HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL APPEAL No. 1929 OF 2004

JUDGMENT:

The State preferred this appeal challenging the calendar and judgment, dated 04.01.1999 passed by V Metropolitan Magistrate, Vijayawada in C.C.No.152 of 1995 finding both the respondents-A1 and A2 not guilty for the offences punishable under Sections 420 and 120-B I.P.C. and acquitted them.

The Deputy Superintendent of Police, CBI, Visakhapatnam filed a charge sheet against the respondents alleging that the respondents are brothers and that one V.V.K.Ranadheer, who worked as an Officer in Andhra Bank main branch during 1980-82 and died on 13.12.1992, used to discharge the duties entrusted to him in the Bank and he was placed as in-charge of clearing department to release the credit vouchers pertaining to the cheques presented for clearance only after realisation of the amount at the respective drawee banks to the concerned department in the Bank and he has to safeguard the interest of the Bank, being an employee of the financial institution as per the norms laid down by the department.

Respondent No.1-A1 opened savings bank account bearing No.1866 with Union Bank of India and another savings bank account bearing No.198 with South India Bank. Respondent No.2-A2 also opened savings bank account bearing

No.11058 with Union Bank of India. During 1980-82, the respondents had criminally conspired with Ranadheer, in order to cheat the bank and in pursuance of their conspiracy, respondent No.2 opened savings bank account bearing No.12871 on 01.02.1980 in Andhra Bank main branch, Vijayawada, where Ranadheer was working and also obtained cheque book containing leaves from 955261 to 955280 with dishonest and fraudulent intention of utilising those cheques for drawing amount either from savings account No.12871 or from savings accounts of Union Bank of India and South India Bank through clearing process, which was looked after by Ranadheer, though there was no sufficient fund to the credit of their accounts to honour the cheques presented for clearance.

In pursuance of the said conspiracy, respondent No.2 had presented the cheques in the Bank, either drawn by himself or drawn by others, payable in his favour. Further, respondent No.1 also had presented the cheques of local banks drawn in favour of respondent No.2; respondent No.2 with dishonest and fraudulent intention had withdrawn the amount utilising the cheque book leaves issued to him, knowing well that the cheques would be returned unpaid for want of sufficient funds. But, with the conspiracy of respondent No.1 and Ranadheer, the respondents had withdrawn an amount to a tune of Rs.43,000/- from Andhra Bank main branch. Thus, with the connivance of Ranadheer, respondent Nos.1 and 2 have committed the offences punishable under Sections 420 and 120-B I.P.C. and thereby, they are liable for punishment for the said offences.

The case was taken on file against the respondents for the offences punishable under Sections 420 and 120-B I.P.C. On securing the presence of the respondents, complied Section 207 Cr.P.C., charges were framed against them for the above stated offences and read over and explained to them in Telugu. They pleaded not guilty and claimed to be tried.

During trial, on behalf of the prosecution, P.Ws.1 to 21 were examined and Exs.P.1 to P.138 were marked. After closure of the prosecution evidence, the respondents were examined under Section 313 Cr.P.C. explaining the incriminating material that appeared in the testimony of the prosecution witnesses. They denied the same and reported no defence. Upon hearing argument of Special Public Prosecutor for the State i.e. CBI and the defence counsel, the trial Court found both the respondents not guilty and acquitted them for the offences punishable under Sections 420 and 120-B I.P.C. holding that the evidence of PWs.1 to 4 and 6 does not disclose the presentation of the cheques by either of the accused at any time and thereby, the prosecution failed to prove the offences allegedly committed by the respondents and acquitted them for those two charges.

The State is aggrieved by the acquittal of the accused and after seeking leave of the Court under Section 378(4) Cr.P.C., it preferred the present criminal appeal, challenging the acquittal of the accused, finding them not guilty for the offences punishable under Sections 420 and 120-B I.P.C. on various grounds.

