

**(2005) 02 CAL CK 0020**  
**In the Calcutta High Court**  
**Case No : C.R.R. No. 1203 of 2003**

Shibnath Mukherjee and Others

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

**Date of Decision :** 04-02-2005

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 200, 204, 468(1), 468(2), 469  
Penal Code, 1860 (IPC) — Section 23, 30, 415, 416, 417  
Special Marriage Act, 1954 — Section 36

**Citation :** (2005) 4 CHN 447

**Hon'ble Judges :** P.N. Sinha, J

**Bench :** Single Bench

**Advocate :** Joymalya Bagchi, Mela Sen and Siladitya Banerjee, for the Appellant; Amit Bhattacharjee and Kiran Shah, for the Respondent

**Final Decision :** Allowed

## Judgement

P.N. Sinha, J.—This revisional application u/s 482 of Cr. PC has been preferred by the petitioners for quashing complaint case No. C-661 of 2002 under Sections 419 and 420 of the Indian Penal Code (in short IPC) now pending in the Court of the learned Chief Judicial Magistrate (in short CJM), Barasat and the order dated 16.9.02 passed by the learned CJM issuing process against the petitioners and another accused.

2. The aforesaid complaint case was started on the basis of complaint lodged by O.P. No. 2 as complainant in the Court of the learned CJM against these petitioners and another accused. It was the allegation of complainant that on the basis of an advertisement in "Bartaman" Bengali daily newspaper dated 21.2.99 a marriage negotiation between Pranabesh Bagchi, son of complainant and petitioner No. 2 Mohua Bagchi nee Mukherjee was made and in the newspaper the advertisement was published as "quick marriage, East Bengal Mukherjee, 20/5"1" class X standard, really beautiful, expert in household works, father Central Government employee, no objection in business". During negotiation the

petitioner No. 1, father of the bride told that his daughter is Xth standard pass. The complainant on her good relying upon representation of accused petitioner No. 1 and other relatives of the bride without making any enquiry settled the marriage of her son with accused petitioner No. 2 under Special Marriage Act and the marriage was solemnised on 2.12.99. On the night of "fulsajya" complainant's son discovered that he has been deceived by the father of the bride who has suppressed about old mental ailment of his daughter which is incurable. After the marriage, it was noticed that accused petitioner No. 2 used to leave her wearing apparels in front of other persons without caring for privacy and she uttered irrelevant talks. During her stay in the matrimonial home the complainant's son tried to have co-habitation with his wife, the accused No. 2, but the attempt failed as right hand of accused No. 2 started trembling abnormally. Accused No. 2 disclosed to the son of complainant that it was due to the result of some kind of disease and doctor advised her that, if she takes regular medicine throughout her life, the disease . would remain under control but would not be cured. Thereafter, the complainant made appointment with Dr. Braja Ghosh, a neurologist for treatment of accused No. 2 and Dr. Ghosh referred the case to a reputed neurophysicist Dr. Narayan Chakraborty. Dr. Chakraborty after examining accused No. 2 declared that she was suffering from mental ailment since her birth. Subsequently, accused No. 2 filed an application u/s 36 of the Special Marriage Act in the Court of the learned Additional District Judge, 6th Court, Alipore. In the matrimonial suit she stated that she read upto class IX standard and she was not class X standard pass. The complainant accordingly lodged the complaint against the accused petitioners and another for the offence of cheating. It appears that the learned CJM by order dated 16.9.02 issued process under Sections 419 and 420 of IPC against the petitioners and another. Thereafter, the petitioners have moved this Court for quashing the proceeding and also for quashing the impugned order passed by the learned Magistrate issuing process against them.

