HON'BLE SMT. JUSTICE ANIS

CRIMINAL REVISION CASE No. 314 OF 2007

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 petitioners/A.1 to A.3 challenging the judgment dated 27.02.2007, passed by the learned V Additional Sessions Judge, Warangal, in Criminal Appeal No.69 of 2006, whereunder and whereby the conviction and sentence passed against the revision petitioners for the offence punishable under Section 420 of the Indian Penal Code, 1860 (for short 'IPC'), vide judgment dated 29.06.2006 in C.C.No.197 of 2003 by the Special Judicial Magistrate of I Class for PCR Cases, Warangal, were confirmed.

2. The revision petitioners herein are A.1 to A.3 and the respondent herein is the complainant in C.C.No.197 of 2003 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 case of the prosecution in brief is that PWs 1 to 18 are the residents of Ghanpur (W), A.1 is the resident of Veldi of Raghunadhpally Mandal, A.2 to A.4 are the residents of Ghanpur (W) and one Namidala Sampath Kumar (absconding) is the resident of Thorrur village. In the year 1995, A.1 to A.4 and Sampath Kumar started a scheme in the name of Gold India Savings and Investments Limited at Station Ghanpur with a malafide intention and they themselves named A.1 as Branch Manager, A.5 as Divisional Manager and A.2 to A.4 as the agents. All the accused made vide propaganda of the said scheme and made attractive advertisements and got joined

PWs 1 to 18 and others. The terms of the said scheme are that every subscriber should deposit Rs.5/- or 10/- per day for a period of ten years and after lapse of ten years, the accused would refund the total amount with interest @ 11% per annum and also they should provide loan facility after completion of one year and on the said secured loan, the interest @ 18% per annum will be charged. Thus, the accused made the witnesses believing that their amounts will not be gone anywhere and they are responsible for any lapses and deposed confidence in the mind of the witnesses, due to which all the witnesses joined in the scheme and deposited amounts. The accused also issued passbooks in favour of PWs 1 to 18. A.2 used to collect amounts daily from the witnesses and issued receipts to them and handed over the amounts to A.1, A.3 and A.4. The collected amount was deposited in the joint account of A.1 and Sampath Kumar in Kakatiya Grameena Bank and Bank of Baroda at Ghanpur (W) under S.B. Account Nos.1912 and 3704 respectively. The accused collected amounts upto May, 1997, closed the business without making refund of amounts to the witnesses and absconded after withdrawing the amounts from the bank. When the witnesses asked the amount from A.2 to A.4, they promised that they will responsible for the refund of the amount to the witnesses, but so far did not pay amount to them. Thus, all the accused with a malafide intention collected amount from PWs 1 to 18 and used the said amount for their personal use and cheated them. As such, the witnesses have filed a private complaint before IV Additional Judicial Magistrate of I Class, Warangal, which was referred to police under Section 156(3) Cr.P.C. Thereafter, PW22 registered a case in Crime No.71 of 2000 under Section 420 IPC and recorded the statements of PWs 1 to 20. On 31.08.2000, PW23 apprehended A.2 to A.4 at the house of A.2 and interrogated them. On interrogation, A.2 to A.4 voluntarily confessed to have committed the offence along with A.1 and Sampath Kumar. Basing on the said confession, PW23 affected the arrest of A.2 to A.4

and produced them before the Court for judicial remand. On 26.09.2000, A.1 was apprehended at his house and on interrogation, he voluntarily confessed to have committed the offence along with A.2 to A4 and Sampath Kumar, as such PW23 arrested A.1 and produced him before the Court for judicial remand. The police failed to apprehend the said Sampath Kumar and filed the Charge sheet against A.1 to A.4.

4. The learned IV Additional Judicial First Class Magistrate, Warangal, took cognizance of the case and framed charge against the accused for the offence punishable under Section 420 IPC. At the stage of trial, the case was transferred to Special Judicial Magistrate of I Class for PCR Cases, Warangal as per the orders of the Sessions Judge, Warangal and the case was renumbered. During trail, to prove the case of prosecution, PWs.1 to 23 were examined and Exs.P.1 to P.24 were got marked.

5. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C putting all incriminating material available against them. Accused denied the material evidence and reported no oral evidence on their behalf, but got marked Exs.D.1 to A.4.

