

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.407 OF 2005

ORDER:

This criminal revision is filed questioning the propriety and legality of the order dated 06.03.2005 in CrI.A.No.192 of 2004 passed by the Principal District and Sessions Judge, West Godavari at Eluru confirming the conviction and sentence and reducing the sentence, imposed by the Additional Judicial Magistrate of First Class, Tadepalligudem, for the offence punishable under Section 420 IPC, from three years to one year.

The petitioner is accused No.1 in C.C.No.55 of 2002. Learned Magistrate found the accused guilty and convicted him for the offence punishable under Section 420 IPC in C.C.No.55 of 2002 and the same was confirmed and reduced the substantive sentence from three years to one year by the learned Principal Sessions Judge, West Godavari, Eluru in CrI.A.P.No.192 of 2004 and the said judgment is now under challenge before this Court.

It is the case of the prosecution that A1 and A2 joined hands with a bogus company in the name and style of Mahila Abhivrudhi Sankshema Sangam with false registration No.76 of 1996 by running office at Salipet, Tadepalligudem and used to collect amount from innocent women promising to provide loans for purchasing cattle as per rules and regulations of the society. A1 joined in the said company in the month of December, 1999 with A2 and opened office at Salipet and also opened a training tailoring shop at Pullaigudem Village and started collections

from innocent villagers making them to believe that they can purchase the cattle by availing loan if they deposit Rs.500/- for granting loan since 03.12.1999. After completion of two months time, P.W.1 along with members in the scheme demanded the accused for arrangement of loan but A1 did not respond and absconded from the village by locking the office at Salipeta. Thereupon, a report was lodged with the police and the same was registered as a case in Crime No.110 of 2001 for the offence punishable under Section 420 IPC.

During investigation, police examined the witnesses and recorded their statements and observed the scene of offence, seized material objects in the office and filed the charge-sheet.

On securing the presence of accused, after compliance of Section 207 Cr.P.C., framed a charge under Section 420 of IPC, read over and explained to them in Telugu but they pleaded not guilty and claimed to be tried.

During trial, the prosecution examined P.Ws.1 to 10 and marked Exs.P1 to P16 and M.Os.1 to 8. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. and reported no defence evidence.

Upon hearing argument of both the counsel, the trial Court recorded a specific finding that A1 along with A2 made the innocent women to part with huge amount during those days on the pretext of providing loan for purchase of cattle and thus, the petitioner cheated the innocent women P.Ws.1 to 6

and committed an offence punishable under Section 420 of I.P.C., convicted and sentenced as stated above.

Aggrieved by the conviction and sentence, the petitioner herein preferred an appeal referred supra. *Vide* judgment dated 09.03.2005, the conviction was confirmed by reducing the sentence from three years to one year for the offence punishable under Section 420 IPC and confirmed the fine imposed by the learned Magistrate.

The present revision is filed questioning the propriety and legality of the judgment on the sole ground that Exs.P3 to P6 and P12 to P16 does not contain the signatures of petitioner/A1 and P.Ws.1 to 6 have stated that they have paid amount to A2, who is S.Chandra Rao and the trial Court did not consider the original profession of the petitioner as taxi driver and committed an error in finding him guilty for the offence punishable under Section 420 IPC and the appellate Court committed similar error in confirming the conviction and reducing the substantive sentence from three years to one year and prayed to set aside the same.

When the matter is reached for hearing, the counsel for petitioner did not appear to advance argument, but this Court cannot dismiss the revision for default. However, this Court is entitled to verify the material on record and dispose of the case

without waiting for the counsel as held by the Delhi High Court in ***Nisha Sharma and others v. Vinod Kumar Sharma***¹.

Persuaded by the law declared by the Delhi High Court, I would like to verify and pass appropriate orders even without waiting for the counsel for the petitioner, who appears to have avoided advancing argument initially for one reason or the other.

A1 and A2 allegedly opened an office at Salipet, Tadepalligudem and collected Rs.500/- from innocent women with a promise to provide loans for purchase of cattle. P.Ws.1 to 6 are the persons, who allegedly deposited Rs.500/-. P.W.1 deposited Rs.500/- and A2 passed Ex.P1 receipt duly signed by him and P.W.1 also signed on Ex.P1. Similarly, P.W.2 wife of P.W.1 also corroborated the evidence of P.W.1. On perusal of Ex.P1 receipt, it can be seen that it is a receipt with heading of Mahila Abhivrudhi Sankshema Sangham, Tadepalligudem and the name of P.W.2 was mentioned and the payment of Rs.500/- was made by P.W.1 to the said society. The signature of P.W.1 is found as spoken to and at the column provided for the signature for the President there was an initial of A2. In 239 Cr.P.C. and in 313 Cr.P.C. examinations, A2 signatures were found with full name as S.Chandrarao for the reasons best known to him and on Ex.P1 it is only an initial. But payment of Rs.500/- to A2 by P.Ws.1 and 2 is consistent. At the same time, P.W.3 stated that she paid Rs.500/- to A2 and in turn he passed a receipt for sanction of loan for purchase of she-

