

(2012) 10 MP CK 0048

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 432 of 2011

Amitabh Shukla

APPELLANT

Vs

Nath Narayan Mishra and Another

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 415, 482
Hindu Marriage Act, 1955 — Section 12, 13(1)(ia), 13(1)(iii)
Penal Code, 1860 (IPC) — Section 420

Citation : (2013) ILR (MP) 514 : (2013) 1 MPHT 24

Hon'ble Judges : R.C. Mishra, J

Bench : Single Bench

Advocate : H.S. Dubey, for the Appellant; R.S. Patel, Shashank Upadhyay and Mr. Alok Vagrecha, Advocates for the Respondent No. 1 and Mr. R.K. Kesharwani, Panel Lawyer for the Respondent No. 2-State, for the Respondent

Final Decision : Allowed

Judgement

R.C. Mishra, J.—This is a petition, u/s 482 of the Code of Criminal Procedure (for short "the Code"), for quashing of the proceedings pending as Cri. (Complaint) Case No. 11349/2010 in the Court of Shri Sanjay Kumar Sahi, JMFC, Jabalpur. In that case, vide order dated 28-9-10, direction was given to issue process against the petitioner only in respect of the offence punishable u/s 420 of the IPC upon a complaint made by respondent No. 1, alleging commission of the offence by as many as 8 persons including Pratibha, the daughter of petitioner. On 9-7-2008, marriage of Pratibha was solemnized with Kamlesh an Advocate practicing at Jabalpur and son of respondent No. 1, at Suhagi, Distt. Rewa.

2. Relevant allegations may be summarised as under:-

The petitioner fraudulently obtained consent of respondent No. 1 for the marriage by representing that Pratibha was (a) hale and hearty, (b) a First Class Graduate in Science, and (c) a University topper in M.Sc. and employed as teacher whereas, in fact, she was (a) a schizophrenic, (b) not a post graduate,

and (c) unemployed."

3. Learned Counsel appearing on behalf of the petitioner has contended that his prosecution for the offence is an abuse of the process of the Court in view of the following background facts:-

(i) Before marriage, Pratibha had a brilliant academic career and passed B.A. Examination in the First Division in the year 2007;

(ii) At the time of marriage, she has not been suffering from any disease; and

(iii) Before approving the marriage proposal, the respondent No. 1 and his family members had, on as many as three occasions, discussed various matters with Pratibha so as to understand her nature and assess her level of intelligence. Thereafter,-

(a) On 25-5-2008, engagement ceremony was organised at Jabalpur.

(b) On 5-7-2008, Oli ceremony had taken place at Suhagi, Distt. Rewa.

(c) On 6-7-2008, at the Tilak ceremony performed in Bareti, Distt. Rewa, respondent No. 1 made a demand for Rs. 10 lacs and a Maruti Car in dowry, but the petitioner was able to give a cash amount of Rs. 5 lacs only.

(iv) Although, at the time of marriage, along with household articles and gold & silver ornaments, the petitioner had also gifted a car, bearing registration No. U.P. 17-AV-8643 yet, at the time of second Bidai, the respondent No. 1 and his family members reiterated the demand for a sum of Rs. 5 lacs. However, being a Teacher, he could manage only an amount of Rs. 1 lac for the purpose.

4. According to learned Counsel, it was due to non-fulfillment of the demand for additional dowry that a petition, under Sections 12 and 13(1) (i-a) and (iii) of the Hindu Marriage Act, 1955 for annulment of marriage/divorce, was filed before the Family Court at Jabalpur on totally a non-existent of so-called mental disorder and with a view to fortifying the same, a false complaint was preferred. He has further contended that even the uncontroverted allegations made in the complaint would not make out a case against the petitioner, as there was absolutely no oral or documentary expert/medical evidence on record to indicate that at the time of marriage negotiations, Pratibha was a patient of Schizophrenia or that an incorrect information as to her educational qualification or employment was given.