6. After perusal of the oral and documentary evidence and after hearing the arguments, the trial Court come to a conclusion that the prosecution proved the ingredients attracting the provisions of Section 420 IPC and convicted A.1 to A.3 (case against A.4 was abated as died) for the offence punishable under Section 420 IPC and sentenced them to undergo simple imprisonment for a period of six months and to pay fine of Rs.500/- each.

7. Aggrieved by the conviction and sentence passed by the trial Court, A.1 to A.3 preferred Criminal Appeal No.69 of 2006 before the V Additional Sessions Judge, Warangal, where the appellate Court

after hearing the arguments and considering the evidence on record, dismissed the appeal by confirming the conviction and sentence passed by the trial Court.

8. Being aggrieved by the judgment of the appellate Court passed in Criminal Appeal No.69 of 2006, the revision petitioners preferred the present revision case.

9. The learned counsel for the revision petitioners argued that the petitioners are the employees working under Sampath Kumar who along with others have started business and they are only responsible for the management and running of the firm, hence the conviction and sentence against the petitioners are liable to be set aside. It is further argued that the petitioners themselves gave a representation under Ex.D.4 to the Superintendent of Police to show their willingness for investigation of the case. It is further argued that all the witnesses stated in their evidence that they paid amounts only for some period and they have not completed the entire period and further there should a promise which is lacking in this case. It is further argued that the ingredient of dishonest intention is not found in this case, and Section
420 IPC is an individual act and Section 34 IPC is not included in the charge. It is also argued that Rs.1,16,518/- was only collected and it is not a huge amount where the accused cheated PWs 1 to 18. It is also argued that both the Courts committed an error to come to a conclusion that the withdrawal of the amounts from the bank by the petitioners shows their dishonest intention to cheat the public and it is a wrong approach without any basis. It is further argued that one Sampath Kumar is an employer, who is absconding and they are working under him as employees and as per his instructions only, the amounts were drawn. It is further argued that it is not the case of prosecution that the petitioners have misappropriated the amounts

collected from PWs 1 to 18 and there is no charge under Section 406 or

409 IPC and the prosecution failed to establish that the petitioners have made a false representation and with dishonest intention concealed the facts, thereby convicting the petitioners is erroneous and liable to be set aside.

The learned counsel also relied on a case-law reported in *The State of Kerala Vs. Pareed Pillai and another*[1], wherein the Hon'ble Supreme Court held at Para 16 as follows:

> "It is not sufficient to fasten a criminal liability on them. To hold a person guilty of the offence of cheating."

The learned counsel also relied on *S.N.Palanitkar and others Vs. State of Bihar and another*[2], wherein the Hon'ble Supreme Court held at Para 21 as follows:

> "It is clear from the allegations made in the complaint and the sworn statements that the appellant No. 1 company entered into an agreement with the respondent No. 2 on certain terms and conditions. It is alleged that the appellant No. 7 went to Patna and contracted respondent No. 2 and induced him to enter into an agreement assuring him of huge profit. At the time of arriving at such an agreement, none of the other appellants either met the respondent No. 2 or induced him to enter into any agreement with a view to cheat him. The agreement was further renewed for a period of one year. It is not the case that there was no supply of goods at all as it has come on record that there was supply of 400 ton of fertilizer, may be it was far less than the required quantity. The allegations made against the appellants other than the appellant No. 7 are very vague and bald. From the material that was placed before the Magistrate, even prima facie, it cannot be said that there was conspiracy or connivance between the other appellants and the appellant No. 7. If the appellants have committed breach of agreement, it is open to respondent No. 2 to seek redressal in a competent court or forum to recover damages, if permissible in law in case he had sustained any loss. In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say

> <u>that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating</u>."

The learned counsel finally prayed the Court to allow the revision case by setting aside the impugned judgment of the appellate Court.

