

(2002) 10 AP CK 0027

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 2771 of 2002

Suram Kiran Kumar Reddy and Others

APPELLANT

Vs

State of A.P. and Another

RESPONDENT

Date of Decision : 25-10-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 198, 482
Penal Code, 1860 (IPC) — Section 109, 376, 415, 417, 420

Citation : (2002) 6 ALT 565 : (2003) 2 RCR(Criminal) 24

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : B. Vijayasen Reddy, for the Appellant; Additional Public Prosecutor for Respondent No. 1 and A. Satya Prasad, for the Respondent

Judgement

C.Y. Somayajulu, J.—This is a petition to quash the proceedings in P.R.C. No. 9 of 2002 arising out of Crime No. 42 of 2001 of Ramgopalpet Police Station.

2. 2nd respondent gave a report to the Inspector of Police, Ramgopalpet P.S., alleging that she was introduced to the 1st respondent at a function on 31-12-2000 (wrongly typed as 2001 in the FIR) held in a hotel by her friends and gradually friendship grew between them, resulting their falling in love with each other and so they had on 1-5-2001 decided to marry, and started spending nights in hotels and were moving around as if they were husband and wife, and on one day when petitioners 3 and 4 (parents of 1st petitioner) were away from Hyderabad, she and 1st petitioner spent a whole night in the house of 1st petitioner, and on one occasion 4th petitioner (mother of 1st petitioner) presented diamond studded platinum tops, and even when the 1st petitioner went to East Africa on business trip he used to be in touch with her and so she also went to Kenya to be with the 1st petitioner, and that she and 1st petitioner went to several places in East Africa and Dubai and returned to Hyderabad 13-3-2002 at 3 a.m., along with petitioners 1 and 2 and while dropping her in her house 2nd petitioner (elder brother of 1st petitioner) threw her luggage on

the face of her mother and warned her not to speak to the 1st petitioner and informed her that if she wants money, he would pay that amount but in no event would the marriage between her and 1st petitioner would be performed and thus she was cheated and raped. The said complaint was registered under Sections 493, 376 read with Section 109 IPC against the petitioners and after investigation, police filed a charge-sheet against the petitioners for offences under Sections 493, 417, 420 and 376 read with Section 109 IPC. Hence this petition.

3. The main contention of Sri Vijaysena Reddy, learned counsel for petitioners is that the averments in the FIR and the charge-sheet, even if taken to be true, do not constitute offences under Sections 493, 417, 420 or 376 IPC and so the charge-sheet is liable to be quashed. He placed strong reliance on *Moideenkutty Haji and Others Vs. Kunhikoya and Others*, ; *Lingam Govinda Rao v. State*, 1998 (1) ALT (Crl.) 206 (A.P.) = 1998 (1) ALD (Crl.)48; *Jayanti Rani Panda v. State of West Bengal and Ors.*, 1984 Crl.L.J. 1535; *Sukumar Ghose v. The State*, 1985 (2) Crimes 377; *Gobinda Biswas and Ors. v. The State*, AIR 1951 Assam 122; *Ramayya v. Somappa*, AIR 1925 Madras 367; *Reginald Abraham and Ors. v. State of A.P.*, 2002 (2) ALT (Crl.) 97 (A.P.) = 2002 (1) ALD (Crl.) 889, *Shyam Bahadur Koeri and Others Vs. The State*, ; *Ramnath v. King Emperor*, AIR 1925 All. 230 and *Ram Narayan Misra v. King*, AIR 1921 Patna 304, in support of his contention. The contention of Sri Satya Prasad learned counsel for 2nd respondent is that since the police, after investigation, have filed the charge-sheet against the petitioners there is prima facie case against the petitioners, and since there is ample evidence to show that 1st petitioner had cheated the 2nd respondent, and moved with her as if she were his wife, question of quashing the charge-sheet at this stage does not arise.

4. Before considering the contentions raised on either side it is necessary to examine the offences alleged. The first offence alleged is u/s 493 IPC. The two essential ingredients for an offence under that Section are (i) deceit by the accused causing a false belief, in the victim girl, in the existence of a lawful marriage between them and (ii) cohabitation or having sexual intercourse with the woman after having caused such belief. In *Moideen Kutty Haji* case (1 supra) a Full Bench of the Kerala High Court held that the essence of Section 493 IPC is deception caused by a man on a woman in consequence of which she is led to believe that she is lawfully married to him while in fact they are not lawfully married, and in order to establish deception there must be an allegation that the accused falsely induced her to believe that she is legally wedded to him, and in case both the man and woman fully knew that they are not husband and wife and no ceremony of marriage took place between them, question of one of them believing otherwise does not arise. The averments in the police report and the charge-sheet do not even disclose that 2nd respondent believing herself to be the wife of the 1st petitioner had sexual intercourse with him. Therefore even if all the allegations in the charge-sheet are taken to be true, no offence u/s 493 IPC is made out against the 1st petitioner. That apart, Section 198 Cr.P.C. places

an embargo on the Court taking cognizance of a complaint in respect of offences under Chapter XX IPC unless it is filed by the person aggrieved by the offence. Since Section 493 IPC is in Chapter XX IPC, the complaint for an offence u/s 493 IPC can be filed only by the 2nd respondent. It is not necessary to consider the question whether the complaint for an offence u/s 493 IPC can be taken cognizance of by a Court on a complaint filed by police along with another cognizable offence for deciding this case, because, as stated above, from the allegations in the charge-sheet and complaint, no offence u/s 493 IPC is made out in this case.

