THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 04.05.2007

+ **CRLREV. P. No.498/1997**

DR AJIT GUPTA ... Petitioner

- versus -

STATE AND ANOTHER ... Respondents

Advocates who appeared in this case:

For the Petitioner	:	Mr P.N. Lekhi, Sr Advocate with Ms Seema Gulati, Ms Rajni Gupta and Mr Anurag Ahluwalia
For the Respondent/State	:	Mr V.K. Malik
For the Complainant	:	Mr Kanwal Nain with Mr Praveen Singhai

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in Digest? YES

BADAR DURREZ AHMED, J

1. This revision petition is directed against the order dated 18.11.1997 passed by the learned Additional Sessions Judge allowing the revision petition filed by the complainant (Yashpal Singh) in respect of an order dated 19.02.1997 whereby the petitioner had been discharged by the learned Metropolitan Magistrate.

2. A complaint was filed by the respondent No.2 (Yashpal Singh) alleging that offences under Sections 403/405/420 IPC had been committed by

the petitioner [Dr Ajit Gupta] (referred to as accused No.1 in the complaint) and one Mr Chaman Lal (referred to as the accused No.2 in the complaint). It was alleged that on 29.07.1983 the petitioner dishonestly and fraudulently misrepresented that he was competent to sell the bus bearing Registration No. DEP 4301. It is alleged that the respondent No.2, the complainant, agreed to purchase the said bus for a sum of Rs.2,55,000/- less the bank loan to the tune of Rs.1,65,000/-. The complainant was, therefore, required to pay a sum of Rs.90,000/- only and the petitioner was to hand over all the papers of the said bus and transfer the complete rights of the bus. It is further alleged that thereafter the petitioner represented that the complainant could pay Rs.55,000/- and the remaining Rs.35,000/- would be collected by him through cheques from the Delhi Transport Corporation (DTC) as the bus was running under the DTC operation. It was further alleged that the complainant was to bear the diesel, maintenance, salary of driver and cleaner and other maintenance and operational charges. On this representation, it is alleged that the complainant paid Rs.5,000/-. On 03.09.1983, the petitioner is alleged to have received a sum of Rs.50,000/- against receipt. In this way, it is alleged that the complainant paid the agreed amount of Rs.55,000/-. It is alleged that in the second / third week of November, 1983, the complainant came to know that a sum of Rs.10,000/- was to be deposited in Bank as installment of the loan. The petitioner had promised to deposit the said installment of loan alongwith road tax arrears and the insurance premium. The complainant allegedly incurred all

the maintenance and operational charges. It is alleged that the petitioner received Rs.51,754.72 from DTC. Apparently, on 12.01.1984, the bus met with an accident and the complainant asked the petitioner to inform the insurance company on which the petitioner reportedly disclosed that the bus was not insured. Thereafter, the complainant was asked to compromise the matter. The complainant spent a certain amount of money on repairs and came to know that the road tax was also not deposited since 04.04.1983. It is alleged that on 29.02.1984, the complainant was surprised to learn from the office of the DTC that the accused (Chaman Lal) stopped the delivery of cheques. On being contacted, both the accused persons, i.e., Dr Ajit Gupta and Mr Chaman Lal agreed that the road tax and insurance premium as well as the bank installments would be paid by Mr Chaman Lal and thereafter, necessary transfer papers would be executed. In this manner, the accused persons dishonestly induced the complainant to continue to operate the bus and the complainant incurred maintenance and operational charges. The complainant allegedly took a loan of Rs.80,000/- for incurring the said maintenance and operational charges. It is alleged that Mr Chaman Lal collected cheques for Rs.18,292.60 and fraudulently encashed the same by depositing them in some other account. In May, 1984, it is alleged that Mr Chaman Lal and the complainant opened a joint account in New Bank of India in its branch at Subzi Mandi, Ghantaghar, Delhi. It is alleged that the complainant used to deposit cheques collected by him from DTC in the said account. Apparently, on 19.09.1984, the bus was

seized by the Traffic Police on account of non-production of the Registration Certificate and fitness certificate and on 04.10.1984, the DTC directed the suspension of operation of the said bus. On 10.12.1984, the bus is said to have met with an accident and for which a case under Section 279/304-A IPC was registered at Police Station Kalkaji. It is alleged that Mr Chaman Lal took the bus on *superdari* and removed the same for repairs. Thereafter, the accused persons did not return the bus to the complainant and, therefore, the complaint was made for offences under Sections 420/406 IPC.

