THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.231 of 2005

ORDER:

The appellant in Criminal Appeal No.156 of 2002 on the file of IX Additional District and Sessions Judge (FTC), Krishna at Machilipatnam, who is the accused in C.C.No.192 of 2001 on the file of II Additional Judicial I Class Magistrate, Machilipatnam, preferred this criminal revision under Section 397 read with Section 401 Cr.P.C. questioning the propriety, legality and correctness of the judgment dated 19.02.2004 rendered by the appellate Court in Criminal Appeal No.156 of 2002 confirming the conviction and sentence under calendar and judgment dated 21.08.2002 passed by the trial Court in C.C.No.192 of 2001 whereby the revision petitioner herein (for short "the accused") was convicted under Section 248(2) of Cr.P.C for the offence punishable under Section 418 I.P.C. and was sentenced to pay a fine of Rs.5,000/-, out of which the 2nd respondent herein (for short "the complainant") was entitled for an amount of Rs.4,000/- and, in default of payment of fine, to undergo simple imprisonment for six months.

The complainant by name Suddabatula Venkata Lakshmi Narasimha Rao filed a complaint against the accused by name Koppineedu Babu Raja Prakash @ Babu Rao for the offence punishable under Section 418 I.P.C. alleging that the accused is a resident of Garisepudi and Segment Member of 49th Water Users Association, Lakshmipuram in Kruthivennu Mandal. The complainant is a registered contractor in the Irrigation Department and worked as a Contractor for the improvement of Garisepudi Minor Drain etc, on the instructions of President and accused. The President is an Advocate practising at Bantumilli and the accused is looking after the works as a Member of the Water Users Association. He used to sign both in English and Telugu. On 21.09.1999, during morning hours, the complainant, accompanied by his clerk (L.W.2-P.Subrahmanyam), went to the house of the President at Bantumilli, on the instructions given by the accused two days earlier that a cheque will be issued to him as part-payment for the work done by him. At that time, the accused and the President were present at the house of the President. On seeing the complainant and his clerk, the accused and the President stated that the cheque will be given to him now and, saying so, the President mentioned an amount of Rs.48,000/- on the cheque and gave it to the accused to fill up the name of the drawee etc. The President asked the complainant to go to the Court and find out whether the District Munsif has attended the Court or not, since the Court is situated near to the President's house. In the meantime, the accused asked the clerk of the complainant about the full name of the complainant to fill the column in the cheque and accordingly L.W.2, the clerk of the complainant, informed the complainant's name as S.V.L.Narasimha Rao and it was written on the cheque by the accused. By the time the complainant returned to the house of the President, the preparation of cheque was completed and the accused signed on the cheque. The accused informed the complainant that both the accused and the President should sign on the cheque as per the rules, for encashment. The complainant was also informed by his clerk that he furnished the name of the complainant which was written on the cheque.

The complainant received the cheque and came back to Machilipatnam and presented for collection on 01.11.1999 with the Indian Bank at Machilipatnam and the Bank returned the cheque unpaid vide memo dated 15.11.1999. Later the complainant issued a registered notice to the President of the Water Users Association and thereafter filed a complaint which was registered as C.C.No.13 of 2000 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 on the file of the same Court.

During the course of evidence, the Bank Manager of Kanaka Durga Grameena Bank was examined and it came to light that the accused gave instructions to the said Bank to stop payment of the cheque amount on

20.09.1999 through a memo and hence the cheque of the complainant was returned unpaid based on the said memo issued by the accused. Thus the accused cheated the complainant, who therefore filed a private complaint before the Magistrate.

The Magistrate took the complaint on file for the offence punishable under Section 418 I.P.C. Upon securing the presence of the accused, the Magistrate, after following the procedure under Section 207 Cr.P.C, examined him under Section 251 Cr.P.C. The accused denied the accusation made against him based on the evidence of P.Ws.1 and 2 and expressed his intention to cross-examine. Therefore, a charge for the offence punishable under Section 418 I.P.C has been framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

During trial, on behalf of the complainant, P.Ws.1 to 3 were examined and Exs.P.1 to P.11 were marked. After closure of the complainant's evidence, the accused was examined under Section 313 Cr.P.C. He denied the incriminating evidence on the complainant's side and reported no defence.

