official witnesses i.e., Bank officials and official from Regional Transport Authority, Rajahmundry and their evidence clearly established the fraud played by A.1 and how he cheated the Bank while obtaining the loan amount form his Savings Bank Account. It is no doubt, PW.1 came into picture in this case after loans were advanced to A.1 and A.1 paid initial instalment and thereafter, committed default in payments. As per the evidence of PW.1, after withdrawing the loan amount through self cheques and cheques through clearance, A.1 committed default in paying instalments. He paid only one instalment to the Bank towards the loan. PW.1 do not know personally who has submitted the documents as per the sanction of loan to the agents or franchise in Hyderabad. Admittedly, there are no contradictions marked in the evidence of PWs.1 to 5. So, the evidence of Investigating Officer is not essential and non-examination of the Investigating Officer is not fatal to the case of prosecution. As such, the principles laid down in ***Hazari Choubey's case, Dusasan Bhoi's case*** and ***Rajawa Kebat's case*** (fifth, sixth and seventh cited supra) relied upon by the learned counsel for revision petitioner/A.1 are not relevant to the present facts of the case.

17. The other contention of the learned counsel for revision petitioner/A.1 is that the agents played fraud, but not A.1. There may be the role of agents in transacting the loan transaction with the Bank, but the fact remains that A.1 has opened the account in the Indus Ind Bank, Secunderabad Branch and submitted the necessary application there and his name was introduced by one B.V.Ramana. After one month of the opening of the account, Rs.3,76,000/- was deposited in the account of A.1 and thereafter, A.1 withdrawn the said amount. It is not explained by A.1 how the said amount was received by him in his account. Further, as per the evidence of PW.5, A.1 does not have the car i.e., Maruthi Esteem Car bearing No.AP.5E.567 and he is not the owner of the said property. He forged and fabricated the documents and submitted the loan application to the Bank and obtained the loan amount. PW.5 clearly stated that the car belongs to one Ramana Chandra as per the official records maintained in their Office. The documentary evidence produced by the prosecution clinchingly established the case of prosecution for the offence charged against A.1 and both the Courts below after considering the evidence of prosecution gave a concurrent finding that the prosecution able to prove the guilt of the accused for the offence punishable under Section 420 I.P.C and convicted the revision petitioner/A.1 for the said charge. The learned counsel for the revision petitioner/A.1 has relied upon ***Patel naranbhai Marghabhai's case, Sardarmal's case, Addagada Raghavamma's case*** and ***Sri Venkateswara Oil Company's case*** (first, second, third and fourth cited supra) to disprove the case against the revision petitioner/A.1. But, the facts mentioned in those cases are not relevant to the facts of the present case as they are civil in nature. Therefore, in view of the evidence on record, I am of the view that the concurrent finding given by both the Courts below needs no interference and the revision is liable to be dismissed.

18. Accordingly, the Criminal Revision Case is dismissed confirming the judgment dated 01.04.2008, passed by the I Additional Metropolitan Sessions Judge, Hyderabad, in Criminal Appeal No.129 of 2005.

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

ANIS, J

Date: 20.04.2015

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