THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.201 OF 2012

ORDER:

This criminal revision case is filed under Sections 397 & 401 Cr.P.C challenging the judgment in Cr.A.No.121 of 2011 dated 23.06.2011 passed by the IV Additional Metropolitan Sessions Judge at Hyderabad, acquitting the respondents 2 & 3/Accused 1 & 2 for the offences punishable under Sections 418 & 420 I.P.C

The case of the prosecution in nut shell is that A-1 is Managing Director of M/s Helios Insurance Services Private Limited, while A-2 who is the wife of A-1 is its Director of M/s Helios Insurance Services Private Limited. M/s Helios Insurance Services Private Limited is a licensed insurance brokerage firm having been issued with license by Insurance Regulatory and Development Authority (I.R.D.A). The complainant/P.W.1 has knowledge and experience in insurance business field. A-1 and A-2 had contacted P.W.1 and offered to pay 50% of the commission earned for the insurance business generated by her. A-1 and A-2 with dishonest intention represented that as per I.R.D.A rules, the complainant cannot be appointed as individual consultant on high percentage and issued letter of appointment dated 01.10.2003 in the name of M/s Helios Insurance Services Private Limited and by believing the words of A-1 and A-2, the complainant/P.W.1 accepted the same. With her reputation and contacts in the insurance field, the complainant secured good insurance business for A-1 and A-2 from various reputed companies. Further, the complainant arranged group mediclaim policy for the employees of various companies Rs.61,20,000/-, out of which A-1 and A-2 received Rs.8,16,368/- towards commission. The complainant is entitled to receive 50% of the said amount, as per the letter of appointment issued by A-2. Though, A-1 & A-2 promised to pay Rs.3,94,187/- to the complainant, later they refused to pay the same and threatened the complainant with dire consequences. Therefore, the complainant filed a complaint against the accused for the offences punishable under Sections 418, 420, 120-B, 506, 499 r/w 34 I.P.C.

The Trial Court took the case on file and upon securing the presence of the accused A-1 & A-2 by issuing summons after compliance of necessary formalities, the accused was examined, framed charge for the offence above stated read over and explained to them, but they pleaded not guilty and claimed to be tried.

During trial, P.Ws.1 to 5 were examined on behalf of the complainant and marked Exs.P-1 to P-38. and Exs.D-1 to D-3 were marked.

After closure of the complainant's evidence, the accused A-1 and A-2 were examined under Section 313 of Cr.P.C. explaining incriminating material that appeared against them; they denied the same and reported no defence.

Upon hearing argument of both the counsel, the Trial Court convicted A-1 & A-2 sentenced to undergo rigorous imprisonment for a period of one year and to pay compensation of Rs.2,00,000/- to the complainant with default sentence. Aggrieved by the order of the Trial Court, the Accused A-1 & A-2 preferred Crl.A.No.121 of

2011 before the IV Additional Metropolitan Sessions Judge at Hyderabad, wherein, the Appellate Court vide its order dated 23.06.2011 allowed the appeal, setting aside the conviction and sentence passed by the Trial Court and acquitted A-1 and A-2 for the offences allegedly committed by them. In the present facts of the case, the Trial Court found the accused guilty, but, on re-appreciation of the facts, the Appellate Court found both the accused not guilty and set-aside the conviction and sentence passed against respondents 2 & 3 herein. The Appellate Court on appreciation of entire evidence concluded that prosecution miserably failed to establish the alleged offences punishable under Sections 418 & 420 Cr.P.C. Challenging the order of the Appellate Court, the complainant filed the present criminal revision case.

During hearing, learned counsel for the petitioner/ complainant Sri K.V. Bhanu Prasad had neither appeared nor got the matter represented by any counsel and advance arguments, but this Court cannot dismiss the revision for default, however this Court can decide the revision on merits in view of the law declared in **Nisha Sharma and others v. Vinod Kumar Sharma**[1] wherein it is made clear that the revision cannot be dismissed for default and even the petitioner or his advocate did not appear before the Court, the Court shall examine the record and decide the revision on merits.

Persuaded by the law declared by the Delhi High Court, I would like to decide this revision, perusing the record.

[1] 1990 Cri.L.J. NOC 57 (Delhi)

Though the learned Public Prosecutor for the State of Telangana represented for the State, he did not advance any argument, since the dispute is between the complainant and the respondents 2 & 3/accused A-1 & A-2 before the Trial Court.

