
(1997) 11 BOM CK 0052

In the Bombay High Court

Case No : Criminal Application No. 1608 of 1997

Atmaram Mahadu More

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 13-11-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 228
Penal Code, 1860 (IPC) — Section 376, 415, 417, 420

Citation : (1998) 5 BomCR 201 : (1998) 1 MhLj 37

Hon'ble Judges : B.B. Vagyani, J

Bench : Single Bench

Advocate : B.R. Varma, for the Appellant; A.M. Kanade, Public Prosecutor, for the Respondent

Judgement

B.B. Vagyani, J.—Heard learned Advocate Mr. B.R. Varma for the petitioner and Shri A.M. Kanade, learned Public Prosecutor for the State. Rule made returnable forthwith. Shri A.M. Kanade, learned Public Prosecutor waives notice for the State. With the consent of parties, matter is taken for final hearing.

2. The short point that arises (or consideration is whether the offence of cheating as defined u/s 415 of I.P.C. embraces cases in which no transfer of property is occasioned by the deception.

3. In brief facts giving rise to this criminal application are as under:

4. The prosecutrix is a divorced woman. The prosecutrix was given in marriage at Badoda, tq. Chopda, Dist., Jalgoan. However, prosecutrix and her husband could not pull on well. The said marriage was completely broken and ended in divorce.

5. After divorce, the prosecutrix started residing with her mother at village Pargoan. It is alleged by the prosecution that the accused, who is petitioner in the present application, came in contact with the prosecutrix. The casual acquaintance ultimately culminated into a love affair. It is alleged by the prosecutrix that petitioner-accused used to tell her that he would marry her. It is

further case of the prosecutrix that the petitioner-accused, after giving promise of marriage, sexually exploited the prosecutrix on number of occasions. According to the prosecutrix, every time before the sexual intercourse, the petitioner-accused allured the prosecutrix with the promise of marriage. The prosecutrix became prey to the petitioner-accused on account of promise of marriage and allowed him to have sex with her. The nature brought this indecent affair on the surface. The prosecutrix became pregnant. The prosecutrix asked the petitioner-accused to fulfil his promise of marriage, but the petitioner-accused flatly refused to marry prosecutrix.

6. The prosecutrix sought indulgence of P.S.I., attached to the Adavat Police Station by submitting a formal application dt. 21 st April 1992, wherein, the love affair has been disclosed. It appears that the indulgence didn't bear any fruits. The request of marriage put forth by the prosecutrix has been turned down by the petitioner-accused. Thereafter, the prosecutrix lodged a criminal complaint against the petitioner-accused on 30th April 1992 at Police Station, Adavat. On the basis of First Information Report, lodged by the prosecutrix, Crime No. 25/92 has been registered against the petitioner-accused u/s 376 of I.P.C. The Investigating Officer carried out necessary investigation. After completion of the investigation, the charge sheet came to be filed, The learned Magistrate committed the case to the Sessions Court as the offence punishable u/s 376 of I.P.C. is exclusively triable by the Court of Sessions.

7. On perusal of the relevant police papers, the learned Additional D.J. initially framed the charge u/s 376 of I.P.C. The trial proceeded with. The prosecution examined few witnesses, including the prosecutrix. During the pendency of the trial, the learned Additional Public Prosecutor, submitted an application u/s 216 of the Code of Criminal Procedure and moved the Additional Sessions Judge for additional charge u/s 417 of the I.P.C. The learned Additional Sessions Judge called the say of the petitioner-accused on the application filed by the State for additional charge. The petitioner-accused opposed the application for additional charge on the ground that the offences u/s 415 and 417 fall under the Chapter XVII which deals with offences against property. According to the petitioner-accused, no offence has taken place with regard to the property and therefore, application for additional charge u/s 417 of I.P.C. is liable to be rejected. 5. The learned Additional Sessions Judge, Amalner, Dist. Jalgaon, after hearing both the sides and taking into consideration the legal position allowed the application filed by the State, by his order dt. 21st July 1997. The additional charge u/s 417 of I.P.C. has been framed against the petitioner-accused.

8. Feeling dissatisfied with the impugned order dt. 21st July 1997, the present criminal application has been filed u/s 482 of the Code of Criminal Procedure for quashing the order of additional charge.