The main grounds raised before this Court are that the Court below did not appreciate the evidence in right perspective and the material produced before the Court, Exs.P.39, P.35, P.36, P.40, P.53, P.38, P.37 and P.34, corresponding deposits in sundry debts marked as Exs.P.62, P.66, P.69, P.61, P.60 and P.30 and bounced cheques marked as Exs.P.51, P.47, P.48, P.52, P.56, P.50, P.49, P.81, P.87 and P.75, would clinchingly establish the offences committed by the respondents and the said facts are supported by the oral evidence of P.Ws.1 to 4, but the trial Court did not appreciate the contentions in proper perspective and committed grave error in finding the respondents not guilty for the above offences. It is contended that the trial Court failed to weigh the evidence of P.Ws.1 to 6 with golden scales and observed that the evidence of P.Ws.1 to 4 and 6 did not throw any light with respect to any fraudulent or dishonest intention on the part of the respondents and late Ranadheer. The conclusions arrived at by the trial Court are erroneous and if the surrounding circumstances and subsequent conduct of the accused were taken into consideration, that would clinchingly establish the guilt of the respondents. Thus, the trial Court committed serious error in acquitting the respondents for the said two offences and the prosecution requested this Court to set aside the finding of their not guilty for the above offences and convict them in accordance with law, by finding them guilty for both the offences.

During hearing, learned Public Prosecutor for the appellant contended that the documentary evidence produced before the trial Court coupled with the oral evidence of P.Ws.1 to 4 and 6 is suffice to hold the respondents guilty for the serious offences punishable under Sections 420 and 120-B I.P.C. and drawn the attention of this Court to the cheques and clearing slips etc., and requested this Court to reappraise the evidence and record conviction of the respondents for both the offences by setting aside the calendar and judgment, acquitting the respondents.

Per contra, learned counsel for the respondents supported the calendar and judgment and acquittal recorded thereunder by the trial Court. He mainly contended that the offence allegedly took place about 12 years prior to filing of the charge sheet and the investigating agency took 12 years time to file charge sheet against the respondents. Apart from that, the evidence of P.Ws.1 to 4 and 6, who are main witnesses, does not disclose actual commission of offences by the respondents. The important witnesses, G.V.Narasimha Rao and K.V.Seshagiri Rao, were not examined by the Investigating Agency to establish the guilt of the respondents for the said offences. Non-examination of the important witnesses stated above is fatal to the case of the prosecution and thereby, acquittal recorded by the trial Court cannot be faulted and requested this Court to dismiss the appeal confirming the acquittal recorded by the trial Court under the impugned calendar and judgment.

In view of the rival contentions and perusing the material available on record, the point that arises for consideration is:

> ***"whether the respondents and Ranadheer formed into an unlawful assembly to commit the offences punishable under Sections 420 and 120-B I.P.C.; if so, whether the respondents are liable for punishment for the said offences; if so, whether the calendar and judgment of the trial Court is liable to be set aside?"***

POINT:

The facts narrated in above paragraphs show that the respondents allegedly opened accounts in various banks referred to supra and presented cheques without sufficient balance to the credit of their accounts, but with the aid of Ranadheer those cheques were encashed and amount was deposited to the sundry debtors account by Ranadheer, thereby, caused loss to a tune of Rs.43,000/- to Andhra Bank where Ranadheer was the Officer and In-charge of clearing department.