The powers of the High Court are limited, this Court cannot interfere with the concurrent fact findings recorded by the courts below. But, under Section 401(3) Cr.P.C there is a clear interdict to exercise power to convert acquittal into conviction, but this Court can order re-trial in only exceptional circumstances. It is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have though fit to appeal; but this jurisdiction should be exercised by the High Court only in exceptional cases, when thee is some defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Ordinarily, High Court does not interfere against an order of acquittal passed Lower Court.

In **K. Chinnaswamy Reddy vs. State of Andhra**[2], the Supreme Court held as follows:

> 7. It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have though fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of s. 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in

[2] 1962 AIR 1788

> exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be : where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished of produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of s. 439(4). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles."

In view of the law declared by the Apex Court, this Court can interfere with the acquittal only in extraordinary circumstances where the findings are not based on any evidence. At the same time, Section 401(3) Cr.P.C made it clear that in revision, the High Court cannot convert a finding of acquittal into one of conviction ordering re-trial. When there is no finding of acquittal for the offence, the power of revisional court to convert an acquittal into conviction under Section 401(3) Cr.P.C does not operate.

In the present facts of the case, the Trial Court found the accused guilty, but on re-appreciation of the facts, the Appellate Court found the accused not guilty and set-aside the conviction and sentence passed by the Trial Court against the respondents 2 & 3/A-1 & A-2. The Appellate Court on appreciation of entire evidence, concluded that prosecution miserably failed to establish the alleged offences punishable under Sections 418 & 420 Cr.P.C.

Section 418 I.P. deals with cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect and whoever cheats 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 legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

The offence is non-cognizable and here, it is a case where I.R.D.A Rules does not permit the payment of 50% of the commission received by the accused 1 & 2. But, still they executed a contract. Therefore, such contract is not a legal contract and contrary to the guidelines of I.R.D.A. In such case, the respondents 2 & 3 are either by law or by legal contract are bound by the contract and thereby, question of cheating does not arise as defined under Section 418 I.P.C. Here, the petitioner was only an insurance professional engaged by respondents 2 & 3 and by utilizing her reputation, respondents 2 & 3 could collect huge business.

Section 420 deals with cheating and dishonestly inducing delivery of property and according to it, whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

In the present case, the services of the petitioner are engaged by the respondents 2 & 3 which is only a service contract at best. There was no legal contract or the respondents 2 & 3 were not legally bound to protect, thereby, the question of commission of offence punishable under Section 418 I.P.C is unfounded.

The other offence allegedly committed by the respondents 2 & 3 is punishable under Section 420 I.P.C. To convict the accused for the offence punishable under Section 420 I.P.C, the prosecution has to prove that the respondents 2 & 3 had dishonest intention from the very beginning. In **Joseph Salvaraj A. vs. State of Gujarat and Ors.**[3], the Supreme Court held that, Section 420 of the IPC deals with cheating and dishonestly inducing delivery of property. Cheating has been defined under Section 415 of the IPC to constitute an offence. Under the aforesaid section, it is inbuilt that there has to be a dishonest intention from the very beginning, which is sine qua non to hold the accused guilty for commission of the said offence. If, the above principle is applied to the present facts of the case, the evidence of the petitioner is totally silent regarding existence of dishonest intention at the time of entering into contract. On the other hand, the respondents 2 & 3 issued a letter agreeing to pay consideration agreed for securing insurance business from various companies in instalments. If, really, the respondents 2 & 3 had any intention of cheating at the time of alleged inducement of the petitioner to enter into agreement, they

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[3] AIR 2011 SC 2258

ought not have issued such letter. In fact, the respondents 2 & 3 induced the petitioner to part with any property or any valuable security to constitute an offence with dishonest intention, except utilizing the services of the petitioner to secure insurance business. Therefore, such act would not fall within the definition of 'cheating' under Section 415 I.P.C and not liable for punishment under Section 420 I.P.C. Therefore, the Appellate Court rightly acquitted the accused for the offences punishable under Sections 418 & 420 I.P.C and this Court need not re-appraise entire evidence again while exercising jurisdiction under Sections 397 & 401 Cr.P.C, in view of the clear interdict to exercise power to convert acquittal into conviction under Section 401(3) Cr.P.C. Therefore, I find no merit in this criminal revision case and the same deserves to be dismissed, as it is merit-less.

In the result, the criminal revision case is dismissed.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:30.08.2017

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