3. It is noted in the order of the Metropolitan Magistrate dated 19.02.1997 that after recording of the preliminary evidence, the petitioner (Dr Ajit Gupta) was summoned by an order dated 28.01.1987, whereas the complaint against Mr Chaman Lal was dismissed. In the same order dated 19.02.1997, it is noted that pre-charge evidence was recorded and the complainant examined four witnesses, including himself. It appears that PW-1 [Ratan Singh] was a witness of the Agreement to Sell and the payment of Rs.5,000/-. PW-2 [S.P. Gupta] deposed with regard to the opening of the joint account of the complainant [Mr Chaman Lal]. PW-3 [Ram Nath] was from the DTC and he deposed about payments made by DTC to the authorised person. PW-4 (Yash Pal) was the complainant himself and he reiterated the allegations made in the complaint. The learned Metropolitan Magistrate noted that the offence of cheating is sought to be made out from the allegations that the

petitioner (Dr Ajit Gupta) dishonestly misrepresented that he was competent to sell the bus. But the learned Metropolitan Magistrate was of the view that this has not been established because the co-accused [Chaman Lal] never disputed the authority of Dr Ajit Gupta to dispose of the bus. With regard to non-payment of road tax and not getting the bus insured, the learned Metropolitan Magistrate was of the view that these facts ought to have been verified by the complainant before he entered into the deal. The learned Metropolitan Magistrate also observed that the complainant only paid Rs.55,000/- and he was to pay an additional amount of Rs.1,65,000/- towards the bank loan and adjust a sum of Rs.35,000/- out of the cheques to be collected by the accused from DTC. The operational changes were to be incurred by him. The learned Metropolitan Magistrate came to the conclusion that the sum total of the amounts payable by the petitioner did not come to more than the amount to be paid by the complainant and that, therefore, the complainant was not a loser. The learned Metropolitan Magistrate concluded that simply because the agreement to sell the bus did not materialise, it did not amount to the making out of an offence. He further observed that the complainant could have availed his remedy by filing a civil suit for specific performance of the agreement. Accordingly, he did not find any *prima facie* case against the petitioner also and discharged him.

4. Being aggrieved by this order of discharge, the complainant (Yash Pal Singh) filed a revision petition (CR No.231/1997) before the learned Additional Sessions Judge. It was contended on his behalf that the petitioner had been discharged at the pre-summoning stage and the petitioner had yet to go to trial and there was sufficient *prima facie* material for framing a notice against the petitioner in view of the averments made in the complaint as also in the pre-summoning evidence. It was argued on behalf of the complainant that the petitioner had all along held out that he had the authority to sell the bus which had been purchased by the complainant from the petitioner. It was submitted that this was a misrepresentation made by the petitioner with fraudulent intent and that the petitioner knew well that he did not have the authority to make these representations. Therefore, according to the complainant, the ingredients of the offences under Section 420 IPC were clearly made out. The learned Additional Sessions Judge, after considering the arguments advanced by the counsel for the parties and examining the pre-summoning evidence, was of the view that there were allegations that the petitioner had misrepresented fraudulently that he would pay the road tax, insurance premium and the bank installment arrears and thereafter in conspiracy with Chaman Lal, both of them connived together to cheat him of the bus. It is further indicated that on the misrepresentation of Dr Ajit Gupta and Chaman Lal, the petitioner agreed to incur further maintenance charges but after the accident the said Chaman Lal took away the bus on *superdari* and

thereafter did not return the same to the petitioner. The learned Additional Sessions Judge came to the conclusion that at this stage, the role of Dr Ajit Gupta in the alleged offence cannot be excluded totally and that, therefore, the order of the learned Metropolitan Magistrate was liable to be set aside and, accordingly, directed that the petitioner be summoned as, *prima facie*, the ingredients of Section 420 were made out against him. The learned Additional Sessions Judge concluded as under:-

> "Admittedly the initial transaction of the complainant Yashpal was with Dr. Ajit Gupta and it was on his misrepresentation that he had paid a sum of Rs.55,000/- for the purchase of the bus but thereafter on subsequent assurances by Dr. Ajit Gupta the complainant entered into direct negotiations and dealings with accused Chaman Lal. The complainant nevertheless has been deprived on his bus which he had purchased and for which he had paid a sum of Rs.55,000/- balance of which had to be paid in the course of the running of the bus. Complainant had also incurred operational charges for running the vehicles. Intention of Dr. Ajit Gupta was prima facie dishonest causing a wrongful loss to the complainant and this is clear from the body of the complaint as also in the pre-summoning evidence including the deposition on oath of CW-1 Yashpal prima facie there is sufficient material for proceeding with those accused Dr. Ajit Gupta U/s 420 IPC and he accordingly be summoned. Revision petition allowed in the aforesaid terms. Trial court record be returned. Parties to appear before the ld. Trial court on 8.12.97."