Before adverting to the evidence on record, it is appropriate to decide the scope of appellate jurisdiction of this Court, under Section 378(4) Cr.P.C. The High Court while exercising jurisdiction under Section 378(4) Cr.P.C. is under obligation to reappraise the entire evidence on record though it is against acquittal or conviction. Therefore, it is obligatory on the part of the High Court to reappraise the entire evidence to come to an independent conclusion notwithstanding the finding recorded by the trial Court. In an appeal against acquittal, it would be justified for the High Court to re-appreciate the evidence in order to determine whether the charge was brought home to the accused. Where, no two views are reasonably possible in the matter and view taken by the trial Court was perverse and unsustainable, the High Court would be well within its limits of power and would not transgress self imposed limitations of its powers in interfering with an order of acquittal. The High Court has full power to review at large the evidence, based on which the order of acquittal was passed, and to reach the conclusion that upon the evidence, the order of acquittal should be reversed. No limitation should be placed upon the power unless it is expressly stated in the Code, but in exercising the power conferred by the Code and before reaching its conclusion upon the fact, the High Court should give proper weight and consideration to such matters as the view of the trial Judge as to the credibility of the witnesses; the presumption of innocence in favour of the accused, presumption certainly not weakened by the fact that he has been acquitted at his trial; the right of the accused to the benefit of any real and reasonable doubt; the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge, who had the advantage of seeing the witness; the High Court should also take into account the reasons given by the Court below in support of its order of acquittal and must express its reasons in the judgment which lead it to hold that the acquittal is not justified; further if two conclusions can be based upon the evidence on record, the High Court should not disturb the finding of acquittal recorded by the trial Court. It would follow as a corollary from that, that if the view taken by the trial Court in acquitting the accused is not unreasonable, the occasion for the reversal of that view would not arise as held by the Apex Court in **State v. Ranjitsinh Jivanji**[1], **Surat Singh v. State of Punjab**[2] and **Ajit Singh Thakur Singh v. State of Gujarat**[3].

From the law declared by the Apex Court while deciding an appeal against acquittal, the Court must keep in view the guidelines laid down by the Apex Court and merely because different view is also possible, it does not justify interference with the judgment of acquittal. Unless the conclusions reached by the trial Court are palpably wrong or based on erroneous view of law or its decision is likely to result in grave injustice, the High Court should be reluctant to interfere with such conclusions. The High Court on an appeal against an order of acquittal can review the entire evidence and come to its own conclusions. There must be substantial and compelling reasons for the High Court to interfere with the judgment of acquittal. Otherwise, this Court while exercising power under Section 378(4) Cr.P.C. shall not interfere as a matter of routine, without reappraisal of evidence and record a specific finding that the findings recorded by the Court below both on fact and law are erroneous. Therefore, the duty is cast

---

[1] (1984) 1 Criminal Law Cases 306
[2] (1976) SCC 311
[3] 1981 SC 733

upon the appellate Court to reappraise the entire material and come to an independent conclusion uninfluenced by the findings recorded by the Court below while exercising powers under Section 378(4) Cr.P.C.

Keeping in mind the law declared by the Apex Court, I would like to reappraise the entire evidence available on record. Before adverting to the evidence on record, it is necessary to advert to the ingredients of the offences allegedly committed by the respondents. The first charge framed against the respondents is for the offence punishable under Section 120-B I.P.C. Section 120-A I.P.C. defines 'criminal conspiracy'. When two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated as criminal conspiracy. To constitute an offence punishable under Section 120-A I.P.C., the prosecution has to establish the following essential ingredient of offence:

> "Essential ingredient of criminal conspiracy is an agreement to commit an offence.
>
> The offence of conspiracy to commit a crime is different from the crime that is the object of conspiracy because the conspiracy precedes the commission of crime and is complete before the crime is attempted or completed. Equally the crime attempted or committed does not require the element of conspiracy as if its ingredients."

Therefore, to constitute an offence of criminal conspiracy, there must be an agreement between the parties to do an illegal act or to do a legal act by illegal means.

Similarly, to constitute an offence punishable under Section 420 I.P.C., the prosecution has to establish the ingredients of cheating. The word 'cheating' is defined under Section 415 I.P.C. It is thus:

> "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'."

To constitute an offence of cheating, the following are the ingredients to be established by the prosecution by adducing cogent and satisfactory evidence.

i. There should be fraudulent or dishonest inducement of a person by deceiving him;

ii. (a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or

(b) The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

iii. In cases covered by (ii) (b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

Therefore, cheating can be committed in either of the two ways described in Section 415 I.P.C. Deceiving a person is common in both the ways of cheating. A person deceived may be fraudulently or dishonestly induced to deliver any property to any person. The person deceived may also be intentionally induced to do or omit to do anything which he would not have done it and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

Therefore, to convict any person for the offence punishable under Section 420 I.P.C., it is the primary duty of the prosecution to establish the above ingredients.

