



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Reserved on: 28th May, 2025

Pronounced on: 11th August, 2025

+

CRL.A. 815/2025

VIVEK GARG, ADVOCATE

9/7, Shakti Nagar, Patodia Palace,
Delhi-110007

.....Petitioner

Through: Petitioner in person (through VC)

versus

1. STATE

2. AKHILESH PATI TRIPATHI

MLA, Aam Aadmi Party,
N-25/A-277, T-Huts, Lal Bagh,
Near Azadpur, Delhi-110033.

.....Respondents

Through: Mr. Mukesh Kalia and Ms. Kanika
Vohra, Advocates with SI Mithilesh
Kumar, PS Civil Lines

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Criminal Appeal under Section 378 (4) read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*), has been filed on behalf of the Appellant/Complainant, Sh. Vivek Garg, Advocate, against the Judgment dated 21.03.2022 of the Ld. ACMM, New Delhi, *whereby Respondent No.2, Akhilesh Pati Tripathi, MLA has been acquitted in the Complaint Case No.4/2019 under Section 420/468/409 of Indian Penal Code, 1860 (hereinafter referred to as "IPC")*.



2. The Appellant, **Sh. Vivek Garg** stated that he is an Advocate and RTI Activist who is fighting against corruption at all levels due to corrupt nexus of fulcrum of evils who are looting the country worst than the British. He had filed one such Complaint Section 200 Cr.P.C. against the Respondent No.2, Akhilesh Pati Tripathi, MLA from Model Town Constituency since 08.12.2013.
3. The allegations are that being an MLA and a public servant, he was entitled for reimbursement of medical expenses from Government of NCT of Delhi in regard to the treatment obtained by him, his spouse and dependent family members. The member of the family is considered *dependent* only if his income from all sources is less than Rs.3,500/- per month.
4. The MLA is required to declare in his Application Form for getting Medical Facility Card under DGEHS for MLAs from GNCT, Delhi. Respondent No.2, Akhilesh Pati Tripathi obtained Medical Facility Card No.218647 from Government of National Capital Territory of Delhi (GNCTD), by unlawfully claiming that his parents Shri Abhay Nandan Tripathi and Smt. Chandra Wati Devi, were dependent upon him. Shri Abhay Nandan Tripathi had retired as a Principal from Government School, Uttar Pradesh and was drawing a pension much more than Rs,3,500/- per month. Therefore, neither he nor the mother of Respondent No.2 were dependant upon him.
5. The Complainant obtained information under RTI that the Respondent No.2, had been reimbursed a sum of Rs.2,01,600/- in regard to the medical treatment of Smt. Chandra Wati, his mother at Dr. B.L. Kapoor Memorial Hospital, Delhi, Rs.1,75,730/-, Rs.1,81,763/- and Rs.2,730/-. It was alleged



that neither the father nor the mother of the Respondent No.2, Akhilesh Pati Tripathi were entitled to have their names entered into the Medical Facility Card in dependent category of the Respondent No.2, Akhilesh Pati Tripathi, who by doing so, committed an offence under Section 420 IPC.

6. It is asserted that despite occupying such a seat and being a public representative, he has breached the trust of public and committed the crime for which he deserves heavy punishment so that no other Politician would even dare to commit any crime and the public faith is maintained in the legal system of the country.

7. The *pre-summoning evidence* was led and the Respondent No.2, Akhilesh Pati Tripathi was summoned under Section 420 IPC *vide* Order dated 12.10.2017.

8. In the pre-Charge evidence, following witnesses were examined:

9. **CW1 Sh. Vivek Garg, the Complainant** deposed about the averments as made in the Complaint Ex.CW5/A. He was duly cross-examined on behalf of Respondent No.2, Akhilesh Pati Tripathi.

10. **CW2 Sh. Vikas, Senior Assistant, AERO Election Office, Model Town Vidhan Sabha,** deposed about the nomination papers of the Respondent No.2 for the year 2013 as well as 2015 election of Delhi Vidhan Sabha.