¹ 1990 Cr.L.J.NOC 57 (Delhi)

buffaloes and made her to believe the words of A2. P.W.2 also testified about the passing of Ex.P3 receipt and on perusal of Ex.P3, it can be seen that it is also a receipt with heading Mahila Abhivrudhi Sankshema Sangham, which contains the signatures of P.W.3 and A2. Similarly, P.Ws.4 and 5 paid Rs.500/- each to A1 and A2 and obtained Exs.P4 and P5 receipts. Those two receipts were issued in the name of Mahila Abhivrudhi Sankshema Sangham, Tadepalligudem acknowledging Rs.500/- each from P.Ws.4 and 5 and were signed by both the accused. Similarly, P.W.6 paid Rs.500/- to A1 and A2 and obtained Ex.P6 receipt.

The main witness is P.W.8, who is the owner let out the office to A1 and A2. He deposed that A1 is the resident of same village, who introduced A2 to P.W.8 and they opened office in the name of Mahila Abhivrudhi Sankshema Sangham and promised to provide loan on payment of Rs.500/- by each women. Accordingly, they collected Rs.500/- from each of the witnesses P.Ws.1 to 6 and passed Exs.P1 to P6 receipts. But after two months when they demanded for providing loans, they closed the office at Salipet, Tadepalligudem and absconded. In the presence of P.W.7-Village Administrative Officer, police observed the scene of offence and seized M.Os.1 to 8 under the cover of panchanama.

A reading of entire material on record would go to establish that the petitioner and A2 started the office in the name of Mahila Abhivrudhi Sankshema Sangham and promised

to arrange a loan for purchase of cattle to women. Accordingly, they collected Rs.500/- from P.Ws.1 to 6 and passed Exs.P1 to P6 receipts but failed to arrange loans as promised. Therefore, such act would fall within the definition of Section 415 IPC.

“415. Cheating.—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”.”

Section 420 I.P.C. is the penal provision. The ingredients constitute an offence punishable under Section 420 I.P.C. dishonest intention from the very beginning, which is essential to hold the accused guilty for the commission of such offence as held by the Apex Court in **Joseph Salvaraj Vs. State of Gujrat**². Therefore, the main ingredient to constitute an offence is that they must have a dishonest intention at the first instance. In the present case on hand, the petitioner/A1, who is the taxi driver initially, opened an office in the name of Mahila Abhivrudhi Sankshema Sangham and promised to provide loans to innocent women to purchase cattle but fixed two months from the date of payment for arranging loan. If really, they had no such dishonest intention, the petitioner ought not to have fixed two months grace period for arranging loan. This itself, would indicate that the petitioner with a dishonest intention along with A2 made the innocent women P.Ws.1 to 6 to part with Rs.500/- each and promised to arrange loan for

²AIR 2011 SC 2258

purchase of she-buffaloes. Such act would certainly attract an offence punishable under Section 420 of IPC.

The jurisdiction of this Court under Sections 397 and 401 Cr.P.C. is limited and this Court normally accept the concurrent fact findings recorded by both the Courts below unless those findings are manifestly perverse or apparently erroneous or without any evidence. Therefore, in the present case on hand, both the trial Court and the Appellate Court based on the testimony of P.Ws.1 to 6 and P.Ws.7 and 8 who are mediator and house owner recorded fact finding that the petitioner along with A2 induced PWs.1 to 6 to part with Rs.500/- each fixing grace period of two months for arranging loan from the date of deposit of payment and issued Exs.P1 to P6 receipts, but failed to fulfill his promise and such an act would certainly attract an offence punishable under Section 420 of IPC. Thereby such fact finding recorded by the Court cannot be interfered since these findings are supported by both oral and documentary evidence. Therefore, I find no illegality or irregularity warranting interference by this Court while exercising power under Sections 397 and 401 of Cr.P.C. and the revision is devoid of any merit and deserves to be dismissed.

In the result, the Criminal Revision Case is dismissed.

Consequently, miscellaneous petitions pending if any, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:07.09.2017

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