
(2016) 02 CAL CK 0154
In the Calcutta High Court
Case No : Criminal Revision No. 278 of 2012.

**Gargi Chakraborty - Petitioner @HASH The State of West Bengal and
another - Opposite Parties**

Date of Decision : 26-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204, Section 397, Section 401,
Section 482
Penal Code, 1860 (IPC) — Section 417

Citation : (2017) 1 AICLR 358 : (2016) 4 CalCriLR 173

Hon'ble Judges : Ranjit Kumar Bag, J.

Bench : Single Bench

Advocate : Mr. Shibaji Kumar Das and Ms. Deblina Lahiri, Advocates, for the
Petitioner; Mr. Sanjoy Mukherjee, Advocate, for the Opposite Party No. 2

Final Decision : Disposed Off

Judgement

Ranjit Kumar Bag, J. - The petitioner has preferred this revision under Section 401 read with Section 482 of the Code of Criminal Procedure praying for quashing of the proceeding of case no.C/9444 of 2011 (corresponding to T.R no.1121 of 2011) pending before the court of learned Judicial Magistrate, 2nd Court, Alipore and challenging the order dated November 9, 2011 passed by the said learned Magistrate in the said complaint case, by which learned Magistrate issued process against the petitioner for the offence under Section 417 of the Indian Penal Code.

2. It appears from the materials on record that the opposite party no.2 filed a petition of complaint against the petitioner before the court of learned Chief Judicial Magistrate, Alipore on the basis of which Complaint Case no.C-9444 of 2011 was started. The complaint case was transferred to the court of learned Judicial Magistrate who examined the opposite party no.2 and his witness and issued process against the petitioner for the offence under Section 417 of the Indian Penal Code.

3. Mr. Shibaji Kumar Das, learned counsel for the petitioner contends that the

allegations made by the opposite party no.2 do not indicate that the petitioner has committed any offence under Section 417 of the Indian Penal Code. By referring to the averments made by the opposite party no.2 in the petition of complaint, Mr. Das submits that there was love affair between the opposite party no.2 and the petitioner, but the said love affair did not culminate in the marriage. According to Mr. Das, there was no intention on the part of the petitioner to deceive the opposite party no.2 from the very inception of relationship between the parties and as such no offence of cheating is made out against the petitioner. Mr. Das also submits that no injury is caused to the reputation of the opposite party no.2 for failure on the part of the petitioner to contract marriage. Mr. Das has relied on the decisions of the Supreme Court in "Hridaya Ranjan Prasad Verma v. State of Bihar" reported in (2000) 4 SCC 168 and "V.Y. Jose v. State of Gujarat" reported in (2009) 3 SCC 78 in support of the contention that the contents of the petition of complaint do not disclose any offence under Section 417 of the Indian Penal Code and as such the criminal proceeding against the petitioner is liable to be quashed.

4. Mr. Sanjoy Mukherjee, learned counsel for the opposite party no.2 submits that the allegations made by the opposite party no.2 in the petition of complaint unerringly point out commission of offence under Section 417 of the Indian Penal Code. The specific contention of Mr. Mukherjee is that the petitioner had the intention to deceive the opposite party no.2 from the very inception of relationship and as such this Court will not invoke the inherent power under Section 482 of the Code of Criminal Procedure to quash the instant criminal proceeding.

5. The criteria laid down by the Supreme Court in paragraph 102 of "State of Haryana v. Bhajanlal" reported in 1992 SCC (Cri.) 426 for quashing of the criminal proceeding are as follows:

"102 ??????..

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognisable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognisable offence but constitute only a non-cognisable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of

the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

6. In view of the above proposition of law laid down by the Supreme Court the present criminal proceeding is liable to be quashed if the allegations made by the opposite party no.2 in the petition of complaint taken in its entirety do not disclose commission of offence under Section 417 of the Indian Penal Code. It is, thus, relevant to consider the allegations made by the opposite party no.2 in the petition of complaint to decide whether the offence under Section 417 of the Indian Penal Code is made out against the petitioner.

7. It appears from the petition of complaint that the petitioner is holding Masters degree from NIT, Durgapur and she is working in a reputed software company. The opposite party no.2 has done his Masters and Ph.D. from Indian Statistical Institute and he is working in a multinational company. It is alleged in the petition of complaint that in the year 2007 the opposite party no.2 was working as a Research Scholar in Indian Statistical Institute and the petitioner joined in a project in the said Institute after completing her B. Tech. in Electrical Engineering. The contents of the petition of complaint disclose that the petitioner introduced herself to the opposite party no.2 for coaching on some chapters from a networking book. It is alleged that the petitioner allured the opposite party no.2 by sending some text in the cell phone followed by conversation over cell phone. It is further alleged that in the month of July, 2007, the petitioner introduced her parents to the opposite party no.2 as confirmation of their relationship. It is also alleged that the petitioner got physical intimacy with the opposite party no.2 showing exhibition of confirmation of love between the parties.