11. **CW3 Shri Hoshiar Singh** produced the record pertaining to the Application for Issuance of Medical Card under DGEH Scheme. The Medical Facility Card is Ex.CW2/B. The Form TR27A under Rule 291 A of Vidhan Sabha dated 05.02.2015 is Ex.CW2/C. The Order of the Accounts Department dated 04.02.2015 is Ex.CW2/D. The record pertaining to Form TR 27A Delhi Vidhan Sabha *vide* Bill dated 12.09.2014 is Ex.CW2/E. The



Medical Facility Card issued on 18.06.2014 showing the parent of the Respondent No.2 as dependents is Ex.CW2/F. The Letter dated 12.11.2014 of GNCTD Legislative Assembly Secretariat to Respondent No.2 is Ex.CW2/F and the Reply of the Respondent to this Letter is Ex.CW2/H. The record dated 31.07.2014 as given by Respondent No.2 is Ex.CW2/I. The Letter of Medical Superintendent dated 05.08.2014 is Ex.CW2/J.

12. **CW4 Sh. S.V. Narayanan**, AAO, P&A O-9 who deposed about the record relating to DGHS dated 15.01.2015 of the Respondent No.2 already exhibited as Ex. CW4/A, FORM TR 27 A (Rule 291-A) of Rs. 2730/- and Ex. CW2/F(Colly).

13. **CW5 Sh. R.S. Bisht, Section Officer**, Delhi Vidhan Sabha who deposed about the RTI Reply dated 17.09.2015 ID No. 1098 and 1099 along with details of payments made to Respondent No.2.

14. Thereafter, **Charge under Section 420 IPC was framed on 09.01.2020 to which the Respondent No.2, Akhilesh Pati Tripathi pleaded not guilty.**

15. The Appellant, Sh. Vivek Garg did not lead any additional evidence at post Charge stage, though he was cross-examined on behalf of the Respondent No.2, as per Section 246 (4) Cr.P.C.

16. Thereafter, **the Statement of the Respondent No.2 was recorded under Section 313 Cr.P.C.**, pleading his innocence. Though he stated that he would lead Defence Evidence, but did not do so and the Defence Evidence was closed on the statement of the Respondent No.2, on 06.01.2021.

17. The **Ld. ACMM in the Impugned Judgment dated 21.03.2022** considered the entire evidence in detail and observed that there was *no*



Sanction given by the Department for the Prosecution and therefore, the Prosecution was not maintainable. The merits of the case were also considered and it was observed that no offence under Section 420 IPC was made out. The Respondent No.2 was consequently, acquitted.

18. ***Aggrieved by the said acquittal, the Appellant Sh. Vivek Garg has filed the present Appeal.***

19. The ***grounds of challenge*** are that ***prior Sanction*** for Prosecution under Section 197 Cr.P.C was not required for which reliance has been placed on the judgment of *Devender Pratap Singh vs. State of Bihar*, AIR 2019 SC 1671 *Punjab State Warehousing Corporation vs. Bhushan Chander & Ors.* AIR 2016 SC 3014, *State of Maharashtra vs. Deva Hari Singh Panwar & Ors.* AIR 2008 SC 1375, *I.G., Police & Ors. vs. Battanapatla Venkata Ratnam & Anr.*, 2015 (13) SCC 87 & *D. Devraja vs. Owais Sabeer Hussain*, AIR 2020 SC 3292.

20. ***On merits***, it is submitted that the monthly income of the father of the Respondent No.2 was Rs.15,000/- per month as per the Action Taken Report submitted in the Court. This was more than the prescribed monthly income of Rs.3,500/- per month to be a dependent, despite which the Petitioner cheated the Government by wrongly declaring his parents as dependent upon him.

21. It is further submitted that to obtain Medical Facility Card, an MLA is required to fill the Form "***Application for issue for medical card under DGEH Scheme for MLAs***", which is required to be submitted before Delhi Legislative Assembly Secretariat, Delhi. At the bottom of this Form it is clearly written that "***Member of the family is treated as dependent only if***



his/her (except spouse) income from all sources if less than Rs.3500/- per month”.

22. Even in the 2004 Medical Form for reimbursement of Medical Claims of DGEHS beneficiaries dated 15.01.2015, has a Declaration that ***“I hereby declare that the statements made in the Application are true to the best of my knowledge and belief and the person for which medical expenses were incurred is wholly dependent on me”***. It is further written that ***“Note: Misuse of DGHS facilities is a criminal offence...”***.

