
(2011) 03 AP CK 0065

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 138 of 2006

Bomma Chakravarthy Goud @ Amit Chakravarthy

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 384, 415, 417, 420, 468

Citation : (2012) 1 ALT(Cri) 56

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : C. Raghu, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

K.G. Shankar, J.—The unfortunate accused was convicted for the offence u/s 417 of the Indian Penal Code ("IPC" for short) by the learned IX Additional Chief Metropolitan Magistrate, Hyderabad. The accused was charge sheeted and was charged for the offence u/s 468 and 420 IPC. The prosecution examined 4 witnesses. Exs. P-1 to P-8 were marked by the prosecution. The learned trial Judge found the accused not guilty of the offence u/s 468 IPC, but convicted the accused for the offence u/s 417 IPC. Simple imprisonment for one year was recorded against the sole accused. Aggrieved by the same, the accused preferred an appeal in Criminal Appeal No. 244 of 2005 before the Metropolitan Sessions Judge, Hyderabad. The learned Metropolitan Sessions Judge confirmed the conviction and sentence. Aggrieved by the same, the present revision is laid.

2. The accused was involved in Crime No. 136 of 1989 of Amberpet Police Station, Hyderabad for the offences u/s 384 and 420 IPC. It ultimately was numbered as C.C. No. 508 of 1993. It would appear that the accused was ultimately acquitted in C.C. No. 508 of 1993.

3. However, while C.C. No. 508 of 1993 was pending for disposal, the accused was selected for the post of the Sub-Inspector of Police. The accused was to fill

up an attestation form after his selection. Column No. 12 of the attestation form as shown in Ex. P-12 contemplates that the accused should state if he was ever arrested by police, convicted by a Court or was detained for any offence. A note is appended to Column No. 12 of the attestation form that in the event the selected applicant is detained, arrested, convicted or debarred subsequent to the filing of the attestation form, the applicant should immediately bring it to the notice of the State Level Recruitment Board or the concerned authority. The note further contemplates that in the event the answer to the main question whether the applicant was ever arrested by police, convicted by a Court or was detained for an offence is in the affirmative, the applicant should state the details of such arrest etc.

4. The accused admittedly did not state in Column No. 12 that he was involved in C.C. No. 508 of 1993 relating to Crime No. 136 of 1989 of Amberpet Police Station. C.C. No. 508 of 1993 was pending by the date of the appointment of the accused. Subsequently, it came to the notice of the employer of the accused that the accused was involved in a criminal case. Consequently, he was removed from service. It would appear that the accused has taken steps for redressal by approaching the State Administrative Tribunal.

5. So far as the present case is concerned, a complaint was lodged against the accused for making such a false statement in Column No. 12 of the attestation form. The accused, therefore, was charge sheeted. After full-fledged trial, the accused was found not guilty of the offence u/s 468 IPC, but was found guilty of the offence u/s 417 IPC.

6. Sri C. Raghu, learned Counsel for the revision Petitioner contends that the offence of cheating has not been made out by the conduct of the revision Petitioner/accused and that the conviction of the accused for the offence u/s 417 IPC is incorrect. Cheating was defined u/s 415 IPC as:

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"
Explanation....

The ingredients of Section 415 IPC are that deceived person must be induced to deliver any property or must consent that any other person should retain any property. In the present case, there is no involvement of any property. The accused did not receive any property and did not induce the Government to permit him to retain such property.

7. The other limb of Section 415 IPC is that the person deceiving shall intentionally induce the victim to do or omit to do an act which the deceived would not have done but for the deception to constitute the offence of cheating.

The learned Counsel for the accused pointed out that the note appended to column No. 12 of the attestation form did not recite that if the answer to the query is in the affirmative, the accused would not be eligible for appointment as a Sub-Inspector of Police. Added to it, P.W. 1, who is the personal assistant to the Commissioner of Police, admitted that the rules do not envisage that if the accused had been arrested, convicted or detained, as the case may be, he would automatically have become ineligible for appointment as a Sub-Inspector of Police.

8. This is the point on which the learned Counsel for the accused heavily relies upon. His contention is that although the accused did not furnish correct information in Column No. 12 of the attestation form, it is not tantamount to cheating within the meaning of Section 415 IPC and that the accused is not liable for punishment u/s 417 IPC. I already read out Section 415 IPC. The necessary and underlying ingredient of cheating is the deception with a view to have any property to be delivered by the deceived or forcing the deceived to do or omit to do an act which the deceived would not have done otherwise. In the present case, assuming that the accused stated that he was involved in a criminal case, in view of the evidence of P.W. 1, it is clear that the accused nevertheless would have been appointed as Sub-Inspector of Police. The mere fact that there was a case pending against the accused would not have gone in the way of the appointment of the accused as a Sub-Inspector of Police according to P.W. 1 himself. Where the correct information would not have created a result opposite the result which the accused had obtained by giving false information, furnishing of false information cannot be considered as cheating punishable u/s 417 IPC.

9. I wholly agree with the contention of the learned Counsel for the accused that the accused has not committed the offence u/s 417 IPC. The trial Court and the appellate Court went by the assumption that for the appointment of Sub-Inspector of Police, the record of the applicant should be clean. I am concerned with the commission of the offence u/s 417 IPC and not with the parameters which the appointing authority should adopt to decide the case of the accused as a Sub-Inspector of Police. Viewed in this angle, I am afraid that the trial Court and the appellate Court erred in appreciating the legal position. The prosecution failed to show that the accused committed the offence u/s 417 IPC.

10. It would appear that the accused hails from a decent family and that the accused was a former practicing advocate. These factors would have been relevant had the accused been convicted. Where the accused is found not guilty, the background of the accused and the nature of the offence committed by him are irrelevant.

11. For the reasons set out, I hold that the prosecution failed to establish that the accused committed the offence u/s 417 IPC. The conviction recorded by the trial Court and confirmed by the appellate Court against the accused for the offence u/s 417 IPC is set aside. The accused is acquitted of the offence u/s 417 IPC. His bail bonds shall stand discharged. The Criminal Revision Case is allowed

accordingly.