

(2019) 03 MP CK 0120

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 3510 Of 2017

Sampatti Singh

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 28-03-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 397, 401

Indian Penal Code, 1860 — Section 34, 326, 415, 420, 467, 468

Citation : (2019) 03 MP CK 0120

Hon'ble Judges : Rajendra Kumar Srivastava, J

Bench : Single Bench

Advocate : B.K. Mishra, Pradeep Sahu

Final Decision : Allowed

Judgement

1. Petitioner/accused has filed this criminal revision under Section 397 read with Section 401 of Cr.P.C. to set aside the order dated 11.09.2017 passed by Additional Sessions Judge, Shahdol, in Session Trial No. 59/2013, whereby Additional Sessions Judge, Shahdol framed the charges under Sections 420, 467 and 326 read with Section 34 of IPC against the petitioner/accused.

2. Case of the prosecution is that on 31.01.2013 at Public Health Center Gohparu, Sterilization Camp was organized. Petitioner/accused and other person had conducted some forged sterilization of villagers. Brajesh Paliha made a complaint against other accused person regarding forged sterilization on 01.02.2013. Brajesh Paliha submitted a complaint before Chief Executive Officer, Janpad Panchayat, Gohparu, District Shahdol that he is unmarried and he is resident of Village Budnwah. Co-accused-Nand Kumar and Khel Singh took him to the Community Health Centre Gohparu, where he was intoxicated and his sterilization was done in the name of one Vijay Singh. He has filed a written complaint before In-charge of Police Station Gohparu, District Shahdol for the same. Inquiry was conducted and FIR was lodged on 01.02.2013 under Sections 420, 467, 468 and 326 of IPC against co-accused Nandkumar Singh and Khel

Singh. During the investigation, it was found that present petitioner-accused was also involved in this case as she was the counselor. Thereafter, charge sheet has also been filed against the present petitioner-accused. The learned trial Judge has considered the material available on the record and framed the charges against the petitioner/accused.

3. Learned counsel for the petitioner submits that learned Court below committed grave error while framing the charges against the petitioner/accused. The Court below has not considered the departmental enquiry. The Health Department made an enquiry and found that the petitioner/accused was not present at that camp. There is no material available on the record against the present petitioner/accused. Complainant did not make any allegation against the petitioner/accused. The statement under Section 161 of complainant was recorded during the investigation. No allegation is mentioned in his statement against the petitioner/accused. Petitioner/accused is made as an accused only on the basis of her signature on the application and consent letter for sterilization of complainant, but it is evident that she had never make any signature in application. At the time of filing of charge sheet, the police has made forged signature of the present petitioner/accused. So there is no material available against the present petitioner/accused on the record. He prays for quashing the charge against the petitioner/accused.

4. Learned counsel for the respondent/State opposes the submission made by learned counsel for the petitioner, and he prays for dismissal of this revision.

5. Heard both the parties and perused the case diary.

6. It is evident from the record that one Brajesh Paliha made a complaint before the in-charge of Police Station, Gohparu that he is unmarried and he is resident of Village Budhanvah, Tehsil Gohparu. Co-accused-Nand Kumar and Khel Singh had taken him to the Community Health Centre, Gohparu, where he was intoxicated and his sterilization was done. Dr. R.K. Shukla-Medical Officer Community Health Centre, Gohparu also submitted an application to register the FIR to register the case against co-accused Nand Kumar and Khel Singh on 02.02.2013. It is mentioned in the complaint that a sterilization camp was conducted at the Community Health Centre, Gohparu and where Nandkumar Singh and Khel Singh brought a person for sterilization in that camp. They have submitted an application and consent letter for said person filling with name as Vijay Kumar S/o Ram Singh, R/o Gram Khudwar, aged about 27 years. Sterilization of Vijay Kumar was done and he has received Rs. 1,100/- after marking his signature as Vijay Kumar but it is found that person was not Vijay Kumar, whereas he was Brejesh Paliha S/o Maiku Paliha R/o Budhanwah. So Nandkumar Singh and Khel Singh had played fraud by bringing Brajesh Paliha for sterilization in place of Vijay Kumar. They have created obstruction in Official work and also tarnish the image of national program. Thereafter investigation was conducted and application for sterilization and consent letter were seized from the possession of Community Health Centre, Gohparu. Statement of

witnesses were recorded, Ration Card and other documents in regard of Brajesh Paliha were seized. After completion of the investigation, charge sheet has been filed against the petitioner/accused on this ground that she was a counselor of this incident.

7. In this regard under Sections 415 and 420 of IPC provides as under:

"Section 415 in The Indian Penal Code

415. 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.-A dishonest concealment of facts is a deception within the meaning of this section.

Section 420 in The Indian Penal Code

420. Cheating and dishonestly inducing delivery of property.-Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

8. It is evident from the record that complainant did not make any allegation against the present petitioner/accused and there is no material available on the record that present petitioner/accused was present at the time of incident and she met Brijesh Paliha before or at the time of incident. There is no material available on the record that the complainant- Brajesh Paliha alleged anything in this regard against this petitioner/accused. Therefore, there is no question of cheating. Nothing is found in the statement of complainant/Brajesh Paliha against present petitioner/accused which shows that present petitioner/accused convinced him to take part in sterilization. So ingredient of cheating is not available against the present petitioner/petitioner. Therefore, no question arises for cheating and forged of documents, as present petitioner/accused was not present at the time of incident. As she did not meet with complainant prior or after the incident, therefore, it can not be said that she has any intention to make sterilization of Brajesh Paliha. When complainant/Brajesh Paliha did not allege any thing against the present petitioner/accused then present petitioner/accused can not be implicated under the such serious offence under Sections 420, 467 and 326 read with Section 34 of IPC.

9. The learned trial Judge has relied upon the some judgments of the Hon'ble

Apex Court and this Court thinks it is appropriate to mention the same as under:-

1. State of Bihar Vs. Ramesh Singh reported in AIR 1979 SC 2018.
2. Union of India Vs. Prafulla Kumar reported in AIR 1979 SC 366
3. Supdt. And Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja reported in AIR 1980 SC 52.
4. State of Maharashtra Vs. Priyasharan Maharaj reported in AIR 1997 SC 2041.
5. Hem Chand Vs. State of Jharkhand reported in (2008)5 SCC 113.

10. It is held in all these judgments that some material must be available on the record on which basis charges can be framed. It is evident that petitioner/accused was not implicated as an accused in the FIR which is lodged by complainant/Brajesh Paliha. Medical Officer Committee Health Centre also lodged a complaint about this incident for registering the offence and there is nothing mentioned about any allegation against the present petitioner/accused. As when complainant did not allege any fact against present petitioner/accused for cheating even then charges were framed against the petitioner/accused under Sections 420 and 467 of IPC. There is no material available on the record on the basis it can be ascertained that at the time of incident or before of the sterilization of complainant she was present there. Therefore, it can not be inferred that there was any intention of petitioner/accused to commit the sterilization of complainant/Brajesh Paliha.

11. In view of the forgoing discussions, it is evident that the learned trial Judge committed error to frame the charges against present petitioner/accused. Therefore this revision petition is allowed and the order dated 11.09.2017 passed by Additional Sessions Judge, Shahdol, in Session Trial No. 59/2013 against the present petitioner/accused, is set aside. Petitioner-Smt. Sampatti Singh is hereby discharged from the charges under Sections 420, 467 and 326 read with Section 34 of IPC.