3. Mr. Joymalya Bagchi, learned Advocate for the petitioners contended that a plain reading of the petition of complaint without adding or subtracting anything to it would clearly indicate that there is no element of offence under Sections 419 and 420 of IPC. Section 30 of the IPC describes what is valuable security. The complaint discloses that there was no inducement and there was no delivery of property and there was no wrongful loss to the complainant and wrongful gain to the accused persons. There are several inconsistencies in different paragraphs of the complaint. The petitioner No. 2, the daughter-in-law of complainant started a case u/s 498A of IPC against her husband and other in-laws, and thereafter, as a counter blast the complainant instituted the present proceeding. There cannot be any misrepresentation if the bride read upto class IX and not class X. It does not attract any element of cheating. Matter would have been different if the bride i.e. petitioner No. 2 was totally illiterate. The mental incapacity of bride since birth cannot be regarded as suppression and concealment of incurable disease amounting to cheating.

4. Mr. Bagchi further contended that mental illness per se is not a ground to make a girl incapable of marriage. The husband, son of complainant has instituted a suit for divorce against petitioner No. 2 on the ground of desertion. If the husband files the suit against the wife on the ground of desertion, the allegation by the husband or her mother regarding cheating, inducement, deception etc. does not arise at all. No property was given to the accused persons nor anything was taken away by the accused persons. The allegation that the wife took away her property cannot attract any offence as the wife alone has right over her "stridhan" properties. Before the learned Additional District Judge, 6th Court at Alipore evidence was recorded over the application filed by petitioner No. 2 claiming alimony pendente lite and in the said Court the petitioner No. 2 was examined as a witness. If she was suffering from mental disorder and mental incapacity of high degree, the learned Additional District Judge would have noted it in the order sheet or in the deposition sheet. Her evidence in the Court of the learned Additional District Judge does not reveal that she is unable to pursue her normal course of life and unable to understand her good or bad. It would be evident that she answered the questions properly and with relevancy and after considering everything learned Judge allowed her prayer for alimony pendente lite. Accordingly, in the instant complaint there is no element of cheating at all against the accused persons. Continuation of the criminal proceeding would be an abuse of the process of Court and being so the said complaint case should be quashed. In support of his contention Mr. Bagchi relied upon the decisions namely Anilchandra Pitambardas Sagar and others Vs. Rajesh Harjivandas Jhaveri and others, , Dr. Sharma's Nurshing Home, v. Delhi Admn. and Ors. reported in 1999 SCC (Cri) 91, Ramkrishna Baburao Maske v. Kisan Shivraj Shelke and Ors., reported in 1975 Cri. LJ 173, Zandu Pharmaceutical Works Limited and Ors. v. Md. Sharaful. Hague and Ors., reported in JT 2004(9) SC 486 and Ramesh Kumar Verma and Others Vs. Jai Shankar Prasad Srivastava, .

5. On the contrary, Mr. Amit Bhattacharjee, learned Advocate for the opposite party No. 2 contended that perusing the complaint learned Magistrate took cognizance and thereafter examined the complainant and her witnesses u/s 200 Cr. PC and finding that sufficient materials have been disclosed for the alleged offence and to proceed further issued process u/s 204 of Cr. PC. There was no illegality in the impugned order passed by the learned CJM. In the advertisement only good side of the bride were disclosed and the dark or the black side of the bride were not mentioned. The advertisement attracted the complainant and the advertisement induced the complainant to make the marriage negotiation. The advertisement was published concealing some material facts and intention of the advertiser was to induce parents of bridegroom and to give a defective bride in marriage somehow. If the matter of advertisement was false right from the beginning there are elements of cheating concerning that advertisement and the accused persons have cheated the complainant and her son. The complainant would not have proceeded with the marriage negotiation of her son with the

daughter of accused petitioner No. 1, if it was disclosed to her that the bride was suffering from mental incapacity since birth. Cheating has been defined in Section 415 of the IPC and it has two parts and in the instant case the second part would attract and illustrations (c) and (i) as mentioned in the Section 415 of IPC are applicable. The mental incapacity of the bride appears from her evidence itself before the learned Additional District Judge, 6th Court, Alipore.

