THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE NO.143 of 2007

ORDER:

This Criminal Revision Case by the petitioner-A.1 under Sections 397 and 401 Cr.P.C. is directed against the judgment dated 12.01.2007 in Criminal Appeal No.82 of 2003 on the file of the Principal Sessions Judge, Kadapa.

2. Heard the learned counsel for the petitioner-A.1, the learned Assistant Public Prosecutor appearing for respondent-State and perused the record.

3. Case of the prosecution, in brief, is as follows:

A.1 is the Managing Director of M/s. Nice India Investments and Savings Limited, Hyderabad. P.Ws. 1 to 9, 11, 12 and others are small traders and wage earners. A.1 and other four accused, joined together with an intention to induce public to join a scheme floated by them and induced the public to believe that if they join as members of the scheme, they would get huge monetary benefits. A.1 opened a concern under the name and style 'Nice India' at Anantapur. A.2 to A.5 carried on the business at Anantapur on behalf of A.1. They induced public to join as subscribers in the daily deposits scheme, making them to believe that after payments being made for 25 months, the subscribers would get double of the amount paid by them. Being so induced by A.1 and other accused, the defacto complainant and others joined as subscribers and paid amounts regularly to A.1 and the other four accused. They were allotted with account numbers. Thus, having induced the subscribers to join the scheme and to pay amounts, A.1 and other four accused dishonestly closed the branch at Anantapur town and stopped all its transactions and thereby cheated the subscribers. Basing on the report lodged by P.W.1, police registered a case in crime no.125 of 1997 of I Town police station, Anantapur for the offence punishable under Section 420 IPC and filed the charge sheet before the Additional Judicial Magistrate of First Class, Anantapur.

4. After taking cognizance of the said case for the offence punishable under Section 420 IPC, the said case was transferred to the file of the II Additional Judicial Magistrate of First Class, Kadapa.

5. When charges were framed for the offences under Sections 420 read with 34 and 406 read with 34 IPC against the accused, read over and explained to them, they pleaded not guilty and claimed to be tried.

6. To substantiate his case, the prosecution examined P.Ws.1 to 13 and got marked Exs.P1 to P31. Ex.D1, which is contradiction elicited in the evidence of P.W.1, was also marked.

7. After closure of the prosecution evidence, accused were examined under Section 313 Cr.P.C. with reference to the incriminating evidence found against them in the evidence of prosecution witnesses. They denied the same. No oral or defence evidence was adduced on behalf of the accused.

8. Vide judgment dated 24.04.2003 in C.C. No.80 of 2002 on the file of the II Additional Judicial Magistrate of First Class, Kadapa, the trial Court found A.2 to A.5 not guilty of the offences punishable under Sections 420 read with 34 and 406 read with 34 IPC and acquitted them, but found A.1 guilty of the offences punishable under Sections 420 and 406 IPC, accordingly convicted him and sentenced to

undergo rigorous imprisonment for a period of one year and to pay fine of Rs.5,000/- in default to suffer simple imprisonment for a further period of nine months, for the offence under Section 420 IPC, and to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.48,105/- as compensation under Section 357 (3) Cr.P.C. in default to suffer rigorous imprisonment for a further period of nine months, for the offence punishable under Section 406 IPC. The trial Court also directed to distribute the compensation amount among P.Ws.1 to 9, 11 and 12 as narrated in its judgment. Challenging the same, A.1 preferred the above appeal. The appellate Court dismissed the appeal vide the impugned judgment. Challenging the same, the present revision came to be filed by A.1.

9. Learned counsel for A.1 would contend that both the courts below erred in convicting and sentencing A.1 for the offences punishable under Sections 420 and 406 IPC; that there is no evidence to substantiate the requirements of the said offences; that there is no evidence to show that A.1 induced the witnesses to deposit money in Nice India. It is further contended that Nice India has no branch at Anantapur, and the Court below erred in relying on the evidence of P.W.13 and the recitals in Exs.P26 and P27, and ultimately, prayed to allow the revision as prayed for.

10. On the other hand, the learned Assistant Public Prosecutor would submit that there is ample evidence on record against the accused, who is the Managing Director of M/s. Nice India showing the fraudulent means adopted by him and collecting huge money from public, and that there is intention on the part of A.1 to deceive right from the beginning; that both the courts below, upon consideration of the entire evidence on record, rightly convicted and

sentenced A.1, and in the absence of any perverse findings, there are no grounds to interfere with the concurrent findings of the courts below, and ultimately, prayed to dismiss the revision.

11. Now the point that arises for consideration is whether the findings of both the courts below are legal, proper and correct?

12. Revisional jurisdiction of this Court under Section 401 Cr.P.C. is a truncated one. Unless the findings are based upon no evidence or perverse, or that inadmissible evidence was taken into consideration in convicting the accused or that admissible evidence was overlooked, normally the revisional powers cannot be exercised to disturb the concurrent findings of the two courts below.

13. As per the evidence on record, A.1 is the Managing Director of M/s. Nice India Investments and Savings Limited, Hyderabad. It has a branch at Anantapur. A.2 was the Manager of M/s. Nice India branch at Anantapur. There is specific evidence of P.W.2 that A.1 was the Managing Director of the company. P.W.2 deposited the money in the said branch on daily basis at the instance of one Govindarajulu, who was agent of M/s. Nice India at Anantapur. P.W.3 also corroborated the evidence of P.W.2. There is also evidence of other witnesses with regard to subscribing huge money in M/s. Nice India, wherein A.1 is the Managing Director. There is also proper identification of A.1. There is evidence that money subscribed by the prosecution witnesses and other subscribers was not refunded to them. The trial Court was pleased to acquit A.2 to A.5 stating that they were employees working in M/s. Nice India Investments and Savings Limited, Anantapur, and

convicted and sentenced A.1 only. A.1 is the person who induced agents as well as subscribers to deposit huge amounts in M/s. Nice India Investments and Savings Limited, Anantapur branch. The amounts deposited by the subscribers were not returned. The essential ingredient to constitute an offence punishable under Section 420 IPC is that intention to deceive a person must be in existence at the time of inception. The element of cheating and fraudulent intention is present from the date of inception i.e. much before the subscriptions made by the prosecution witnesses and other subscribers. The act of A.1 not refunding the amounts subscribed by the subscribers and converting them to his own use, would amount to criminal breach of trust.

14. Both the courts below rightly appreciated the entire evidence on record and recorded concurrent findings with regard to guilt of A.1. There is ample evidence to substantiate the allegations against A.1. The ingredients to constitute offences punishable under Sections 420 and 406 IPC are proved beyond all reasonable doubt. Both the Courts below elaborately dealt with the oral and documentary evidence and acted on the basis of the admissible evidence on record, and rightly found A.1 guilty, accordingly, convicted and sentenced him. The findings of the Court below are based on proper appreciation of evidence on record. There is nothing to take a different view. There is no illegality or miscarriage of justice. The concurrent findings need not be interfered with. There are no grounds to interfere with the same. The revision case is devoid of merit and is liable to be dismissed.

15. In the result, the Criminal Revision Case is dismissed. The trial Court is directed to take consequential steps in pursuance of the dismissal of the present revision.

(Dr. Shameem Akther, J)

25.04.2018
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