23. Despite the knowledge of these facts and legal policy printed on the Forms, the Respondent No.2 has abused his official position and induced the officials of concerned Department to unlawfully to get the Medical Facility Card in which he unlawfully declared his parents as dependents to obtain wrongful gain. He induced the officials of GNCT, Delhi not once but thrice by declaring his parents as dependents despite they not being so. He, thus cheated the exchequer to obtain wrongful gain with *mala fide* intention.

24. However, these facts have not been appreciated and the Respondent No.2 has been acquitted vide Order dated 21.03.2022, which is liable to be set aside.

25. It is contended that the offence under *Section 420 IPC* is clearly proved against the Respondent No.2 from all the documents exhibited by the Complainant in his testimony. None of these documentary evidence has been refuted by the Respondent No.2. So much so, he neither stepped into the witness box in his defence nor did he examine any defence witness which clearly proves his crime. ***The Ld. Trial Court has ignored all these facts and has wrongly acquitted the Respondent No.2.***



26. The Appellant has relied upon the *Action Taken Report* that was submitted by the Police Station, Civil Lines before the Court which is claimed to be admissible under Indian Evidence Act. It is submitted that in the said ATR, it was confirmed that the father of the Respondent No.2 retired as a Government School Teacher who was drawing a monthly pension of Rs.15,000/- per month which is much more than the prescribed limit of Rs.3500/- per month. This ATR has neither been opposed, countered nor denied by the Respondent No.2 and it is an admitted fact that his father was getting a monthly pension which is much more than Rs.3500/- per month.

27. It is further contended that the Ld. ACMM has failed to consider that mother of the Respondent No.2, is neither physically nor financially dependent on him. To become physically dependent, there must be nobody else in the family who could take care of her and the dependent should also reside with the Respondent No.2. However, the mother was not living with Respondent No.2, but lived in the home town along with her husband and other sons, as per the information obtained through RTI. The brothers and father of the Respondent No.2 were there to take care of the mother and therefore, she was not physically dependent on the Respondent.

28. Furthermore, after the Respondent No.2 became an MLA, his mother purchased a luxury Bungalow of approx. 600 square metres in her home town i.e. District Sant Kabir Nagar, U.P worth crores of rupees, which further establishes that the mother of the MLA was much richer and was independent/self-sufficient and did not need any financial medical reimbursement from GNCTD.



29. The mother was financially independent as not only was she having crores of rupees worth property, but also her family monthly income was much higher than the prescribed limit. All these facts and evidence has been overlooked by the learned ACMM.

30. It is further submitted that the Respondent after being caught in this crime, returned the cheated money which in itself is an admission and confession. Such return of Money, does not absolve him of the crime of cheating.

31. The Appellant has relied on Dr.Subramanian Swamy vs. Dr. Manmohan Singh AIR 2012 SC 1185, wherein it was observed that *“Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait jacket formula of locus standi..”*.

32. The Respondent No.2 with a *mala fide* intention, induced the officials of GNCTD by filing false Form to obtain Medical Facility Card and also to seek reimbursement. All these aspects and the responses obtained through RTI, have all been brushed aside by the Ld. ACMM.

33. It is asserted that Respondent No.2 has failed to prove any defence to counter the evidence of the Appellant; rather he has confessed to the crime himself. *The Judgment dated 21.03.2022 is, therefore, liable to be set aside.*

34. ***Ld. Counsel for Respondent No.2, Akhilesh Pati Tripathi has argued*** that his mother was suffering from cancer and was being treated at Dr. B.L. Kapoor Memorial Hospital, Delhi. Respondent No.2 being under the *bona fide* impression that his mother was dependent upon him, had accordingly, declared her as one of the dependent aside from his father. The



minute he became aware of the Rule to the contrary, he wrote a Letter to Vidhan Sabha and returned the money along with the interest.

35. It is argued that there was no dishonest intention, but it was merely a case of *bona fide* ignorance. It is further argued that the *bona fide* of the Respondent No.2 is also borne out from the Letter dated 02.11.2015 written by Vidhan Sabha to the SHO stating that no further action be taken against the Respondent.