6. Mr. Bhattacharjee further contended that ingredients of divorce should not be mixed up with the elements of cheating. The father of the bride knowing fully well that his daughter did not pass class X standard represented in such manner and, knowing that his daughter is suffering from incurable mental disorder or mental incapacity since birth, did not disclose it either in the advertisement or at the time of talks of marriage negotiation. It establishes that the accused persons concealed some vital materials relating to marriage negotiation and induced the complainant to give marriage of her son with the daughter of accused No. 1. In the instant case there are elements of cheating and there is no ground to quash the criminal proceeding. In support of his contention he cited the decisions namely G.V. Rao v. L.H.V. Prasad and Ors., reported in 2000 (2) L.W. (Cri) 937, Sadhu Ram and Ors. v. Kishan Kumar, reported in 1987 Cri L. J. 1351, Subhra Pal and Ors. v. Biswarup Pal and Ors., reported in 1990 C Cri LR (Cal) 161, Smt. Best Morning Khongthohrem Vs. Nirmalendu Deb, , Som Dutt Vs. Raj Kumari, , reported in 1963(2) Cri. LJ 434, Banwarilal and Another Vs. The State, and Baboo Khan Vs. State, .

7. I have perused the revisional application and the materials on record and considered the submissions made by the learned Advocates of the parties. A plain reading of the complaint and the facts and circumstances behind the institution of the complaint case against the accused petitioners establishes that there cannot be cheating, if the bride, i.e. accused petitioner No. 2 read upto class IX and was not class X standard pass as told by her father, the accused No. 1. There is no great difference between class IX standard and class X standard and the difference, if any, is of insignificance and minor in nature which is not sufficient to attract elements of cheating. If it was found that the accused petitioner No. 2 was illiterate and did not know at all how to read and write, matter would have been different. In the instant case, the accused petitioner No. 2 is not an illiterate lady but, it is evident that she read upto class IX and also gave evidence before learned Additional District Judge, 6th Court, Alipore in Misc. Case No. 4 of 2001 u/s 36 of the Special Marriage Act in connection with Matrimonial Suit No. 1124 of 2000. These matters establish that petitioner No. 2 was not deaf and dumb, was not illiterate and she read upto class IX. Accordingly, the allegation that the complainant was cheated as the bride was not class X standard pass but was found read upto class IX only, cannot be accepted and in the instant matter there was no cheating at all for such allegation.

8. Now the crux for consideration is whether the failure of the accused persons to

disclose that the petitioner No. 2 was suffering from mental incapacity or mental disorder from her birth or since 1995 would attract element of cheating. It is true that in the advertisement published in the matrimonial column of the Bengali daily newspaper "Bartaman" it was not mentioned that the bride was suffering for mental disorder. The complainant, when the marriage negotiation was in progress and talks were going on how two families can be united through the nuptial tie between son of complainant and daughter of accused petitioner No. 1, had the opportunity to see the bride when she accompanied by her son and others visited house of accused No. 4 to see the bride and to have some talks. It appears on that occasion the accused petitioner No. 2 did not speak anything and kept mum and when questioned the complainant was told that the bride was feeling shy to talk. It fails to impress me the explanation of complainant that they relied on such submission. If the complainant applied her intelligence properly and created pressure on the parents of the bride for talk at the very inception she could have detected the matter whether the bride was suffering from mental disorder or was irrelevant in talk or conversation. The accused persons cannot be blamed for the entire episode and for the present breakdown of the said marriage the complainant was also responsible to some extent by not applying her proper senses and not making proper enquiry.

9. Be that as it may, this discussion is of little consequence when the complainant has already lodged a complaint against the accused persons and the learned CJM has issued process against them under Sections 419 and 420 of IPC.