Upon hearing the arguments of both counsel for the parties, the Magistrate found the accused guilty for the offence punishable under Section 418 I.P.C and convicted and sentenced him as stated supra.

Aggrieved by the conviction and sentence passed by the trial Court, the accused preferred an appeal in Criminal Appeal No.156 of 2002 before the District & Sessions Judge, who in turn dismissed the same confirming the conviction and sentence passed by the Magistrate for the offence punishable under Section 418 I.P.C. Hence, the accused filed the present revision raising several contentions.

The first and foremost contention raised in the grounds of appeal is that the allegations in the complaint would not constitute an offence punishable under Section 418 I.P.C. Therefore, both the trial Court and the appellate Court, without looking into the relationship between the parties, the allegations made against the accused and without recording any findings whether those allegations would constitute an offence punishable under Section 418 I.P.C, found the accused guilty for the offence punishable under Section 418 I.P.C. and convicted and sentenced him as stated supra.

During the hearing Sri Y.V.Ravi Prasad, learned counsel for the revision petitioner-accused, contended that to constitute an offence under Section 418 I.P.C, the prosecution has to prove that there is a relationship between the parties and the accused is under the obligation to protect the interest of the complainant and in the absence of such finding, conviction of the accused for the offence punishable under Section 418 I.P.C. is illegal.

Section 418 I.P.C. deals with punishment for cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect. To attract the offence punishable under Section 418 I.P.C, there must be cheating with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect. Therefore, the accused must be, either by law or by legal contract, under obligation to protect the interest of the complainant. In the absence of duty on the part of the accused, either by law or by legal contract, to protect the interest of the complainant, the accused is not liable to be convicted for the offence under Section 418 I.P.C.

In the present case, the complainant was a contractor who used to attend to the works relating to Garisepudi Minor Drain and the cheque was issued only to pay the amount for the work done by him but it was dishonoured on account of the memo issued by the accused to stop payment, to the bank. The President is a person who is having control over all the Water Users Associations and the accused is only a Member of a Water Users Association, who issued cheque and on its presentation payment was stopped on account of the instructions given by him.

To convict the accused for the offence under Section 418 I.P.C, there must be cheating and there must be a legal or contractual obligation on his part to protect the interest of the complainant. The word “cheating” is defined under Section 415 I.P.C. According to it, 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”. In the present case, the accused, allegedly issued a cheque marked as Ex.P.6 which was dishonoured and returned vide memo marked as Ex.P.3. Ex.P.5 is the letter addressed by the accused to Kanaka Durga Graameena Bank to stop payment. Therefore, the fact proved by the complainant is that the accused issued a cheque for Rs.48,000/- and addressed a letter to the Kanaka Durga Graameena Bank to stop payment of the amount covered by the cheque. Whether such act constitutes offence punishable under Section 418 I.P.C is a question to be decided by the Court.

Here, the complainant attended the works relating to Garisepudi Minor Drain and as part payment, the accused issued the cheque marked as Ex.P.6 which was returned on its presentation for collection vide Ex.P.3 along with the cheque return memo. By such act of addressing letter to stop payment, the accused did not cheat the complainant to part with any valuable security or property and there is no legal or contractual obligation on the accused to protect the interest of the complainant. In the absence of proof of legal or contractual obligation to protect the interest of the complainant and his making a representation to the complainant in a deceitful manner to part with any valuable security or property, the ingredients of Section 418 I.P.C do not get attracted. It is not even the case of the complainant that the accused had any intention to deceive him at the time of commencement of contract for attending to the works relating to Garisepudi Minor Drain. A mere representation, which is not claimed or alleged to have been made dishonestly or fraudulently, would not attract the charge of "cheating" only because the complainant parts with money on the basis thereof.

The main ingredients to constitute the offence "cheating" are (i) there should be a fraudulent or dishonest inducement of a person; (ii) the person so deceived (a) should be to deliver any property to any person or to consent that any person shall retain the property; or (b) should be intentionally induced to do or omit to do anything which he would not if he were not so deceived, and (iii) in case covered by 2(b) the act or omission should be one which causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

As held by the Apex Court in ***S.W.Palanitkar and others vs. State of Bihar***[1] a person who allegedly cheated the complainant must have a dishonest intention at the initial stage and by his representation he must induce the complainant to part with property or money, which causes harm to the person induced in body, mind, reputation or property.