9. The learned Advocate Shri B.R. Varma vehemently submitted that Chapter XVI of I.P.C. is in respect of offences affecting the human body. The sexual offences fall under this chapter. The Chapter XVII of the I.P.C. is in respect of offences

against the property. The offence of cheating is defined u/s 415 of the I.P.C. and same is made punishable u/s 417 of the I.P.C. The offence of cheating squarely falls within the Chapter XVII of the I.P.C. which deals with the offence against property. Pointing out these two Chapters of I.P.C., the learned Advocate Mr. B.R. Varma proceeds to submit that the impugned order passed by the learned Additional Sessions Judge, suffers from illegality and therefore, it is liable to be quashed u/s 482 of the Criminal Procedure Code.

10. On the other hand, learned Public Prosecutor, Mr. A.M. Kanade, forcefully submitted that the definition of the offence of cheating also embraces cases in which no transfer of property is occasioned by the deception. The learned Public Prosecutor Mr. A.M. Kanade drew my attention to the wording of definition of cheating mentioned in section 415 of the I.P.C. and pointed out that the offence of cheating consists of two separate classes of acts.

11. According to Mr. Kanade, Public Prosecutor, the sexual intercourse with the woman, on giving false promise of marriage, squarely falls within the definition of cheating, as defined u/s 415 of the I.P.C., which is made punishable u/s 417 of the I.P.C. According to Mr. Kanade, challenge given by the petitioner-accused is without any merits and therefore, criminal application is liable to be rejected. Mr. Kanade, learned Public Prosecutor, in support of his submissions had relied upon *Marah Chandra Paul v. State of Tripura*, 1997 C.R.I. 715.

12. I gave anxious consideration to the rival submissions made at the Bar.

13. To constitute offence of cheating u/s 415 of I.P.C. following ingredients are necessary :-

(i) Deception of any person;

(ii) fraudulently or dishonestly inducing the person deceived to deliver any property to any person or to consent for that or any person shall return any property or;

(iii) intentionally inducing person deceived to do or omit to do anything which he would not do or omit if he was not so deceived and which act of omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

14. If the requirements for constituting the offence of cheating, as defined u/s 415 of I.P.C., are taken into account, the offence of cheating postulate two different classes of acts, which the person deceived may be induced to do. In the first place, he may be induced fraudulently or dishonestly to give any property to any person or to consent that any person shall return any property. This is the one class of acts. The second class of acts, as envisaged by the definition of cheating, postulates 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 inducement must be fraudulent or dishonest and in the second class of acts, inducement must be intentional. The definition of the cheating u/s 415 of I.P.C.

clearly takes in its sweep some cases in which transfer of property is occasioned by the deception and also some cases in which no transfer of property is occasioned by the deception. Cases in which no property is occasioned by deception also squarely come within the meaning of section 415 of the I.P.C. The very language used in the definition of cheating would clearly point out that the offence of cheating also embraces cases in which no transfer of property is occasioned by deception. The latter part of the definition of cheating given u/s 415 of the I.P.C. would clearly point out that the cases in which damage or harm is caused or likely to cause to the person deceived in body, mind and reputation, on account of intentional inducement, would fall within the meaning of the offence of cheating.

15. In order to constitute such type of offence in which transfer of property is not involved, the intention is the gist of the offence. The person cheated must have been induced to do a particular act which he would not have done or to omit to do an act which he would not have done, owing to the deception practised on him. No doubt intention at the time of offence and the consequence of the act of omission are required to be considered in order to find out whether the offence of cheating is committed. If ingredients to constitute offence of cheating are taken into account, the arguments of learned Advocate Mr. B.R. Varma are liable to be rejected.

16. The learned Public Prosecutor Shri A.M. Kanade has rightly dissected the ingredients to constitute an offence of cheating, as defined u/s 415 of the I.P.C. and pointed out that the prosecutrix was intentionally induced to submit to sexual intercourse on false promise of marriage. The overt act on the part of the petitioner-accused has certainly caused damage or harm in body, mind and reputation of the person deceived.

17. If phraseology used in the definition of the offence of cheating is subjected to close scrutiny, it is beyond doubt clear that the indulgence of the petitioner-accused in sex with prosecutrix by means of intentional inducement after giving false promise of marriage squarely falls within the mischief of the definition of cheating as defined u/s 415 of I.P.C. which is punishable u/s 417 of I.P.C. In the instant case, it is clearly seen from the copy of the F.I.R. dt. 30-4-1992 that the petitioner-accused intentionally induced the prosecutrix to submit to intercourse, by giving false promise of marriage. The matter doesn't last here. The prosecutrix has also testified in her oral evidence that she used to oppose to the act of intercourse but because of promise of marriage which was given by the petitioner-accused, she allowed him to have intercourse with her. The averments made in F.I.R., coupled with sworn testimony of the prosecutrix, would clearly lay a foundation to constitute an offence of cheating punishable u/s 417 of the I.P.C. In view of this, it cannot be said that there is no basis or foundation for additional charge framed u/s 417 of the I.P.C.

