

***THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

+CRIMINAL REVISION CASE No. 118 OF 2015

% 22-09-2023

#Soyam Krishna

....Petitioner/Appellant

Vs.

\$ The State of Telangana

.... Respondent/Respondent

!Counsel for the petitioner : Sri. Lakkadi Dayaker Reddy

Counsel for the Respondent : Public Prosecutor

<Gist :

>Head Note:

? Cases referred:

Nil

IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD

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JUDGMENT PRONOUNCED ON: 22.09.2023**THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : Yes

NAMAVARAPU RAJESHWAR RAO, J

THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO
CRIMINAL REVISION CASE NO.118 OF 2015

ORDER:

This Criminal Revision Case is directed against the judgment dt.27.01.2015 passed by the I Additional Sessions Judge, Adilabad in Criminal Appeal No.77 of 2012, wherein and where under, the learned Sessions Judge confirmed the judgment dt.31.07.2012 passed by the Judicial First Class Magistrate, Adilabad in C.C No.281 of 2009 against the revision petitioner/accused No.1.

2. Vide the aforesaid judgments, the petitioner/accused No.1 was convicted for the offence punishable under sections 417 and 420 of the Indian Penal Code and was sentenced to undergo simple imprisonment for a period of 2 years and to pay a fine of Rs.2,000/-. Though the Trial Court also found the accused No.2 i.e. the father of the petitioner herein, guilty for the offences charged, he was acquitted by the learned Sessions Judge in the appeal.

3. Brief facts of the prosecution case are as follows:

The revision petitioner, his father and the de-facto complainant are residents of Thosham village and their houses are situated adjacent to each other, and are close relatives. The

revision petitioner is a student and pursuing his graduation. He used to call the de-facto complainant daily to his house for watching TV and used to tell love stories to her and as usual, in the month of June 2007, he called the de-facto complainant to his house in the absence of his family members and with a false promise to marry her, had sexual intercourse with her and then onwards he continued the same for four or five occasions. Later, the de-facto complainant was taken to the hospital by her mother, where the doctor informed that she was carrying 6th month pregnancy, on which her mother questioned her as to who was responsible for the pregnancy and the de-facto complainant informed her that the petitioner is responsible for the same and he refused to marry her and thus cheated and deceived her. The father of the petitioner warned the de-facto complainant to take Rs.50,000/- from him and get the pregnancy aborted but she denied the same and lodged the complaint with the police. Thus, upon registering the crime and investigating into the matter, the police filed a chargesheet against the petitioner and his father and the Trial Court took cognizance.

4. In support of the prosecution case, PWs.1 to 9 were examined and Exs.P-1 to P-9 were got marked. No evidence was adduced on behalf of the accused.

5. On appreciating the material on record, the Trial Court found the accused guilty of the charged offences and convicted and sentenced the accused as stated supra.

6. Aggrieved thereof, the accused preferred the above criminal appeal before the learned Sessions Judge, and the learned Sessions Judge was pleased to acquit the petitioner's father, whereas, confirmed the conviction and sentence imposed on the petitioner. Aggrieved further, the petitioner is challenging the said judgments before this Court.

7. Heard the learned Counsel appearing for the revision petitioner and the learned Assistant Public Prosecutor appearing for the complainant/State. Perused the record.

8. It has been contended by the learned Counsel for the petitioner that both the Courts below erred in convicting the revision petitioner for the charged offences without properly appreciating the evidence on record. It was further contended that there was no promise of marriage made to the de-facto complainant at any point of time and the Courts below, despite

observing that the prosecution did not prove the same, erroneously convicted the revision petitioner. He further contended that the Courts below convicted the revision petitioner based on assumptions and presumptions and not on evidence, including the fact that no independent witness was examined, thus rendering the judgments of both the Courts as illegal. Accordingly, prayed to allow the revision case by setting aside the impugned judgments and acquit the revision petitioner.

9. Per contra, the learned Assistant Public Prosecutor appearing on behalf of the complainant/State had contended that the impugned judgments suffer no infirmity as they are well reasoned. He further contended that the DNA test of the child born to the revision petitioner and the de-facto complainant proved that the revision petitioner is the child's biological father. Thus, there was a physical relationship between the revision petitioner and the de-facto complainant. The evidence of the prosecution witnesses, coupled with the exhibits, made out a clear case against the revision petitioner. Therefore, prayed to dismiss the revision petition.

10. Upon a careful perusal of the record, it is evident that the trial Court observed that the element of deception or fraud at

the time of making a promise by the revision petitioner could be seen from the subsequent conduct of the revision petitioner when he refused to marry the de-facto complainant after the pregnancy. With this observation, the trial Court found that the ingredients of sections 417 and 420 of IPC were very much proved.

11. It is essential advert to the observations of the learned Sessions Judge at para Nos. 11 and 12 of its judgment, and the same are extracted and reproduced as hereunder:

“11. In this case both victim and A1 are close relatives and she believed A1 on his telling love stories to her that he will marry her. **Though there was no specific promise of marriage from the side of A1, she believed that he will marry her and in that belief she continued the relationship with him.** It was also proved that the male child born to the victim was the biological child of A1 and victim and even after that he denied to accept the same and refused to marry the victim.