8. The contents of the petition of complaint disclose that the petitioner could not qualify the GATE examination in the year 2008 and the opposite party no.2 used to come to Calcutta every week from Bangalore to give coaching to the petitioner out of his love. It is alleged in the petition of complaint that ultimately the petitioner failed to get through entrance test of Indian Statistical Institute, though she cleared entrance test for M. Tech. in NIT, Durgapur. It is alleged that

the petitioner developed some relationship with one professor by name Subrajit Das which was ultimately brought to the notice of the opposite party no.2 by the wife of said Subrajit Das. It is further alleged that the marriage between the petitioner and the opposite party no.2 was settled on August 5, 2011 after negotiation between the parents of both parties. It is also alleged that the petitioner secured lucrative job after obtaining Masters in June 2010 in a reputed software company at the initiative of the opposite party no.2. On April 20, 2011, the petitioner conveyed her inability to the opposite party no.2 for solemnization of marriage as scheduled earlier and thereby the marriage between the parties did not take place. It is specifically alleged in the petition of complaint that the petitioner secured her academic career and lucrative job by deceiving the opposite party no.2 in disguise of love and that the petitioner has caused injury to the reputation of the opposite party no.2 by refusing to marry the opposite party no.2. The opposite party no.2 has prayed before the court of learned Magistrate for issuance of process against the petitioner for the offence under Section 417 of the Indian Penal Code. The opposite party no.2 and his brother were examined by learned Magistrate under Section 200 of the Code of Criminal Procedure and thereafter learned Magistrate issued the process against the petitioner for the offence under Section 417 of the Indian Penal Code.

9. Now, I would like to deal with the Authorities cited on behalf of the petitioner to decide whether those Authorities will be applicable in the facts of the present case. In "Hridaya Ranjan Prasad Verma v. State of Bihar" reported in (2000) 4 SCC 168 three out of six brothers executed one registered sale deed in favour of the secretary of a co-operative society for selling out paternal property at a consideration of R.16,00,000/-. The cheques which were handed over by the vice president of the said cooperative society, were dishonoured for insufficient fund. Out of six brothers, one brother instituted civil suit for partition in respect of the property, which was sold out by other brothers. The brothers who sold out the property initiated criminal proceeding against the secretary and the vice president of the cooperative society for the offence under Sections 406/420/120B of the Indian Penal Code. Similarly, the counter case was initiated for the offence under Sections 418/420/423/469/504 and 120B of the Indian Penal Code. The background facts of this Report are clearly distinguishable from the facts of the present case. However, I would like to rely on paragraphs 13, 14, 15 and 16 of the Report where the Supreme Court has laid down that the offence of cheating is not made out in the absence of any intention to deceive from the very inception of the transaction. It is relevant to quote paragraphs 13, 14, 15 and 16 of the said Report, which are as follows:

"13. Cheating is defined in Section 415 of the Code as "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 - A dishonest concealment of facts is a deception within the meaning of this Section.

14. The section requires - (1) Deception of any person.

(2)(a) Fraudulently or dishonestly inducing that person

(i) to delivery any property to any person; or

(ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person 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.

15. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the 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 inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

16. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning that is, when he made the promise cannot be presumed."

10. In "V.Y. Jose v. State of Gujarat" reported in (2009) 3 SCC 78 the Supreme Court has laid down in paragraph 12 when the offence of cheating is not made out. It is relevant to quote paragraph 12, which is as follows:

"12. For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out."

11. In the instant case, the averments made in the petition of complaint by the opposite party no.2 indicate that there was relationship between the petitioner and the opposite party no.2 from the year 2007. The fact that the opposite party no.2 used to give coaching to the petitioner for securing good result in the examination cannot be construed that the opposite party no.2 was deceived by the petitioner on the pretext of love. On an analysis of the averments made in the petition of complaint, I find that the petitioner got admission in M. Tech. in NIT, Durgapur and secured a job in a reputed software company by dint of her merit and hard work. The withdrawal of consent of the petitioner for performance of marriage between the parties as scheduled on August 5, 2011 cannot be construed to infer that the petitioner had the intention to deceive the opposite party no.2 from the very inception of relationship between the parties. On an analysis of the averments made in the petition of complaint, I do not think that any harm can be caused to the reputation of the opposite party no.2 for withdrawal of consent on the part of the petitioner for solemnization of marriage on August 5, 2011 as scheduled earlier. Thus, the allegations made by the opposite party no.2 in the petition of complaint do not indicate commission of any offence punishable under Section 417 of the Indian Penal Code on the part of the petitioner. Since the contents of the petition of complaint do not disclose commission of any offence punishable under Section 417 of the Indian Penal Code, I am of the view that continuation of the criminal proceeding against the petitioner will be an abuse of the process of the court. By applying the test laid down by the Supreme Court for formation of opinion about the commission of offence of cheating in "Hridaya Ranjan Prasad Verma v. State of Bihar" (supra) and "V.Y. Jose v. State of Gujarat" (supra) I have no hesitation to hold that the offence punishable under Section 417 of the Indian Penal Code is not made out against the petitioner from the averments made by the opposite party no.2 in the petition of complaint. The logical inference of my entire above observation is that the criminal proceeding against the petitioner is liable to be quashed by applying the criteria laid down by the Supreme Court in "State of Haryana v. Bhajanlal" (supra).

12. Accordingly, the criminal proceeding being C-9444 of 2011 corresponding to T.R. no.1121 of 2011 pending before the court of learned Judicial Magistrate, 2nd Court, Alipore, is quashed.

13. Criminal revision is, thus, disposed of.

14. The Department is directed to send down a copy of this judgment and order to the court below for favour of information and necessary action.

15. Urgent photostat certified copy of this judgment, if applied for, shall be given to the learned counsel for the parties on priority basis upon compliance of all formalities.