10. On the other hand, the learned Public Prosecutor argued that that the evidence of PWs 1 to 18 is cogent and coherent; that A.1 is the Manager and A.2 and A.3 are the agents who collected money and all the accused made a false propaganda about the scheme and made attractive advertisements and on believing the said advertisements, PWs 1 to 18 joined in the scheme and paid Rs.5/- or 10/- per day from their earnings though they are poor persons; that in the year 1997, the accused closed the business and withdrawn the entire amount which was deposited by PWs 1 to 18 and others; that the accused have collected the amounts from the innocent people and thereafter the accused connived with each other and withdrawn the entire amount from the banks, thus the petitioners are responsible for committing the offence punishable under Section 420 IPC; that both the Courts below, after considering the evidence on record, rightly passed the judgments and convicted the petitioners and the said findings of the appellate Court and trial Court need no interference and finally prayed the Court to dismiss the revision case.

11. Now, the point for determination is --

> Whether the revision petitioners/A.1 to A.3 are entitled to set aside the concurrent judgments passed by the trial Court and the appellate Court for the offence punishable under Section 420 IPC??

12. **<u>P O I N T</u>**:

A perusal of the evidence of PWs 1 to 18 shows that in the year 1995 they joined as subscribers in the scheme of Gold India Savings and Investments Limited and paid a sum of Rs.5/- or 10/- per day on the inducement made by the petitioners by giving wide propaganda. Thereafter, PWs 1 to 18 and others contributed the amount. In the year 1997, all of a sudden the petitioners/accused stopped the scheme and failed to return the amount on one pretext or other and cheated the prosecution witnesses. It is also proved from the evidence of prosecution witnesses that the petitioners deposited the amount in Kakatiya Grameena Bank as well as Bank of Baroda. The prosecution filed the documents about the amounts deposited by the subscribers including PWs 1 to 18 under Exs.P.1 to P.24. The prosecution also produced the attested true copies of the statement of the bank accounts.

13. Admittedly, the petitioners are not disputing the existence of Gold India Savings and Investments Limited and participation of PWs 1 to 18 in the said scheme. The petitioners are also not disputing the collection of amount from PWs 1 to 18 and other subscribers and depositing of the amount into bank account and thereafter their withdrawal of the amounts. When the victims and PWs 1 to 18 demanded for return of the amounts, the petitioners and Sampath Kumar did not pay the amount but thrown the blame on each other.

14. By producing the evidence of PWs 1 to 24, the prosecution discharged its burden that the petitioners had dishonest and fraudulent intention and thereby deceived

PWs 1 to 18. The prosecution also produced Ex.P.20 to show the opening of bank account by A.1 and Sampath Kumar in Kakatiya Grameena Bank. The prosecution also filed the documents i.e. bunch of credit vouchers and cheques which clearly show that the petitioners/accused themselves have utilized all the amounts that were collected from the witnesses. A perusal of the cheques discloses that A.1 and the said Sampath Kumar issued cheques in favour of A.2 to A.4 who withdrawn the said amounts. Further, the trial Court in its judgment clearly mentioned in the tabular form showing the cheques issued to A.1 to A.4 and Sampath Kumar.

15. The contention of the petitioners is that they do not have any dishonest intention to cheat the public i.e. PWs 1 to 18 and others and they are only the employees of Gold India Savings and Investments Limited at Station Ghanpur. In this regard, it is clear from the evidence that the cheques were issued in favour of the petitioners and withdrawals were made by each of the petitioners showing the fact that that they shared the amount fraudulently and all of them had knowledge of their fraudulent intention by making representations to the public in attracting them to join in the scheme. Thus, the petitioners have committed the offence punishable under Section 420 IPC and both the Courts below rightly held that the petitioners are guilty of the offence with which they charged.

16. Further, the case-laws cited by the learned counsel for the revision petitioners are not applicable to the facts of the present case. The learned counsel for the revision petitioners contended that A.1 is bedridden with paralysis and a lenient view may be taken. There is no record placed before this Court to show that A.1 was bedridden suffering with paralysis. Therefore, no lenient view can be taken as the offence committed by the petitioners is grievous in nature.

17. Accordingly, the Criminal Revision Case is dismissed, confirming the judgment dated 27.02.2007, passed in Criminal Appeal No.69 of 2006 on the file of the V Additional Sessions Judge, Warangal.

18. Miscellaneous petitions pending, if any, in this Criminal

Revision Case shall stand closed.

ANIS, J

Date: 13.02.2015
Anr

[1] AIR 1973 S.C. 326

[2] AIR 2001 S.C. 2960