10. After going through the averments of the petition of complaint and considering the entire facts and circumstances, I find that, elements of Sections 419 and 420 of IPC are not attracted in the instant matter. In order to attract elements of Section 419 of IPC it must be established that there was a cheating by personation and cheating by personation has been defined in Section 416 of IPC. In order to attract cheating by personation the following ingredients are required. ... (1) Pretention by a person to be some other person, (2) Knowingly substituting one person for another and (3) Representation that he or any other person is a person other than he or such other person really is. To attract Section 419 of IPC it must be established that the accused cheated someone and that he did it by impersonation. In the instant matter it is clear that there was no cheating at all by impersonation and accused No. 1 or accused No. 2 did not cheat by impersonation. The learned CJM did not apply his mind properly by issuing process against the accused petitioners u/s 419 of IPC.

11. Considering the materials of complaint I am of opinion that in this case elements of Section 420 was not at all there in the complaint and the learned Magistrate was not right by issuing process u/s 420 of IPC. In order to attract Section 420 of IPC it must be established that, (1) the accused must have deceived someone, (2) by such deception the accused must induce a person, (a) to deliver any property, or (b) to make, alter or destroy the whole or part of the valuable security or any thing which is signed or sealed and which is capable to

being converted into a valuable property and, (iii) that the accused did so dishonestly. In the instant matter from the complaint as well as other facts and circumstances as disclosed therein it is evident that there was no such deception by the accused persons to the complainant inducing her to deliver any property or to destroy, alter whole or part of valuable security or anything which is signed or sealed or is capable of being converted into valuable security. The essential elements which require to fulfil or to attract element of cheating u/s 420 of IPC are absent in the present petition of complaint and the factual aspects depicted in the complaint do not make out any prima facie case u/s 420 of IPC against the accused petitioners.

12. Learned Advocates of the both parties placed some decisions in support of their respective cases. Considering the contents of the complaint petition and the factual aspects disclosed in the complaint, I am of opinion that, the decisions cited by the learned Advocates of the parties do not require any threadbare discussion. The decisions cited by them do not make out any settled principle of law over such matter. In *Anilchandra Pitatnbardas Sagar* (supra) cited by the learned Advocate for petitioner it was held that merely because sometime after marriage eyesight of the bride was found to be slightly weak or because she had urinary infection issue of process for cheating in relation to marriage u/s 417 of IPC could not be justified. In *Dr. Sliarma's Nursing Home* (supra) complainant admitted his brother in a nursing home and assurance given by nursing home authorities that air conditioned rooms were available but the room provided to the brother of complainant was found to be not air conditioned though there was charge for such a room. It was held that offence of cheating not made out. In *Ramkrishna Baburao Maske* (supra) there was concealment of fact of pregnancy of bride at the time of marriage. It was held that as there was no wrongful gain or wrongful loss of property, involved dishonest concealment of fact cannot be said to have been established and there was no offence of cheating. Other decisions cited by the learned Advocate for petitioners do not require discussion as in my opinion these decisions are not relevant in the facts and circumstances of the present case.

13. In *Sadhu Ram* (supra) cited by the learned Advocate for the opposite party No. 2 the accused concealed that his son was suffering from mental disorder and complainant accepted the marriage proposal and the marriage was celebrated. Subsequently, complainant filed a case of cheating against accused and the Delhi High Court held that complaint cannot be quashed. In *Som Dutt* (supra) there was an arranged marriage and the wife though seven years older than her husband was shown one year younger during marriage negotiation. In a suit for decree of nullity the Punjab and Haryana High Court held that marriage is liable to be annulled. In *Best Morning Khongthohrem* (supra) the husband underwent vasectomy before marriage and it was not disclosed to the wife before marriage. The Special Bench of Gauhati High Court held that consent of the wife to the marriage was thus obtained by fraud and a decree of nullity of marriage could be passed in the facts and circumstances even though the husband could not be

said to be impotent at the relevant time.