Now it is to be seen what section 415 IPC shows:

“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”.

- 12)** In the case on hand, the victim girl would not have consented to the sexual relationship with A1, unless there is no belief of continuation of the relationship by way of marriage. Here she believe that A1 will definitely marry her, so she continued the said relationship and same falls under the second limb of section 417 IPC. Therefore, the ingredients of sections 417 and 420 IPC are proved against A1 only and the lower court has rightly decided the issue against A1 by convicting him for a period of six months and two years for the offences under sections 417 and 420 IPC respectively.”

12. Learned counsel appearing for the revision petitioner relied upon a decision of the High Court of Karnataka in Criminal Petition No.5865 of 2021, wherein a learned Single Judge, at para no.8 held as follows:

“8. *The Hon’ble Supreme Court also has categorically held in the case of S.W.*

PALANITKAR AND OTHERS VS. STATE OF BIHAR AND ANOTHER reported in **(2002) 1 SCC 241** at paragraph No.11 that mere breach of contract cannot give rise to any criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction and the time when the offence is said to have been committed. Here in this case, petitioner No.1 is said to have promised to marry respondent No.2, but failed to marry her. In view of the judgment of the Hon'ble Supreme Court, respondent No.2 has failed to make out a case of criminal intention of petitioner No.1 from the beginning for cheating the complainant. That apart, the aforesaid judgment of High court of judicature at Madras is applicable to the case where the promise of marriage will not attract Section 420 of IPC. This Court has held in Crl.R.P.No.223/2020 dated 24.02.2020 in the case of Sri.D.Ramesh Sinha Vs. State of Karnataka that as a promise of marriage and breach of contract will not attract the provisions of Sections 417 and 420 of IPC. Such being the case, nothing, continuing the proceedings or investigation against the petitioners is abuse of process of law and therefore, the same is liable to be quashed."

13. This court, having considered the rival contentions of both learned Counsel, is of the considered view that the

reasons assigned by the learned Sessions Judge would reveal that the learned Sessions Judge found that there was no specific promise of marriage from the side of the revision petitioner. At this juncture, it is appropriate to extract Sections 415 and 420 IPC. Section 415 IPC is already extracted supra.

Cheating is defined in section 415 of the IPC. Section 420 lays down the punishment for aggravated forms of cheating where the offender dishonestly induces a person so deceived to deliver any property or interfere with any valuable security. In other words, Section 420 specifically punishes aggravated cases of cheating. Any act of cheating, whether fraudulently or dishonestly, is punishable under Section 417. In contrast, Section 420 specifically punishes a case where cheating is done by dishonest inducement and its subject matter is property or valuable security. Under this section, the person so deceived is

- 1. Either induced to deliver any property to some other person, or*
- 2. Make, alter or destroy*
 - 1. The whole or any part of valuable security, or*
 - 2. Something that is signed, sealed and is capable of being converted into a valuable security*
- 3. A guilty intention must exist at the time of inducement or of delivery of property. Here, it is essential to prove that the parting of the property is by virtue of dishonest inducement of the accused. Moreover, the delivered property has to be of some monetary value to the person who has been cheated.*

14. The very ingredient which is necessary for the purpose of attributing section 415 and 420 of the IPC is that there must be a promise or deceit made to the victim by the accused. In the present case, despite the learned Sessions Judge finding that there was no specific promise of marriage made by the revision petitioner, the learned Sessions Judge upheld the conviction of the revision petitioner based on assumptions and presumptions as to his subsequent mindset and attitude. Further, the decision relied upon by the counsel for the revision petitioner is applicable to the present case as even in the present case, there is no intention of cheating the de-facto complainant at the beginning. The above observations are enough to hold that the prosecution failed to prove the guilt of the revision petitioner beyond all reasonable doubt. Therefore, the conviction and sentence imposed on the revision petitioner must be set-aside.

15. Accordingly, the criminal revision case is allowed. The judgment dt.27.01.2015 passed by the I Additional Sessions Judge, Adilabad, in Criminal Appeal No.77 of 2012, wherein and where under, the learned Sessions Judge confirmed the judgment dt.31.07.2012 passed by the Judicial First Class Magistrate, Adilabad, in C.C No.281 of 2009 against the

revision petitioner/accused No.1 are hereby set-aside and the revision petitioner is acquitted of the said offences. **However, it is made clear that if the de facto complainant/victim needs any maintenance for her family (if she leading life without any 2nd marriage) from the revision petitioner, the revision petitioner shall provide the same without taking the advantage of this judgment. If he fails to do so, the de facto complainant/victim is at liberty to take necessary steps against the revision petitioner.** The bail bonds of the petitioner shall stand cancelled. Fine amount, if any paid, shall be returned to the revision petitioner, after the expiry of appeal period.

Miscellaneous petitions, if any, pending shall stand closed.

NAMAVARAPU RAJESHWAR RAO, J

Date:22.09.2023
BDR