5. The other offence alleged is u/s 376 IPC, which prescribes the punishment for rape. "Rape" is defined in Section 375 IPC as,

"A man is said to commit "rape" who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:

First - Against her will.

Secondly - Without her consent.

Thirdly - With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly - With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly - With her consent, when at the time of giving such consent by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly - With or without her consent, when she is under sixteen years of age."

6. The averments in the FIR or the charge-sheet do not disclose that the sexual intercourse between the 1st petitioner and the 2nd respondent, at any time, was without her consent. 2nd respondent admittedly is aged more than 16 years. In *Litigant Govinda Rao* (2 supra) a man and woman lived together as husband and "wife for one and a half years, and had sexual intercourse, with the consent of the woman, given on an assurance that he would marry her. A learned single Judge of this Court held that an offence u/s 376 IPC is not made out in the circumstances of the case. In *Jayanti Rani Panda* (3 supra) a fully grown girl consented to have sexual intercourse with a man on his promise to-marry her and continued to have that relationship and became pregnant. The man refused to marry the woman and was prosecuted for an offence u/s 376 IPC. The trial Court acquitted the accused. The High Court dismissed the appeal filed by the prosecutrix holding that Section 90 IPC cannot be called in aid in such a case to pardon the act of the woman and fasten the criminal liability on the man, unless

it is found that the accused never really intended to marry her. In Sukumar Ghose (4 supra) the accused had sexual intercourse with a girl aged more than 16 years having promised to marry her, with her consent, and made her pregnant. The trial Court convicted the accused for an offence u/s 376 IPC and the same was confirmed by Sessions Judge. The High Court relying on the ratio in Jayanti Rani Panda (3 supra) acquitted the accused holding that the woman indulging in sexual intercourse with the accused on a promise of marriage was an act of promiscuity and was not induced on misconception of fact. In view of the law laid down in the above decisions even if all the allegations in the complaint are taken to be true, since the sexual intercourse by the 1st petitioner was with the consent of the 2nd respondent offence u/s 376, IPC-cannot be said to have made out against, the 1st petitioner.

7. The other offences alleged against the petitioners are under Sections 417 and 420 read with Section 109 IPC. u/s 109 IPC abettor is liable to the same punishment as that which may be inflicted on the principal offender if (a) the act of the offender is committed in consequence of the abetment and (b) no express provision is made in the IPC for punishment of such abetment. Obviously prosecution is taking the aid of Section 109 IPC to rope in petitioners 2 to 4 for the offences alleged against the 1st petitioner by the 2nd respondent. As stated earlier no offence can be said to have been committed by 1st petitioner under Sections 493 and 376 IPC. So petitioners 2 to 4 also cannot be said to have abetted under Sections 493 and 376 IPC.

8. Section 417 IPC provides the punishment for cheating, which is defined in Section 415 IPC. Section 420 IPC deals with cases of cheating and dishonestly inducing delivery of property. In Gobinda Biswas (5 supra) it is held that the difference between Section 417 and Section 420 IPC is that where, in pursuance of the deception, no property passes, the offence is one punishable u/s 417 IPC, but where in pursuance of the deception property is delivered the offence is punishable u/s 420 IPC. In Ramayya case (6 supra) it is held that the offence u/s 417 IPC is cheating generally but Section 420 IPC is an aggravated type of offence involving delivery or destruction of valuable security. In Reginald Abraham case (7 supra) it is held that the complainant supplied goods on credit to the accused on the promise made by him that he would pay the price of the goods, but failed to pay the price. Since no dishonest intention, at the inception, on the part of the accused to cheat was established, it was held that the ingredients of Section 415 IPC are not satisfied and so the accused were discharged. The said decision has no application to the facts of this case.

9. In Shyam Bahadur Koeri case (8 supra) a child aged about 7 years found "treasure" under Treasure Trove Act, 1878, and concealed it under the soil. His mother who knew that fact did not ask her son to report the matter to the concerned authorities. The question was whether the mother was guilty of the offence of abetment. It was held that the mother of the boy (who found the "treasure") is not guilty of abetment of the offence under Sections 3, 4 and 20 of

Treasure Trove Act or Section 107 IPC. on the ground that connivance on her part does not amount to abetment u/s 107 IPC. In Ramnath case (9 supra) it is held that mere giving of aid to an accused will not make that act abetment of an offence, if the person who gave the aid did not know that an offence was being committed or contemplated, as there should be an intention on the part of the abettor to aid an offence or to facilitate the commission of an offence. In Ramnarayan Misra case (10 supra) it is held that a finding that person accused of a substantive offence could not have acted in the way in which he acted without the approval or connivance of the person accused of abetment, is not sufficient to prove the offence of abetment u/s 107 IPC.