Turning to the facts of the present case, the accused issued a cheque towards payment of amount for the repair works of Garisepudi Minor Drain and it is the consideration payable for the work done by the complainant, but later he issued a letter to the Kanaka Durga Grameena Bank to stop payment and whether, on account of such stoppage of payment, had the complainant sustained any harm to his body, mind, reputation or property and whether the accused is legally or contractually bound to protect the interest of the complainant is to be looked into. The evidence on record does not disclose about the

[1] 2002 SCC(Cri) 129

obligation of accused either by law or by contract to protect the interest of the complainant. Apart from that, there is nothing on record to establish that complainant was subjected to damage or harm in body, mind, reputation or property.

The contention of complainant was that on account of the stoppage of payment of the cheque, by addressing a letter under Ex.P.5, he sustained huge loss i.e loss of property. It is no doubt true that on account of such instructions to the banker, the cheque amount was not paid, but there is absolutely no evidence to establish that accused had any intention initially to cheat complainant.

On a consideration of the entire material on record, it is evident that complainant miserably failed to establish the obligation of accused either legally or by contract to protect the interest of the complainant and also the dishonest intention on the part of accused at the time of commencement of contract for repairs of Garisepudi Minor Drain or at the time of issuance of cheque. Therefore, the concurrent fact findings recorded by the trial Court and the appellate Court are not supported by any legal evidence more particularly with regard to existence of dishonest intention at the time of commencement of the contractual relationship between the accused and the complainant.

While, undoubtedly, the powers of this Court under Sections 397 and 401 of Cr.P.C are limited and normally this Court will accept the concurrent fact findings recorded by both the courts below in exercise of power of revision under Sections 397 and 401 of Cr.P.C, this Court can interfere with such concurrent fact findings, when they were recorded without any evidence or they are manifestly perverse or apparently erroneous.

As discussed in the earlier paragraphs, in the present facts, the Magistrate totally ignored the non-existence of dishonest intention at the time of commencement of contractual relationship between accused and complainant, which is the main requirement to constitute an offence punishable under Section 418 of I.P.C. In such case, this Court can interfere with the concurrent fact findings recorded by the both the courts below and set aside the same, if such findings are not based on any evidence satisfying the legal requirement to constitute an offence punishable under Section 418 of I.P.C.

In view of my foregoing discussion, I find that the trial Court failed to record a finding about the existence of dishonest or fraudulent intention at the time of commencement of the contract between the Water Users Association and the complainant or at the time of issuing the cheque to part with any money or a valuable security or property by the complainant or about the harm or damage caused to the complainant either to person, body or property, so also obligation either by law or contract to protect the interest of complainant by the petitioner. In the absence of any such findings, this Court is bound to exercise its power under Section 397 and 401 of I.P.C. and to set aside such concurrent fact findings.

Hence, I find that the concurrent fact findings recorded by the Courts below are perverse and not based on any evidence to constitute an offence punishable under Section 418 I.P.C. and that both the Courts below committed a grave error in convicting the accused for the said offence. Therefore, the conviction and sentence imposed by the trial Court in C.C.No.192 of 2001 dated 21.08.2002 on finding the accused guilty for the offence punishable under Section 418 I.P.C and confirmed by the appellate Court in Criminal Appeal No.156 of 2002 dated 19.02.2004 is illegal and is, accordingly, set aside thereby acquitting accused-revision petitioner herein for the offence punishable under Section 418 I.P.C.

In the result, the Criminal Revision Case is allowed setting aside the conviction and sentence imposed by Judicial I Class Magistrate finding the accused/petitioner guilty for the offence under Section 418 of I.P.C and confirmed by District and Sessions Court in Crl.A.No.156 of

2002 while finding the petitioner/accused not guilty for the offence punishable under Section 418 of I.P.C. Miscellaneous Petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 22.09.2017
JSU

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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