IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO.208 OF 2005

1. Sow. Subhadrabai w/o Raosaheb Pawar,
Age 47 years, Occu. Household,
R/o H-3/1, Shrikrishna Nagar,
T. V. Centre, N-9, Hudco,
Aurangabad.

2. Raosaheb S/o Shamrao @ Ramrao Pawar,
Age 53 years, Occu. Service,
R/o As above. … **Applicants.**

Versus

The State of Maharashtra … **Respondent.**

WITH

CRIMINAL REVISION APPLICATION NO.214 OF 2005

1. Hirabai w/o Annasaheb Chavan,
Age 44 years, Occu. Household,

2. Annasaheb s/o Jaiwantrao Chavan,
Age 47 years, Occu. Service,

Both R/o H-24/04, Shrikrishna Nagar,
N-9, Hudco, Aurangabad. … **Applicants.**

Versus

The State of Maharashtra … **Respondent.**

...
Advocate for Applicants in Revn./208/05 : Mr. S. G. Ladda.
Advocate for Applicants in Revn./214/05 : Mr. S. S. Jadhav.
APP for Respondent/State in both Revn. : Mr. S. P. Sonpawale.
...

CORAM : S. G. MEHARE, J.

RESERVED ON : 10.09.2024
PRONOUNCED ON : 23.09.2024

JUDGMENT :-

1. Heard the learned counsels for the respective parties.

2. The applicants/accused who have been convicted of the offences punishable under Sections 420 read with Section 34 of the IPC and under Section 3 read with Section 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 ("Act of 1978" for short) have impugned the judgments and orders of the learned Chief Judicial Magistrate, Aurangabad passed in RCC.No.1719 of 2001, dated 07.04.2005 and the learned 2nd Additional Sessions Judge, Aurangabad confirming the judgment and order of the learned Chief Judicial Magistrate in Criminal Appeal Nos.37 of 2005 and 39 of 2005, dated 05.07.2005.

3. Learned counsels for the applicants have vehemently argued that both Courts erred in law in holding that both the offences have been proved beyond a reasonable doubt. Learned counsel Mr. Ladda for the applicant Subhadrabai and another have tried to open the case by referring to the evidence. The law is clear that unless the glaring features are brought to the

notice of the High Court, it cannot re-appreciate the evidence in revision. However, he referred to some facts about the incapacity of the complainants to pay or deposit the money for chit because she or her family had no sufficient income to pay such instalments. He referred to the judgments and argued that Section 420 of the IPC was neither ascribed by the Trial Court nor the Sessions Court. The so-called notebook seized from the co-accused did not establish the allegations. He referred to paragraph No.29 of the judgment and order of the learned Appellate Court and argued that though the Court was satisfied that there was no satisfactory documentary evidence on the point of running the *Bhisi* by the accused, the incorrect findings were recorded that it was a case exclusively based on the oral evidence. He tried to argue that this is *prima facie* error of law in recording such findings. He also referred to paragraph No.30 of the judgment of the learned Appellate Court and vehemently argued that when this notebook Exh.36 was not proved, the conviction had been erroneously recorded. He referred to paragraph No.19 of the judgment of the Trial Court and argued that the evidence on the incapacity of the complainant to pay such huge monthly instalments of the deposits was erroneously discarded. The witness gave a material admission that she did not have evidence to prove

that she withdrew the amount from the bank. There were no elements of cheating. Bare failing to return the money is not cheating. The elements of Section 3 of the Act of 1978 were not proved. The defence of the applicants was not properly considered that there were enmical term. The collected bond papers do not refer to the *Bhisi*. He relied on the case of ***State of West Bengal and others Vs. Swapan Kumar Guha and others ; 1982 (1) Supreme Court Cases 561*** and argued that there was absolutely no case to try the accused under the Act of 1978. He has referred to a few paragraphs of the said judgment and argued that the revision deserves to be allowed. However, in the alternate, he prayed for the benefit of Section 4 of the Probation of Offenders Act.

4. Learned counsel for the applicants Hirabai and others adopted the arguments of learned counsel Mr. Ladda on the law points. However, he has reiterated the arguments of Mr. Ladda as regards making out the offence under Section 420 of the IPC. He argued that the charge under Section 406 of the IPC was not framed. He also prayed for the benefit of the Probation of Offenders Act.

5. Learned APP for the respondent/State argued that it was established that the witnesses were the members of the

*Bhisi* run and conducted by the accused. The husband of Subhadrabai was playing an active role in running the scheme. Both Courts have correctly appreciated the evidence, and there is no miscarriage of justice due to incorrect appreciation of evidence. The courts have also discussed about the financial capacity of the complainant to deposit the money. Section 420 of the IPC and the offences under the Act of 1978 were established. Therefore, both revision applications deserve to be dismissed.

6. The case relied upon by the learned counsel for the applicants was on the allegations of Prize Chits and Money Circulation Schemes as defined in Section 2(c) of the Act 1978. However, the facts of the case and averments in the complaint reveal that it was a "conventional chit" as defined in Section 2(a) of the Act 1978. The said definition reads thus ;

> *"2. .....*
> *(a) "conventional chit" means a transaction whether called chit,chit fund, kuri or by any other name by or under which a person responsible for the conduct of the chit enters into an agreement with a specified number of persons that every one of them shall subscribe a certain sum of money (or certain quantity of grain in stead) by way of periodical instalments for a definite period and that each such subscriber shall, in his turn, as determined by lot or by auction or by*

*tender or in such other manner as may be provided for in the chit agreement, be entitled to a prize amount."*

7. It is evident from the facts and the findings recorded by the respective Courts that the accused were the persons responsible for the conduct of the chits. There was an auction practice, and whatever profit was received after the auction, it was equally distributed among the members. The members who did not purchase the *Bhisi* in the auction were entitled to receive the amount as per the scheme when their turn comes by a lot or at the end of the term or period of the *Bhisi*. It was a monthly subscription by the members. In such a case, the documentary evidence is not essential. The oral evidence of the witnesses who suffered financial loss due to the acts of the applicants may be considered if it inspires confidence. Therefore, the Court is of the view that believing the oral version of the witnesses does not make the case bad-in-law in the absence of any documentary evidence as such.