Keeping in mind the ingredients to constitute the offences punishable under Sections 420 and 120-B I.P.C., this Court is required to re-appreciate entire evidence afresh to come to an independent conclusion, uninfluenced by the fact-findings recorded by the Court below.

The prime witnesses examined by the prosecution to establish the guilt of the respondents are P.Ws.1 to 4 and 6. P.W.1 is one Challapalli Sai Pushpakara Rao. The said Pushpakara Rao worked in Andhra Bank main branch in 1982. Along with him, Ranadheer worked as Grade-III Officer at Vijayawada. On 10.02.1988, their Sub-Manager, Sri G.V.Narasimha Rao, directed him to take jottings. Jotting means to check and see if the ledgers are coinciding with the entries in the general ledger. During the said jottings, he found some differences in clearing heads of sundry debtors banker's payment receipt books. The differences were shown in Ex.P1 i.e.

sundry debtors jotting book. The entries on Exs.P2 and P3 are the pages 13 and 14 of Ex.P1 and the difference is of Rs.75,000/- in total (Rs.73,500/-+1500/-). After examining the general ledger, he informed the Sub-Manager about the difference. Curiously, in his cross-examination, he admitted that he worked in the main branch from 1982 to 1989 and the finding of variation between the sundry debtors account and general ledger to a tune of Rs.73,500/- on 10.08.1982, but he had no personal knowledge as to who made such entries and committed such illegality in the branch concerned. He also testifies that if there is no sufficient balance to the credit of the drawee's bank, the cheque will be returned and the same will be intimated to the drawee of the cheque. If the cheque was dishonoured, the bank will not allow any person to avail the said facility of purchase of cheques. The entire evidence of P.W.1 is silent as to who his responsible for the variation between the entries in general ledger and sundry debtors account. Therefore, the evidence of P.W.1, though he is a credible witness, does not throw light on the complicity of the respondents. At best, his evidence is useful to establish the variation between the entries in general ledger and sundry debtors account to a tune of Rs.73,500/- or 75,000/-. On the basis of evidence of P.W.1, the respondents cannot be saddled with any criminal liability.

The other witness examined by the prosecution is P.W.2, who stated that he was working as an Officer in Andhra Bank in December 1990 and during 1978 or 1980, he was working as

Departmental Officer in savings bank department along with Ranadheer, an Officer allegedly conspired with the respondents. As per the testimony of P.W.2, whenever any audit voucher or cheques are received, they used to verify and enter in the accounts concerned. When withdrawal memos or cheques are returned, the same will be verified and the said particulars will be entered in the ledgers. On verification, he found that a cheque bearing No.955262 was presented in the bank for Rs.2,500/- to be debited from the account of respondent No.2-A2, which is marked as Ex.P.7, the amount covered by Ex.P7 was withdrawn and entered in the ledger pertaining to respondent No.2 which is marked as Ex.P8. Similarly, he spoke about the credit voucher issued for Rs.1,500/- in favour of respondent No.2's account marked as Ex.P9, which was entered in the ledger account of respondent No.2. Similarly, Ex.P10 is the relevant entry in Ex.P4 and on the same day, a cheque bearing No.955265 was presented by respondent No.2 for withdrawal of Rs.1,500/-, the cheque was passed and the amount covered by it was paid *vide* Ex.P11. The amount was entered in Ex.P4. Ex.P12 is the relevant entry. Similarly, he spoke about various transactions from 1980 onwards and with reference to the entries in the ledgers concerned maintained by the bank. P.W.2 is a person having sufficient experience in the bank procedure and he admitted about the knowledge in the procedures in the bank transactions which were covered by the local clearance procedure. As per the local procedure for clearance, the first system is to pay the amount on presentation of the cheque by debiting to the credit of the cheque drawer before issuing cheque for clearance. The other system is to send the cheque to the bank concerned for clearance and amount will be paid after getting it cleared by the drawer bank. The transactions under both the procedures are valid. But, for effecting payment under local clearance procedure, without sending for clearance, the sanction of the Branch Manager is necessary. As such, the Clearance Officer and Branch Manager are responsible Officers in effecting payment under local clearance without sending the cheque for clearance. Therefore, the evidence of P.W.2, at best, established that the Branch Manager of the Bank and the Clearance Officer were responsible for such clearance of cheques without crediting any amount to the account of the respondents. The evidence of P.W.2 does not disclose direct involvement of the respondents in commission of such offences so also about the agreement between the parties to do an illegal act or to do a legal act by illegal means at best Ranadheer, Clearing Officer, is responsible for the fraud if any. Therefore, the evidence of P.W.2 is insignificant to establish the complicity of the respondents for the offences punishable under Sections 420 and 120-B I.P.C. except to the extent of establishing the entries made in various accounts maintained by the bank and the prevailing procedure for clearance of cheques, more particularly for clearance without sending cheques to drawer bank, the Manager has to accord permission.