5. While opposing the prayer, learned Counsel for the respondent No. 1 have submitted that no interference with a legitimate prosecution is warranted under the inherent powers. For this, attention has been invited to (a) the averments made by Kamlesh in the petition for divorce, (b) corresponding testimony of Dr. Ashutosh Kapoor and Dr. Namita Shukla, examined as A.W. 3 and A.W. 4 respectively, and (c) contents of medical papers pertaining to treatment of Pratibha at Nagpal Neuro Medical Centre and Manjusha Nursing and Maternity Home at Jabalpur.

6. Reliance has also been placed on the decision in *Sadhu Ram and others Vs. Kishan Kumar*, wherein learned Single Judge of the Delhi High Court had declined to quash the complaint alleging that the accused had deliberately concealed the fact that his son had been suffering from a mental disease to obtain acceptance of his proposal for marriage of his son with complainant's daughter.

7. Before proceeding further, it is necessary to remind ourselves of the principles to be followed in quashing criminal prosecution under the inherent powers. In the leading decision of *R.P. Kapur Vs. The State of Punjab*, that has been followed in all subsequent pronouncements including the one rendered in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, the Supreme Court proceeded to enumerate the categories of cases, where the inherent jurisdiction to quash proceedings can and should be exercised. These are:-

(i) Where it manifestly appears that there is a legal bar against the institution or continuance, e.g., want of sanction;

(ii) Where the allegations in the First Information Report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) Where the allegations made against the accused person do constitute an offence alleged, but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases, it is important to bear in mind the distinction between a case, where there is no legal evidence or where there is evidence, which is manifestly and clearly inconsistent with the accusation made and cases, where there is legal evidence, which on its appreciation may or may not support the accusation in question.

(Emphasis supplied)

8. Apparently, the case in hand does not fall in category (i) (supra). Further, the view taken by a learned Single Judge of the Andhra Pradesh High Court in *L.H.V. Prasad and others Vs. Station House Officer and others*, to the effect that the offence of cheating defined u/s 415 would not be made out in a case pertaining to acceptance of proposal of marriage based on a false representation, has already been disapproved by the Supreme Court. The relevant observations may be reproduced as under:-

.... Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional...

Thus, so far as second part of Section 415 is concerned, "property", at no stage, is involved. Here, it is the doing of an act or omission to do an act by the

complainant, as a result on intentional inducement by the accused, which is material. Such inducement should result in the doing of an act or omission to do an act as a result of which the person concerned should have suffered or was likely to suffer damage or harm in body, mind, reputation or proper.

(Excerpted from Paras 7 and 8 of the judgment rendered in G.V. Rao Vs. L.H.V. Prasad and Others,

9. Accordingly, the case is also not covered by category (ii) (supra).

10. The point for determination, therefore, is as to whether the case against the petitioner falls under category (iii) (supra)?

11. The petition for annulment of marriage was filed on 12-1-10, whereas, the complaint was made on 19-4-10. Interestingly, the petition contained no averment as to misrepresentation regarding Pratibha's educational qualification or employment. Further, a bare perusal of the order dated 28-9-10, directing issuance of process against the petitioner, would reveal that in the preceding inquiry, no medical expert was examined and it was founded on the facts stated by respondent No. 1, namely, Nath Narayan Mishra (P.W. 1), his son Kamlesh (P.W. 4), Bhupendra Tiwari (P.W. 3), who is also a practicing Advocate and Ram Pratap Yadav (P.W. 2), a railway employee. However, evidence of all of them related to the events that followed the marriage.

12. Facts of the instant case are distinguishable from Sadhu Ram's case (supra), inasmuch as, in that case, there was prima facie evidence in the form of statement of Dr. G.C. Mujral, suggesting that the bridegroom had an attack some time in 1982 of manic depressive psychosis" and had remained admitted to G.B. Pant Hospital during the period from 22nd July to 9th August, 1983 whereas, in the present case, neither any medical expert, who had the occasion to examine or treat Pratibha before her marriage, nor any resident of Village Suhagi/Bareti/Rewa, who had the occasion to assess her behavioral pattern and intellectual emotional development, was produced to prove the events that preceded/attended the marriage.