14. The discussion of the above decisions cited by the learned Advocates of the parties reveal that the Bombay High Court and the other High Courts were of different views relating to cheating in marriage. The grounds of decree of nullity of marriage or decree for divorce cannot be identical to attract elements of cheating in all respects. No reliable decision of the Hon''ble Supreme Court of India has been cited before me to form opinion regarding legal principles as to whether under such facts and circumstances cheating in marriage negotiation was made or not. Accordingly, the decisions cited by the parties cannot make out the foundation of law in the instant matter. Considering the facts and circumstances of the present case let me decide whether there was any element of cheating and whether the complaint is maintainable.

15. I have already observed in the previous paragraphs that in the instant case there is no element of Sections 419 and 420 of IPC and the learned Magistrate was not right by issuing process under these two sections. Considering the entire matter and reading the petition of complaint I am of opinion that in the instant case in order to prove cheating it has to be proved by the complainant that they were cheated by the accused persons with the knowledge that they were likely to cause wrongful loss to her. Wrongful loss has been defined in Section 23 of the IPC and it signifies that loss by unlawful means of property to which the person losing is legally entitled. Sections 419 and 420 and even Section 418 of IPC cannot be applied in such matter as the offence alleged herein does not relate to any property and accordingly question of knowledge of wrongful loss does not arise. Considering the factual aspects disclosed in the complaint it appears to me that prima facie a case u/s 417 of IPC was there for which the criminal proceeding could have been proceeded with, though the learned Magistrate did not issue process u/s 417 of IPC and learned. Magistrate could have been directed to proceed under that section. But the prosecution for offence u/s 417 of IPC in the present case cannot be continued with as such offence is barred by limitation. The punishment u/s 417 of IPC is imprisonment of either description for a term which may extend to one year, or with fine or with both. Section 468(1) of Cr. PC prescribes that no Court shall take cognizance of offence after the expiry of period of limitation and sub-section (2) of Section 468 prescribes that the period of limitation shall be --

(a) ...

(b) One year if the offence is punishable with imprisonment for a term not exceeding one year,

(c) Three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

16. The petition of complaint reveals that the marriage was solemnised on 2.12.99. On the night of "Fulsajya", the son of the complainant discovered that the bride was suffering from old mental ailment which is incurable. It was also

disclosed in the complaint that during the short span of stay of the bride in matrimonial home, the son of the complainant tried to have co-habitation with the bride but failed as right hand of the bride started trembling abnormally and the bride disclosed to him that she is suffering from some mental disorder and neuro problems and her disease is not curable. It is clear, therefore, on 4.12.99 or at least on 5.12.99 the complainant was aware of the mental disorder of accused No. 2 but the complaint was not filed within period of limitation and the complaint was filed on 18.5.2002, more than one year after the knowledge of the mental disorder of accused petitioner No. 2. Complaint was conspicuously absent relating to dates of incident including date of failure of husband to have cohabitation with the wife, date of examination of wife by doctors etc. and learned Magistrate before issuing process did not consider whether there was bar of limitation. Section 469 of Cr. PC prescribes that period of limitation relating to an offence shall commence on the date of offence or where the commission of offence was not known to the person aggrieved by the offence, the first day on which such offence comes to the knowledge of such person. The complaint had her first knowledge of alleged offence at least on 5.12.99 or soon thereafter. The complaint was not filed within the period of limitation so far as it relates to Section 417 of IPC and being so the proceeding cannot be permitted to continue with u/s 417 of IPC as such offence is barred by limitation.

17. The above discussion make it clear that continuation of the criminal proceeding in the Court of the learned CJM at Barasat would be an abuse of the process of the Court. Accordingly, exercising jurisdiction u/s 482 of Cr. PC the impugned criminal proceeding pending before the learned CJM should be quashed. The revisional application is allowed and the criminal proceeding being complaint case No. C-661 of 2002 pending before the learned CJM, Barasat and the order dated 16.9.02 passed by the learned CJM in connection with the said case are hereby quashed.

18. Send a copy of this order to the learned Chief Judicial Magistrate, Barasat for information and necessary action.

19. Urgent xerox certified copy be given to the parties, if applied for, expeditiously.