Coming to the evidence of P.W.3, in his examination-in-chief, he stated that he worked as an Officer, Junior Management Category-I in Andhra Bank main branch at Vijayawada, also worked as Saving Bank Department Officer along with Ranadheer, who is no more. He also spoke about the procedure for clearance of cheques etc. As Departmental Officer in clearing, he has to send all the cheques of different banks to the banks concerned for clearing. After getting the clearance, he has to enter the information in the respective accounts. Exs.P.24 to P.29 are the cheques that were presented by him after the amount due, credited to the accounts concerned. Exs.P.24 to P.29 were accepted by credit voucher slip by Ranadheer. Exs.P.30 to P35 are the vouchers corresponding to Exs.P.24 to P.29. Curiously, in the first sentence of his cross-examination, he admitted that he had no knowledge as to who presented Exs.P.24 to P.29. This is suffice to conclude that the prosecution failed to establish that Exs.P.24 to P.29 were presented by the respondents. Yet, P.W.3 admitted that the Officer has to make necessary entry about the receipt of cheque in the ledger and put his initial on the cheque executed. But, P.W.3 does not know as to who is the overall responsible officer. Therefore, the testimony of P.W.3 is not sufficient to establish the complicity of the respondents for both the offences, since, it is silent as to who presented Exs.P.24 to P.29 and the entries made in the relevant accounts maintained by the bank.

Similarly, P.W.4, K.Rama Krishna, testified that during the year 1981-82, he worked as Junior Assistant in Andhra Bank main branch, Vijayawada and they used to maintain a roster of duties for staff. On 01.09.1980, he worked as Cashier and paid cash through the cheque Ex.P.15 to the payee, but he is not in a position to identify the writing on Ex.P.15. In the cross-examination, he made categorical admission that he has no personal knowledge about the payees to whom he was paying cash in cash counter. Even the evidence of P.W.4 is of no avail to the prosecution to substantiate its case.

The prosecution also examined the Manager of the South India Bank as P.W.5 and practicing Advocate, by name Sri N.Harinath, as P.W.7 besides examining P.W.6 - K.Rajendra, Sub-Manager, Andhra Bank, Rudravaram Branch, Karimnagar District, to establish the guilt of the respondents. At best, the evidence of P.W.5, J.Immanuel, would go to establish that the respondents opened savings bank accounts in the branch *vide* RB account No.139 and S.B.79 respectively. Cheque bearing No.55977 issued by respondent No.1 in favour of Ranadheer for Rs.2,500/- was dishonoured for want of sufficient funds and returned to Andhra Bank on 13.05.1980. Similarly, the cheque bearing No.55977, which was returned, entered in cheque returned ledger and Ex.P.36 is the entry. When cheques were returned, the payment if any made to drawer or holder of cheque, the concerned official of the bank is alone responsible. In the absence of proof of agreement, which is prime requirement to constitute offence punishable under Section 120-B I.P.C., between the respondents and Ranadheer to do an illegal act i.e., payment of amount without clearing, at least by circumstantial evidence, the finding recorded by trial Court cannot be interfered. The bank will collect the service charges of Rs.3/- for sending the cheque for clearance etc. At best, his evidence is helpful to the prosecution to prove that no amount was lying to the credit of the accounts of the respondents to pay the amount covered by cheque of Rs.2,500/- issued in favour of Ranadheer, drawee of the cheque as defined under Section 7 of the Negotiable Instruments Act, 1881 (for short 'the Act'). The South India Bank did not clear the cheque and returned unpaid, but necessary entries were made in the accounts maintained by the main branch of Andhra Bank, Vijayawada.