36. *It is, therefore, submitted that the Ld. ACMM has rightly appreciated these facts and acquitted the Respondent No.2 and the Appeal has no merit, which is liable to be dismissed.*

Submission heard and record perused.

37. The *first ground* on which the Ld. ACMM has dismissed the case is that there was *no Sanction* granted by the Department under Section 197 Cr.P.C for the Prosecution of the Respondent No.2 who was the elected member of Delhi Legislature Assembly.

38. Section 197 Cr.P.C. reads as under:-

“197. Prosecution of Judges and public servants.

(1)When any person who is or was a Judge or Magistrate or a public servant not removable from his officer save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-(a)in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;(b)in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged



offence employed, in connection with the affairs of a State of the State Government :

[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members (of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein the expression "State Government" were substituted.

[(3-A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3-B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon



such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.] [Added by Act 43 of 1991, Section 2 (w.e.f. 2-5-1991).]

(4)The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

39. From the plain reading of Clause 1 of Section 197 Cr.P.C., it is clear that it would apply only to the person who commits offences ***while acting or purporting to act in the discharge of his official duty and are removable from the office with the sanction of the Government***. Admittedly, on the day of commission of offence, the Respondent was a sitting MLA, who is the elected representative of the people and cannot be removed from the office at the behest of the Government.

40. This question was considered by the Apex Court in the case of State Of Kerala vs. K. Ajith, (2021) 17 SCC 318, wherein it was observed that Section 197 Cr.P.C. applies only to the public servant if he can be removed from office with the sanction of the Government. However, being an elected representative, MLA cannot be removed by the sanction of the Government.



They can be removed from office for instance when disqualifying under Tenth Schedule of Constitution for which sanction is not required.

41. That MLA is not a **Public Servant** within the meaning of Section 21 IPC, was also considered by the Constitution Bench in the case of R.S. Nayak vs. A.R. Antulay, (1984) 2 SCC 183 wherein it was observed that *to say that an MLA by virtue of his office, is performing policing or prison officers duty would be, apart from doing violence to the language also, lowering him in status. Additionally, Clause 7 of Section 21 IPC does not speak of any adjudicatory function. It appears to comprehend situation where as preliminary to or an end product of an adjudicatory function in a criminal case, which may lead to imposition of a prison sentence and a person in exercise of the duty to be discharged by him by virtue of his office, places or keeps any person in confinement.* Therefore, an MLA as per Section 21(7) IPC, cannot be termed as a public servant.

42. Furthermore, the legal position as regards to the Sanction/Permission in the context of Section 19 of Prevention of Corruption Act, 1988 (*hereinafter referred to as "PC Act"*) was discussed by the Apex Court in the case of P.V. Narasimha Rao vs. State, (1998) 4 SCC 620 wherein it was held that there is no authority Competent to remove a Member of Parliament and to grant sanction for his prosecution under Section 19(1) PC Act. The Court can take cognizance of the offences mentioned in Section 19(1) PC Act in the absence of sanction, but till provision is made by Parliament in that regard by suitable amendment in the law, the Prosecuting Agency before filing the Charge-sheet in respect of an offence punishable under Section 7/10/11/13/15 of PC Act against the Member of Parliament in a



criminal Court, shall obtain the permission of Chairman of Rajya Sabha Speaker or the Lok Sabha, as the case may be.

43. Therefore, in the light of the aforesaid Judgments, the Ld. Trial Court erroneously observed that for want of Sanction under Section 197 Cr.P.C., the Prosecution must be rejected. ***The Sanction under Section 197 Cr.P.C. is not required*** and thus, the observation of the learned Trial Court that the Complaint is liable to be rejected on account of no sanction being obtained, is incorrect and erroneous.

44. The ***second aspect*** for consideration is ***whether any offence of cheating was proved*** from the evidence led by the parties.