10. Section 415 IPC which defines "Cheating" reads-

"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"."

From the above definition it is seen that two separate classes of acts are covered thereunder. The first is a person may fraudulently or dishonestly be induced to deliver any property to any person, or to consent to any person retaining any property. The second is 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 type of cases the inducement must be fraudulent or dishonest, and in the second type the inducing must be intentional and need not be fraudulent or dishonest. "Deceiving" means causing to believe what is false or leading into error. It should be kept in view that it is not sufficient to prove that a false representation has been made, but it is also necessary to establish that the accused in order to deceive the other person only, knowingly made that false representation. That is matter of evidence during trial.

11. In her statement to the police, which was registered as the FIR 2nd respondent stated:

"On 1st May, 2001 we both decided to marry and continued our affair and we spent even nights in big Hotels like Basera, Amrutha Castle one or two days happily enjoyed as if married as he promised me to marry after sometime.... Mr. Kiran Kumar cheated me under pretext of marriage and used me for his sexual desire and taken my passport....."

(underlining mine)

The conduct of the 1st petitioner in promising to marry the 2nd respondent and spending nights with her in hotels, making her believe that she would become his wife and after satisfying his sexual desire, refusing to marry her would definitely cause damage or harm in the mind and body of the 2nd respondent and

inducement, prima facie, has to be taken as intentional covered by second type of cases mentioned in Section 415 IPC.

12. In my considered view "chastity" and/or "virginity" of a woman is also covered by "property" used in Section 415 IPC for the reason that a woman who engages in sexual activity for "payment" is called a prostitute, and the "payment" in such case is made by the man for "buying" sexual pleasure. Traditionally Indian women try to preserve their virginity to "offer" it to their husband on the first night of their nuptial. They also treat and consider "chastity" as if it were "property". For rape they say in Telugu, when translated means "he stole my chastity", as if it were property. The averments in the FIR show that in view of the promise made by the 1st petitioner to marry her only, 2nd respondent spent a few nights with him in some hotels, and also in his house during the absence of his parents. The dishonest or fraudulent inducement on the part of 1st petitioner made the 2nd respondent to offer her "chastity", (which, in my considered opinion, can be considered as property) is apparent from the averments in the FIR. Had the 1st petitioner not promised to marry her, 2nd respondent would not have spent a few nights with 1st petitioner. Thus prima facie the ingredients necessary for the offence of cheating, as contemplated by Section 415 IPC, are found in the FIR. Whether the offence alleged is covered by Section 417 or Section 420 IPC is a matter to be determined by the Magistrate while framing charges. Therefore complaint against the first petitioner for offences under Sections 417 and 420 IPC cannot be quashed.

13. As far as petitioners 2 to 4 are concerned, since they did not induce the 2nd respondent to do anything, they cannot be said to have committed any offence either u/s 417 or Section 420 IPC. For an act to constitute abetment, there must either be (i) instigation to commit an offence or (ii) conspiracy to commit an offence, or (iii) intentional aid a person to commit an offence. The averments in the FIR do not disclose petitioners 2 to 4 either instigating or conspiring with or intentionally aiding the 1st petitioner in his having an affair with the 2nd respondent. In fact the averments in the FIR show that the parents and brother of the 1st petitioner i.e., petitioners 2 to 4 came into picture much subsequent to the 1st petitioner and 2nd respondent started their affair. The specific averment in the FIR, is.

".....he introduced me even to their mother and father Venkata Reddy and Miss Vijayalaxmi and his brother Rajasekhar Reddy, and his mother Smt. Vijaya Laxmi presented me an ear tops pair of platinum with diamonds studded as a gift".

Therefore it cannot be said that petitioners 2 to 4 abetted the 1st petitioner to cheat the 2nd respondent. Therefore the charge-sheet against petitioners 2 to 4 is liable to be quashed.

14. In the result, the proceedings in P.R.C. No. 9 of 2002 against the petitioners 2 to 4 are quashed, and the offences alleged under Sections 493 and 376 IPC

against the first petitioner are also ordered to be deleted. Since the offences that remain against the first petitioner are under Sections 417 and 420 IPC, P.R.C. No. 9 of 2002 shall be renumbered as a Calender Case, against the petitioner only, for offences under Sections 417 and 420 IPC. First petitioner is permitted to surrender before the concerned Magistrate within ten (10) days from to-day. Petition is ordered accordingly.