The respondents have no access to the bank registers maintained in its regular course of business. Therefore, the question of making entries by the respondents in the ledgers maintained by the bank would not arise and at best, the Officer in whose favour the cheques were issued i.e. drawee of the cheque-Ranadheer, who died before the institution of the proceedings, might have made such entries and withdrawn the amount. When cheques issued by the respondents were dishonoured on account of insufficient funds, the same shall be returned along with cheque return memo and thereafter the drawee may invoke the jurisdiction of criminal Court under Section 138 of the Act. But the drawee, the Clearing Officer of the

Andhra Bank, instead of resorting to the procedure under Section 138 of the Act, made such entries and took the amount from the Bank. Similarly, the Branch Manager in Andhra Bank, K.Rajendra, during that period was examined as P.W.6. He also testified in the same lines about the procedures and dishonour of the cheques etc.

The entire evidence produced before the Court below, at best, established that the respondents opened accounts in two banks, namely South India Bank and Andhra Bank, and issued cheques in favour of Ranadheer and others without sufficient amount to the credit of their accounts. But, none of the witnesses did speak anything that those cheques were signed and presented by the respondents-drawees or any person on their behalf. There is no satisfactory evidence on record to establish that the respondents issued cheques conspiring with Ranadheer, Clearing Officer. There must be some evidence on record to establish the conspiracy between Ranadheer and the respondents. Curiously, none of the witnesses P.Ws.1 to 4 and 6 did speak anything about the criminal conspiracy i.e. an agreement between the parties to do an illegal act by two or more persons or to do an illegal act with dishonest intention. In the absence of any such evidence, the findings recorded by the trial Court cannot be faulted. However, it is difficult to prove criminal conspiracy by direct evidence, but the Court can infer such agreement is to commit an offence. Though there is no difference between the mode of proof of any other offence and the offence of conspiracy, it can be established by direct or circumstantial evidence. To prove the criminal conspiracy, it is necessary that *prima facie* case of conspiracy has to be established for application of Section 10 of the Evidence Act. The second part of Section 10 of the Evidence Act permits the use of the evidence which otherwise could not be used against the accused person. It is well-settled that act or action of one accused could not be used as evidence against other. But, an exception has been carved out in Section 10 of the Evidence Act in the case of conspiracy. The second part operates only when first part of the Section is clearly established i.e., there must be a reasonable ground to believe that two or more persons conspired together in the light of language under Section 120-A I.P.C. Then only, the evidence of action or statement made by one of the accused could be used as evidence against the other. When the prosecution intends to establish the offence of criminal conspiracy with the aid of circumstantial evidence, it has to establish every link in the chain of circumstances, and if it failed to prove any one of the links in the chain of circumstances, the case of prosecution would fail.

Coming to the present case on hand, the prosecution made a vain or futile attempt to establish the guilt of the respondents for the offences punishable under Sections 420 and 120-B I.P.C., with the aid of circumstantial evidence, but it failed to establish the links connected to one another to complete the chain of circumstances by cogent and satisfactory evidence for the reason that none of the witnesses did state anything as to who signed on the cheques and who presented and collected the amount covered by those cheques from the cash counter. Therefore, the prosecution miserably failed to establish either by direct or by indirect evidence, the commission of offences punishable under Sections 420 and 120-B I.P.C.