5. Mr P.N. Lekhi, the learned senior counsel who appeared on behalf of the petitioner, referred to the provisions of Section 245 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') which relates to the discharge of an accused. The said section provides that if, upon taking all

the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him. Mr Lekhi also submitted that it was clearly within the powers of the Metropolitan Magistrate to have discharged the petitioner, after taking into account the evidence referred to in Section 244 of the Code. He submitted that the dispute between the parties was entirely of a civil nature without any trappings of a criminal offence. He also submitted that the Metropolitan Magistrate had noted categorically that in the complaint it is nowhere indicated that Chaman Lal had disputed the purported authority of the petitioner to sell the bus. In the absence of such an allegation, it cannot be said that there was material on record to indicate that the petitioner sold the bus or negotiated its sale even when he did not have the authority to do so.

6. He referred to the decision of the Supreme Court in the case of ***Hari Prasad Chamaria v. Bishun Kumar Surekha and Others*****: 1973 (2) SCC 823**. Paragraph 4 of the said decision was read out and the same reads as under:-

> "4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Indian Penal Code. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does

> not disclose the commission of any offence on the part of the respondents under Section 420 Indian Penal Code. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs.35,000. There is also nothing to indicate that the respondents induced the appellant to pay them Rs.35,000 by deceiving him. It is further not the case of the appellant that a representation was made by the respondents to him at or before the time he paid the money to them and that at the time the representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability for them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating."

Reading the above extract, it is apparent that the Supreme Court found the various allegations of fact made in the complaint to be correct for the purposes of coming to the conclusion as to whether the offence under Section 420 IPC was made out or not. The Supreme Court concluded on the facts of that case that even after making that allowance, the complaint did not disclose any offence on the part of the respondents therein under Section 420 IPC. Importantly, the Supreme Court noted that there was nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with the money. There was nothing to indicate that the respondents induced the appellant to pay the money by deceiving him. The fact that the respondents subsequently did not abide by the commitment would render them liable to civil action, but would not be sufficient to fasten criminal

liability on the respondents for the offence of cheating. This decision of the Supreme Court was relied upon by Mr Lekhi to show that in the complaint, as in the present case also, in the pre-summoning evidence, there is no averment that from the very inception, the petitioner knew the representation to be false and not to be acted upon. Subsequently, if the events have worked out to the detriment of the complainant, it cannot be a ground for constituting an offence under Section 420 IPC.

7. The next decision referred to by Mr Lekhi was that of the Supreme Court in the case of ***Haridaya Ranjan P.D. Verma v. State of Bihar and Another*****: 2000 (4) SCC 168** wherein the Supreme Court brought out the distinction between a mere breach of contract and the offence of cheating. The Supreme Court held as under:-

> "15. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.
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> 16. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this

> subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution far cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning that is, when he had the promise cannot be presumed."

8. The last decision referred to by Mr Lekhi was that of the Supreme Court in the case of ***Alpic Finance Ltd v. P. Sadasivan & Another*****: 2001 I AD (Cr.) S.C. 467**. In particular, he referred to paragraphs 10, 11 and 12 of the said judgment which read as under:-

> "10. The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that respondents committed the offence under Section 420 I.P.C. and the case of the appellant is that respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practicing and deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any willful misrepresentation. Even according to the appellant, partiest entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to

> discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception.
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> 11. Moreover, the appellant has no case that the respondents obtained the article by any fraudulent inducement or by willful misrepresentation. We are told that respondents, though committed default in paying some installments, have paid substantial amount towards the consideration.
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> 12. Having regard to the facts and circumstances, it is difficult to discern an element of deception in the whole transaction, whereas it is palpably evident that the appellant had an oblique motive of causing harassment to the respondents by seizing the entire articles through magisterial proceedings. We are of the view that the learned judge was perfectly justified in quashing the proceedings and we are disinclined to interfere in such matters."

On the basis of these decisions, Mr Lekhi submitted that the impugned order was incorrect and was liable to be set aside and that of the learned Metropolitan Magistrate ought to be restored and the petitioner ought to be discharged.

9. The learned counsel for the complainant was also heard. He, first of all, referred to PW-1/A which is the receipt in respect of the said bus and this receipt shows the sale of the bus and the name of the seller has been shown as Dr Ajit Gupta. He has also signed the same. The learned counsel for the complainant submitted that this document is sufficient to indicate that it was a

clear cut case of cheating because the petitioner has signed the same as the seller when he admittedly did not own the bus. He has pretended to sell the bus even though he did not own the same. The learned counsel referred to the provisions of Section 415 of the IPC and in particular to illustrations (a) and (i) thereof which read as under:-

> "(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.
>
> xxxx xxxx xxxx xxxx xxxx
>
> (i) A sells and coveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money for Z. A cheats."

10. The learned counsel appearing for the complainant then referred to the deposition of PW-4 (Yashpal Singh). In his examination-in-chief, he has stated as under:-

> "Dr Ajit Gupta knew it well that the bus was not in his name and that it was in the name of Chaman Lal. If I knew this fact, I would not have paid any money; nor would I have spent any money."