8. It was a promise made by the applicants that every member of *Bhisi* who will subscribed monthly would be entitled to get it returned when they become entitled to by a lot or by auction. Normally, the auction is done in such cases when the person who is a member of the *Bhisi* does not get it

by a lot, and if he is in need of money, he purchases the *Bhisi* at a lesser amount of his subscription. The applicants accepted the responsibility for transactions. The applicants were charging the commission as service charges for managing the transactions of *Bhisi*. The applicants had promised and ensured every member returning their money as per the scheme. It is just a scheme wherein a few people come together. They subscribed monthly whatsoever the practice they adopted, and the members were receiving the money in lumpsum by way of monthly subscription. The member was to pay or subscribe the money till the last person received his subscriptions. In simple words it is a scheme wherein a few persons come together and subscribe to a certain amount, and by lot or by lottery, they get the lump sum amount that may help the members meet their necessities.

9. Section 420 of the IPC is punishable for the offences of cheating. Section 415 of the IPC define “cheating”. It provides that 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. The Explanation to the Section provides that a dishonest concealment of facts is a deception within the meaning of this Section.

10. To hold the person guilty of cheating is defined under Section 415 of the I.P.C., it is necessary to show that he had a fraudulent and dishonest intention at the time of making the promise with an intention to return the property. It also requires the inducement of such person, delivery of property, the consent of that person to retain any property intentional inducement that the person to do or omit to do anything which he could 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.

11. The facts established before the Court by way of substantial evidence reveal that the applicants accepted the complainants and other witnesses as members of the *Bhisi* on the promise to return their subscription either by way of lottery or lot or by way of auction. The members were also bound to subscribe to a monthly subscription till the agreed period ends. So, every member should get the lump sum amount to which

they had subscribed. Even a person who purchases the *Bhisi* in the auction has to continue to pay the remaining monthly subscription till the last person gets the money for his subscription.

12. Both Courts have recorded the findings, which clearly established that the intentions of the applicants were dishonest and that with an intention that they returned the money from the complainant but did not return their subscription. So, the argument of the learned counsels for the applicants cannot be accepted that the offence under Section 420 of the IPC., was not established.

13. As far as the offence punishable under Section 4 of the Act of 1978 is concerned, as discussed above, it was established, and hence, both Courts have correctly recorded the findings that the applicants were guilty of the offences punishable under Section 4 of the Act of 1978.There was no error of law in either of the judgments. The case law relied upon by the learned counsel for the applicants does not apply as it was dealing with another definition of the money circulation scheme. The Court does not find any substance in the revision applications.

14. The learned counsel for the applicants argued that the applicants are facing the trial for a long time and are at an advanced age. Their acts were not intentional. Therefore, the benefit of the Probation of Offenders Act may be extended to them. The applicants have been convicted for the offences punishable under Section 420 of the IPC and Section 4 of the Act of 1978.

15. Section 4 of the Probation Act is regarding the power of the Court to release certain offenders on the probation of good conduct. That Section empowers the Court to grant probation for offences not punishable with death or imprisonment of life. The Court has to consider the circumstances of the case, including the nature of the offence and the character of the offender. The applicants have been sentenced to suffer R.I. for one year for the offence of Section 420 of the IPC., and Section 4 of the Act of 1978.

16. The question is whether probation can be granted for the offences, the accused have been sentenced. The benefit under Section 4 of the Probation of Offenders Act cannot be claimed as a matter of right. The word “may” used in Section 4 of the Act is not to be understood as “must”.

17. The Act of 1978 strictly prohibits chit funds and money circulations. Section 4 of the said Act provides that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, the imprisonment shall not be less than one year, and the fine shall not be less than one thousand. Even then, the applicants were running the chit funds and acting as the persons responsible. Their acts were against the prohibitory law. They have indirectly cheated the Government. The Sentencing policy is that the accused found guilty should be adequately punished so that it should be an eye opener to the other potential offender so that the similar offences are not committed by any other potential offenders.

18. The facts and circumstances, including the nature of the offences, indicate that the applicants had ill intention from the inception of the scheme. Cheating is a moral turpitude. Therefore, this Court is of the view that this is not a fit case to extend the benefit of Section 4 of the Probation of Offenders Act.

19. The applicants are of advanced age. It seems that the applicants were from the poor strata of society, and they were following the long-standing practice of *Bhisi*. These

circumstances are the adequate reasons to sentence the applicants for less than a year. The record reveals that the applicants were behind bars for ten (10) days after taking into custody by the First Appellate Court. Therefore, considering the advanced age of the applicants, their sentence is reduced to the period they have already undergone. Hence, the following order :

**O R D E R**

(i) The revision applications are dismissed.

(ii) The impugned judgments of the learned Judicial Magistrate First Class and First Appellate Court are confirmed and the sentence is modified. The corporal sentence is reduced to the period the applicants have undergone.

(iii) The bail bonds and surety bonds of the applicants stand cancelled.

(iv) The surety stands discharged.

(v) Rule stands discharged

(vi) R and P should be returned to the concerned Courts.

**(S. G. MEHARE, J.)**

...

vmk/-