As stated above, the prosecution has to establish the ingredients to constitute an offence punishable under Section 420 IPC. Here, the act or omission on the part of respondents is that they issued cheques conspiring with Ranadheer, Clearing Officer, and the amount was drawn from the bank either by Ranadheer or by the respondents. To constitute an offence punishable under Section 420 I.P.C., there must be a representation with dishonest intention at the inception and made the persons so deceived to part with any property, valuable security, etc. The entire charge sheet and evidence collected by the Investigating Agency did not disclose that the respondents had any dishonest intention at the inception of issuing cheques to deceive the bank to part with the amount i.e., the amount covered by the cheques. With regard to the proof of dishonest intention at the inception, the Apex Court in **State of Kerala v. A.Pareed Pillai**[4] held that to hold a person guilty for the offence of cheating, it has to be shown that his intention was dishonest at the time of making promise. Such dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfil the promise.

---

[4] AIR 1973 SC 326

As discussed above, the prosecution failed to prove that there was fraudulent or dishonest intention at the time when a promise was made since fraudulent intention is absolutely essential to warrant a conviction for an offence punishable under Section 420 I.P.C. The essential ingredients to constitute an offence are that at the time of accused making out the representation, the same was false to his knowledge and he made that with the intention to deceive. This intention has to be gathered from the facts on record. The drawer has no intention to deceive at the time when he parted with the cheques, but the cheques were dishonoured on the date of presentation into the Bank due to some causes. Then, it cannot be said that the drawer has committed an offence of cheating as held in re **T.S.Ramakrishnan**[5].

In the present facts of the case, there are no reasons to infer that the respondents had any such dishonest intention at the time of issuing cheques, for the simple reason that the cheques they issued earlier were not returned unpaid after its dishonour along with return memo. It is not their case that they are aware about the balance to the credit of their accounts maintained with various banks. In the absence of return of cheque unpaid, on its presentation for collection, it is the common knowledge of anyone that the drawer may not know the exact balance lying to the credit of his account. When the cheques were issued continuously and when they were cleared or returned uncleared but not returned to

---

[5] 1978 Madras Law Weekly (Criminal) 111

the drawer i.e., the respondents, no inference can be drawn from the circumstance of the case that they had any dishonest intention at the time, the cheques were issued or drawn the amount from the clearance department i.e., cash counter. In those circumstances, it is difficult to hold that the findings recorded by the Court below are perverse or based on any legal reasoning to convert the acquittal into conviction.

Though the offence was complained 12 years prior to the filing of the charge sheet, the CBI which is claiming to be an independent Investigating Agency, took five years time to record evidence of few witnesses and collect evidence, which is readily available with the Bank. That apart, it failed to examine the important Bank Officers, Sri G.V.Narasimha Rao and K.V.Seshagiri Rao, who are concerned with the day-to-day transactions in the Bank, obviously for different reasons.

Assuming for a moment that the cheques were dishonoured, but entries were made in the account and the amount was drawn either by the respondents or by Ranadheer, who was working in the Bank and who paid the amount without clearing of the cheques and made entries in the register maintained in the Bank in its regular course of business, are liable for necessary departmental action/criminal action. But, the third parties, the account holders, who presented the cheques, alone cannot be made liable for punishment since the Officers of the Bank were exonerated from their criminal liability for one reason or the other, may be on account of death etc. At the worst, the

Officer alone is liable for commissions or omissions in payment of amount to the respondents since it is the duty of the Bank to verify the amount lying to the credit of the account either with clearing bank or with the bank with which they maintained accounts etc., before payment of the amount and therefore, the prosecution failed to establish the main ingredient to constitute an offence i.e. making representation with a dishonest intention at the inception of issuing cheques or presentation of cheques. Consequently, the prosecution utterly failed to establish the guilt of both the respondents for the offence punishable under Section 420 IPC.

In view of foregoing discussion, I find no illegality in the calendar and judgment finding the respondents not guilty for the offences punishable under Sections 420 and 120-B I.P.C. acquitting them, which warrants no interference by this Court exercising powers under Section 378 (4) Cr.P.C. Consequently, the appeal deserves to be dismissed as it lacks merit.

In the result, the appeal is dismissed confirming the acquittal recorded by the trial Court under calendar and judgment, dated 04.01.1999, passed by V Metropolitan Magistrate, Vijayawada in C.C.No.152 of 1995.

M.SATYANARAYANA MURTHY, J

Dt:21.11.2017

kdl