45. The case of the Complainant/CW1 Vivek Garg, was that Respondent No. 2, Akhilesh Pati Tripathi who was the MLA from Model Town Assembly Constituency, Delhi, was a Public Servant and was entitled to medical reimbursement treatment for himself, spouse, mother and others, who are wholly dependent upon him. As per the Rules, the person is treated as *dependent* if the consolidated family income of those dependents is upto Rs.3500 per month. He asserted that Shri Abhay Nandan Tripathi, father of the Respondent No. 2 had retired as a School Principal and was drawing a monthly pension of Rs.15,000/- along with other income. Furthermore, the Accused in his oath/Election Affidavit of 2013 and 2015, had not declared his parents as dependent upon him. However, he fraudulently made false declaration by concealing material facts and got his parent's names mentioned in his Medical Facility Card to unlawfully grab the medical reimbursement payment.



46. The Respondent No.2 thus, cheated the Govt by taking a medical reimbursement of Rs. 2,01,600/- on account of treatment taken by the mother at BLK Hospital.

47. CW1 (PC)/Mark-4 is the Office Memorandum of the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India which defines the *member of family*. Rule 4 states that member of family in relation to a Government servant would include his *wife or husband, son or daughter, parents, brothers or sisters or any persons related to any of them by blood or marriage, whether they are dependent on the Government servant or not*. The respondent No.2 had filed Affidavits Ex.CW3/B (Colly) at the time of Election, he had submitted Affidavits dated 2013 & 2015 wherein he had declared that he has no dependants. Pertinently, he was unmarried and he did not claim his parents to be dependant.

48. However, for the purpose of Medical Reimbursement, the beneficial scheme under DGEHS details that the medical facility under DGEHS can be availed by spouse, parents, children, sister widowed/divorced/separated daughters, minor brothers, step mother, who shall be deemed to be dependent on the Government servant if they are normally residing with him/her and their income from all sources including pension and equivalent to DCRG benefit family pension, does not exceed Rs.3,500/- plus Dearness relief thereon drawn as on the date of consideration (w.e.f. 01.01. 2009).

49. Respondent No.2 undeniably made an Application Ex. CW-2/A declaring his parents as dependants. In the Application Form itself, at the bottom, it is written that the member of the family treated as dependant only if his/her (except spouse) income from the source is less than Rs.3,500/- per



month. On this Application, his Medical Facility Card bearing No. 218651 Ex. CW2/B in which he had declared his parents as his dependents, was issued.

50. The Respondent No. 2 wrote a letter to the Speaker, Delhi Legislative Assembly Ex.CW1(PC)/B wherein he stated that his mother Smt. Chandra Wati Devi was suffering from Thyroid problem and was undergoing treatment at a local hospital in the native village and her condition was deteriorating day by day and was developing serious health problems and because of his attachment to his mother, he requested his father to bring her to Delhi for proper and better treatment. She was brought by his father to Delhi in the first week of June, 2014 where they explored the facilities for her treatment. He got his mother examined at Bhagwan Mahavir Hospital on 21.06.2014 and then at G.B. Pant Hospital, Delhi on 25.06.2014 and for Expert advice in INMAS, Timarpur, Delhi on 04.07.2014.

51. Doctors at INMAS, Timarpur advised for the surgery for which he took his mother to Dr. B.L. Kapoor Hospital on 07.08.2014. She was admitted there and underwent surgery of total Thyroidectomy. According to the Rules, the Vidhan Sabha had paid the amount to Dr. BLK Hospital, Delhi.

52. A Letter Ex.CW2/I dated 31.07.2014 was written by the Respondent No. 2 to the Delhi Legislative Assembly, Vidhan Sabha seeking facility of CGHS cashless facility for the treatment of his mother Smt. Chandra Wati Devi at B.L. Kapoor Memorial Hospital. The amount of Rs.2,01,600/- as advance payment for the treatment of his mother was sanctioned by the Vidhan Sabha *vide* Letter dated 05.08.2014 Ex.CW-2/J and the said amount was also disbursed to him.



53. The Respondent No. 2 filed the reimbursement for Medical Claim in the sum of Rs.1,70,033/- *vide* his Form Ex.CW-4/A dated 15.01.2015 which was sanctioned *vide* Order Ex.CW-2/D, and was duly disbursed to him.