13. Learned Counsel for the petitioner, still, while making reference to relevant extracts of the treatise on "Abnormal Psychology" by Irwin G. Sarason and Barbara R. Sarason (at Page 329 Chapter 11 of the Ninth Edition: "Schizophrenia and Other Psychotic Disorders") and "Comprehensive Textbook of Psychiatry" edited by Alfred M. Freedman & Harold I. Kaplan, has submitted that risk of development of Schizophrenia is correlated with the genetic relationship or genetic overlap. In this regard, he has also referred to the history recorded by Dr. Ashutosh Kapoor that Pratibha's mother, being a Schizophrenic, had committed suicide. However, fact of the matter is that Schizophrenia is a complex illness and its onset in most people is a gradual deterioration that occurs in early adulthood usually in a person's early 20s.

14. In Smt. Shanta Deb Vs. Indraneel Deb, cited by learned Counsel for the

petitioner, the Definition and Clinical Features of Schizophrenia given by Rustol Jal Vakeel at Page No. 1482 in 1973 Edition of Text Book of Medicine, were reproduced. Accordingly,-

the illness usually begins in the 15 to 25 years age group, although the onset may be much earlier or much later. It may be precipitated by some emotional stress, such as failure in an examination, frustration in a love affair, financial loss in business, professional difficulties or the demise of a near relative or friend. In many cases, there is no apparent cause for the onset of the disease.

15. The judgment in Smt. Shanta Deb's case (supra), also contains reference to an earlier decision rendered by D.M. Dharmadhikari, J. (as His Lordship then was) in Smt. Alka Sharma Vs. Abhinesh Chandra Sharma, wherein, the following excerpts of the same book were quoted:-

The medical opinion is that there are several types of Schizophrenia, of which "Paranoid Schizophrenia" is one of the conditions. This type of Schizophrenia is explained at Page 1485 of the above cited book as under:-

PARANOID SCHIZOPHRENIA

The illness usually begins late in life, between the age of 25 and 35 years.

16. It is pertinent to note here that in the divorce petition, age of Pratibha was reflected as 22 years. As such, she was around 20 years on the date of the marriage.

17. Further, as explained by the Apex Court in Ram Narain Gupta Vs. Rameshwari Gupta, , mere branding of spouse as Schizophrenic is not sufficient for establishing the ground of mental disorder as contemplated in Section 13 (1) (iii) of the Act and degree of mental disorder of the spouse must be proved to be such that petitioning spouse cannot reasonably be expected to live with other.

18. There is yet another aspect of the matter. Each case has to be decided on its own circumstances and, therefore, expert evidence given by Dr. Ashutosh Kapoor and Dr. Namita Shukla or the medical papers placed on record of the case relating to matrimonial dispute cannot be read in the criminal case. Further, even the finding of facts recorded by the Family Court on merits would also not have any bearing on the criminal case (Kishan Singh (D) through LRs. Vs. Gurpal Singh and Others,

19. The marks sheet (Annexure A-3) reflects that Pratibha had secured First Division in B.A. Final (Correspondence) Examination conducted by Awadhesh Pratap Singh University, Rewa. In his examination, u/s 200 of the Code, the respondent No. 1 did not say anything about misrepresentation as to Pratibha's post graduation in Science and none of the independent witnesses, viz., Bhupendra Tiwari and Ram Pratap Yadav had acted as mediator to the marriage. In such a situation, it was not possible to presume that the petitioner had made any misrepresentation as to educational qualification or employment status.

20. To sum up, there was no legal evidence, whatsoever, to establish prima facie that at the relevant point of time, the petitioner knew or had reason to believe that Pratibha had been suffering from Schizophrenia or that he had cheated the respondent No. 1 by making any false representation about qualification or employment so as to obtain his consent or approval for the marriage.

21. For these reasons. I am inclined to hold that the case is squarely covered " by category (iii) (supra), and criminal proceedings against the petitioner are attended with malafide for substantiating the claim for divorce. Consequently, the petition stands allowed and the proceedings in Cri. (Complaint) Case No. 11349/2010 (supra), are hereby quashed.