18. From the impugned order passed by the Additional Sessions Judge, Amalner, Dist. Jalgaon, it is clearly revealed that the learned Additional Sessions Judge has

taken into consideration the allegations made in the F.I.R. and sworn testimony of the prosecutrix and therefore, framed additional charges u/s 417 of the I.R.C. The ratio in *Marah Chandra Paul-appellant v. The State of Tripura-respondent*, 1997 C.R.I. 715 lends a very strong support to the view taken by the learned Additional Sessions Judge in the matter of framing of additional charge u/s 417 of the I.P.C.

19. The learned Advocate Shri B.R. Varma for the petitioner-accused, has made a serious grievance that a great prejudice has been caused to the petitioner-accused on account of framing of additional charge u/s 417 of the I.R.C. According to Mr. B.R. Varma, learned Additional Sessions Judge, first time decided, after oral evidence of prosecutrix to frame the additional charge u/s 417 of the I.R.C.

20. According to Mr. B.R. Varma, Advocate for the petitioner-accused, the learned Sessions Judge, Jalgaon, should not be allowed to fulfil the lacunae in the prosecution case by framing of additional charge u/s 417 of the I.R.C. The submissions of the learned Advocate Shri B.R. Varma do not appeal to the reason. No doubt, the Investigating Agency registered crime u/s 376 of the I.R.C. on the basis of First Information Report lodged by the prosecutrix. It is also true that the learned Additional Sessions Judge initially framed charge u/s 376 of I.R.C. and proceeded with the trial. After conclusion of the oral evidence of the prosecutrix, the learned A.P.P. submitted application for framing of the additional charge u/s 417 of the I.R.C. On hearing both the sides, the learned Additional Sessions Judge thought it fit to frame additional charge u/s 417 of the I.R.C. The First Information Report lodged by the prosecutrix would clearly reveal that the prosecutrix has made a complaint since beginning that the petitioner-accused gave promise of marriage to her that he would maintain her and thereafter by intentional inducement deceived the prosecutor and allured her to submit to sexual intercourse. Under the circumstance, I cannot be said that the learned Additional Sessions Judge tried to fill up the lacunae in the prosecution's case.

21. In view of this position, the submissions made by the learned Advocate Mr. B.R. Varma, for the petitioner-accused are totally hallow. It cannot be said that prejudice is caused to the accused on account of the additional charge. The material on record would clearly indicate that there is sufficient material for the purpose of framing additional charge u/s 417 of the I.R.C. It is legally permissible for any Court to alter or add any charge at any time, before judgment is pronounced. In the instant case, the learned Additional Sessions Judge has rightly and legitimately taken a recourse to the provisions of section 216 of the Code of Criminal Procedure, 1973 for the purpose of framing additional charge u/s 417 of the I.R.C. The framing of additional charge u/s 417 of the I.R.C. is perfectly justified if regard is had to allegations made in the F.I.R. and the sworn testimony of the prosecutrix.

22. The learned Advocate Mr. B.R. Varma drew my attention to the case of *State of Kerala Vs. A. Pareed Pillai and Another*, and submitted that to hold a person

guilty of the offence of cheating, punishable u/s 420 of I.R.C., the prosecution is required to show that the intention of the accused was dishonest at the time of making the promise and dishonest intention is not a matter of inference. The reliance on the aforesaid case of Supreme Court is a feeble attempt on the part of petitioner-accused to get rid of the clutches of the law. It is the province of learned Additional Sessions Judge to marshal the oral evidence and to appreciate evidence adduced by the prosecution in order to find out as to whether petitioner accused has committed offence of cheating punishable u/s 417 of I.R.C. The petitioner -accused can very well agitate this point before the learned Additional Sessions Judge.

23. Under the circumstance, case relied upon by the learned Advocate Mr. B.R. Varma does not at all come to the rescue of the petitioner-accused. The challenge given to the impugned order passed by the learned Additional Sessions Judge, Amalnar, Dist. Jalgaon, is devoid of any merits. In the result, criminal application stands rejected. Rule is discharged.

24. Application dismissed.