54. The Respondent No.2 has asserted that he thereafter, found that under the Rules, his parents were not entitled to receive such facilities under the Health Scheme. He immediately requested the Secretariat of Legislative Assembly in writing to strike off the names of his parents from DGEHS card. He has also requested the Secretariat to let him know if any further corrective measures are required to be taken. On this Letter, the names of the parents of the Respondent No. 2 were directed to be dropped from the list of DGEHS beneficiary.

55. It is also admitted that he returned the amount of Rs.1,70,033/- along with an interest of Rs.31,567/- to Delhi Legislative Assemble *vide* letter Ex.CW2/C.

56. The Complainant made a complaint to the Police on 09.05.2015 alleging of misappropriation of the amount by the Respondent No. 2 by claiming medical reimbursement for his mother, who is not dependent upon him.

57. There is nothing on record to show that the Respondent No. 2 ever got to know about this Complaint made to the Police. The Complaint under Section 200 Cr.P.C. along with an Application under Section 156(3) Cr.P.C., came to be filed in the Court on 11.08.2015 on which a Status Report was called by the Ld. Trial Court.

58. However, the Respondent No. 2 prior thereto, had already *vide* his Letter dated 09.07.2015, had requested Vidhan Sabha to inform him about the Rules and also expressed his willingness to return the money in case it



was found that the mother was not dependent upon him. Consequent to this, he returned the money on 16.09.2015 while the summons in the Complaint had been issued, subsequently, on 10.10.2015. From all this, it is quite evident that the Respondent No. 2 had no *mala fide* intention, but the error was due to inadvertence and ignorance.

59. The Respondent No. 2 had been summoned under Section 415 IPC for the offence punishable under Section 420 IPC. Section 415 IPC defines the offence of cheating as under:-

“Cheating.

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".”

60. From the bare perusal of the Section, it is evident that to constitute cheating, the person deceiving must have *fraudulent or dishonest intention* to induce the person so deceived to deliver any property.

61. It is vehemently contended that there being a Note on the Application Form stating that the dependants must not have income of more than Rs.3,500/-, and the Respondent No. 2 cannot claim inadvertence. In this regard, it may be noted that though this is a printed Proforma, but merely because there was a Note printed on the Form, cannot lead to any presumption that Respondent No.2 had the knowledge or that this in itself sufficient to impute knowledge and the requisite dishonest contention.



62. He has set up a defence that he was given to understand that his parents can be treated with DGEHS facilities of which he was a member in the capacity of an MLA. Being under the *bona fide* impression that his mother was dependent upon him, he had declared her as one of the dependent member aside from his father.

63. That there was no intention to *Cheat*, is also established from the sequence of events as detailed above, which makes it evident that the Respondent No. 2 had no intention at any point of time to fraudulently or dishonestly induce the Government to give him the medical reimbursement to which he was not entitled.

64. This aspect is further corroborated by the Letter dated 02.11.2015 addressed to SHO, PS Civil Lines by Legislative Assembly Secretariat wherein it is mentioned that Akhilesh Pati Tripathi, MLA, had ***voluntarily returned*** the amount claimed for medical treatment of his mother i.e. Rs.1,72,763/- along with penal interest of Rs.20,879/- on 16.09.2015 with due permission of the Speaker, even before he became aware of this Complaint. Moreover, the Legislative Assembly also accepted the inadvertence on the part of respondent No.2 and treated the matter as closed and did not propose to take any further action in this regard.

65. As has been mentioned, there has to be a deception underlined by fraudulent and dishonest intention deceive a person to deliver the property, which he would not have done but for such inducement. From this letter of the Legislative Assembly, it is evident that neither was there any inducement not there was any loss caused to the Legislative Assembly. *Clearly, it was a case of bona fide belief of the Respondent No. 2 that his dependent parents were entitled to reimbursement on his Medical Facility Card.*



66. The Ld. ACMM has therefore, rightly observed that from the evidence induced by the parties, there was no offence of cheating made out.

67. There is no infirmity in the Impugned Judgment and the Ld. ACMM has rightly dismissed the Complaint under Section 420/468/409 of IPC.

68. There is no merit in the present Appeal, which is hereby dismissed. The pending Applications are accordingly, disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

AUGUST 11, 2025

RS/N