In cross-examination, PW-4 (Yashpal Singh) has, *inter alia*, stated as under:-

> "I had never run any transport business earlier. It is correct that I was working as conductor on a DTC bus. I do not know how the bus is being financed from Financing Authorities. The total deal for the bus was Rs.2,55,000/- out of that Rs.55,000/- was paid in cash. It is correct that after paying Rs.55,000/- I took the bus and started plying it in

DTC. It is correct that I was aware that the rest of the amount is a bank loan which has to be paid by me. I do not know who used to get cheques from DTC as the said bus was plying under DTC prior to my purchasing the said bus. After purchasing the bus Dr. Ajit Gupta used to give me authority letter about which I do not know whose signature used to be on that authority letter but on the basis of that authority letter, I used to collect cheques from DTC and used to give it to Dr. Ajit Gupta. I have brought four or five cheques from DTC. It is wrong that Dr. Ajit Gupta deposited the road tax and insurance premium of the said bus after 4-9-83. It is correct that Dr. Ajit Gupta deposited Rs.10,000/- towards the bank loan after 4-9-83 i.e. after I had purchased the bus. It is correct that I did not have the money to deposit two installments towards the bank oloan of the bus as a result I requested Dr. Ajit Gupta to deposit Rs.10,000/- towards the bank loan. It is also correct that I told Dr. Ajit Gupta that he can recover this amount alongwith the amount of Rs.35,000/- because I had to pay Rs.35,000/- to Mr. Ajit Gupta. It is correct that I did not pay any cash other than Rs.55,000/- to Dr. Ajit Gupta. I also did not take any loan from Dr. Ajit Gupta. It is correct that despite my asking Dr. Ajit Gupta did not deposit the road tax and insurance premium of the bus after I had purchased the bus. I did not know Chaman Lal before 19.2.84. After 19.2.84 I and Chaman Lal opened a joint account in the bank. I used to deposit cheque received from DTC in that account and withdraw the amount. After May, 84, the bus plied with DTC till November 84. During this 7/8 months I did not lodge any report of cheating. It is wrong to suggest that I did not deposit any installment of bank loan during the said period, or that Chaman Lal took the bus on account of non-deposit of the installment.

I met Chaman Lal of my own at the information of DTC. It is wrong to suggest that accused Dr. Ajit Gupta introduced me with Chaman Lal as the owner of the bus. I told Chaman Lal that I have purchased the bus from Dr. Ajit Gupta. It is wrong to suggest that I have deposed falsely or that I had filed a false complaint as Chaman Lal has taken my bus."

11. The learned counsel then referred to the decision of ***Shivanarayan Kabra v. The State of Madras*: 1967 Cri. L.J. 946** and in particular paragraph 4 thereof which reads as under:-

> "4. It was argued, in the first place, on behalf of the appellant that on the admitted or proved facts no case of cheating has been made out against the appellant and, therefore, his conviction under S. 420, Indian Penal Code was illegal. We are unable to accept this argument as correct. It has been found that the appellant sent a letter, Ex. P-34 along with a copy fo the business terms, Ex.34 a) "on which we undertake business of four clients". In this document the appellant has made the representation that he could do business in forward contracts in cotton, grains, seeds, bullion, black pepper, etc., in accordance with the pucca adatia system and "in accordance with the usual practice and usage of the various associations concerned." In Exhibit P-33 the appellant sent a telegram to P.W. 2 intimating that "buying is advisable for quick profits". The appellant knew fully well that he had no right to do forward business and that he was not a member of any recognised association and that he could not lawfully advertise to P.W. 2 for investment in forward contracts. It is not necessary that a false pretence should be made in express words by the appellant. It may be inferred from all the circumstances including the conduct of the appellant in obtaining the property and in Ex. P-34 (a) the appellant stated something which was not true and concealed from P.W.2 the fact that he was not a member of any recognised association and that he was not entitled to carry on the forward contract business. It is clear that P.W.2 would not have parted with the sum of Rs.12,000 but for the inducement contained in Ex.P-34 and the representation of the appellant that he could lawfully carry on forward contract business."

12. Considering the arguments advanced by the counsel for the parties and examining the material on record, it does appear that the complaint as well as the pre-summoning evidence discloses that the petitioner held himself out to

be the owner of the bus, when, in fact, he was not the owner. On the basis of this misrepresentation, he induced the complainant to part with money and also expend money on the maintenance and operation of the bus. Despite this, the bus has not been transferred to the complainant. Therefore, in my view, the learned Additional Sessions Judge was correct in holding that, *prima facie*, a case was made out on the basis of the averments contained in the complaint and the pre-summoning evidence to proceed against the petitioner for the alleged offence punishable under Section 420 IPC.

13. Accordingly, the impugned order does not call for any interference and this revision petition is dismissed.

BADAR DURREZ AHMED
(JUDGE)

May 04, 2007