

H. Manjunatha Vs. The State of Karnataka

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Court : Karnataka

Decided On : Nov-19-2016

Judge : The Honourable Mrs. Justice Rathnakala

Appeal No. : Criminal Revision Petition No. 178 of 2010

Appellant : H. Manjunatha

Respondent : The State of Karnataka

Judgement :

(Prayer: This Criminal Revision Petition is filed under Section 397 R/W 401 of Cr.P.C., Praying to Set aside the impugned Judgments of conviction and sentence passed against this Petitioner accused by the Additional Civil Judge (Jr.Dvn.) and Jmfc, Doddaballapur in C.C.No.160/2008 Dated 8.5.2009 and also the Judgment dated 24.12.2009 Passed by the Presiding Officer, Fast track Court-Ii, Bangalore Rural District, Bangalore In Crl.A.No.34/2009.)

1. Heard the learned Counsel appearing for both parties.
2. The respondent/Police charge sheeted the revision petitioner in respect of the offence under Section 420 of IPC.
3. The allegation was that the petitioner/accused, a married person, suppressing the said fact advertised through a daily newspaper for a prospective bride. Thus he came in contact with CW-1/Smt.Bhagyamma, the mother of CW-2/Roopashree.

He persuaded Bhagyamma to sell her site and entered into an agreement of sale with CW-4/Smt.Renukamma on 11.6.2007. He received the advance amount of Rs.3,25,000/- from the proposed purchaser with the consent of Bhagyamma towards the expenses of his proposed marriage with Roopashree, but subsequently retreated from the proposal to marry the girl.

4. During the trial, prosecution examined PWs- 1 to 8 and marked documents Exs.P1 to P7. The accused took the stand of total denial and denied all the incriminating evidence appearing against him during his examination under Section 313 of Cr.P.C. He did not opt to adduce defence evidence. The Trial Court after giving its audience to both parties found the accused/petitioner guilty in respect of the Offence under Section 420 of IPC and sentenced him to undergo imprisonment for a period of three years and to pay a compensation of Rs. 1,50,000/- to PW-1 with default clause.

5. The appeal preferred by the aggrieved accused against the said judgment of conviction and sentence, went in vain.

6. Sri.H.H.Shetty, learned Counsel appearing for the revision petitioner/accused while assailing the judgments of the courts below submits that, assuming for a while, entire case presented by the prosecution as true and correct, then also it fails to bring home the guilt of accused under Section 420 of IPC. The so-called newspaper through which the petitioner gave advertisement by itself was not proved in accordance with law. There was no clinching evidence establishing that he induced PW-1 to sell her property to CW-4 and there was nothing to establish that the sale amount or the advance amount was received by the petitioner. The courts below have acted upon the suppositions to convict the petitioner, without taking notice of the admissions emerging during the cross-examination of prosecution witnesses. That has resulted in great injustice to him and the impugned judgments being erroneous are liable to be set aside under the revisional jurisdiction of this Court.

7. Sri.S.Chandrashekaraiah, learned High Court Government Pleader for the respondent/State in reply would submit that the petitioner has signed sale agreement as a witness. The courts below have rightly upheld the case of the

prosecution, which is proved by the evidence of complainant/CW-1/PW -1 and her daughter/CW-2/PW-2; CW-4/PW-4, who is the purchaser of the property and CW-5/PW-5, who is the husband of CW-4. The courts below have not fallen into any error which needs to be interfered in excise of revision jurisdiction of this Court.

8. In the light of the above submission and on perusal of the lower court records, the sole point that arises for consideration is:

"Whether the judgments of the court below are not founded on the evidence borne on record?"

9. Manifestly to prove the first portion of the charge that the accused through a paper advertisement sought for a suitable bride, etc., the prosecution relied on a piece of newspaper/Ex.P3, which reads thus:

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10. Basically this piece of evidence was inadmissible since the entire news paper was not produced. As such the newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under Section 81 of the Evidence Act to a Newspaper report cannot be treated as proved of the facts reported therein. In that view of the matter, the courts below could not have taken judicial notice of the news item in Ex.P3. The nexus between mobile phone with sim No.98455 64455 was not established; no evidence was produced linking the accused to the said mobile phone. During trial, a call list/Ex.C1, pertaining to sim No.9845564455 standing in the name of one Manjunath was produced and marked as Ex.C1. But no evidence was further produced to prove said document, which is a Computer output, in accordance with the procedure contemplated by Section 65B of the Indian Evidence Act. That takes away the case of the prosecution that the petitioner came in contact with the complainant through the paper advertisement and had assured to marry her daughter. PWs-- 1,2 and 3 are the complainant, her daughter and her mother respectively, who have stated that the accused persuaded the complainant to sell her property and thereafter took away the advance amount of Rs.3,25,000/-. It was brought down by the evidence

of the purchaser of the property PW-4 and her husband PW-5 that the amount paid on the date of the agreement is received by PW-1 only. It is also shown that subsequently the agreement is acted upon. On the showing of the prosecution itself, the property was sold in favour of PW-4. The signature by one Shivakumar in the agreement was marked as the signature of the accused at Ex.P4(e). But no further attempt was made to establish that the said signature is in the handwriting of the accused. Neither of the courts below considered this aspect of the matter while appreciating the evidence that taints the impugned judgments with perversity.

11. Now it is well settled that mere promise to marry and later on withdrawing the said promise will not amount to an offence of cheating. On such false promise to marry, the person to whom such promise was made should have done or omitted to do something that he would not have done or omitted to do but for deception. In this case, the allegation that the accused received the cash amount of Rs.3,25,000/- is not corroborated by oral or documentary evidence. Thus the case of the prosecution fails to attract ingredients of Section 420 of I.P.C and the judgments of both Courts below are erroneous and warrant interference.

12. Having held so, the next focus is on M.Os. 1 to 6 seized by the Investigating Officer during investigation. M.O.6 being cash amount of Rs. 10,000/- seized from the possession of the petitioner, same shall be returned. As regards 5 mobile sets are concerned, over passage of time, necessarily they would have become useless. The body of mobile phone shall be destroyed by the Court in its usual procedure and the battery in the mobile shall be sent any of the E-Waste Recyclers recognised by the State Pollution Control Board for Disposal.

The revision petition is allowed. The judgment of conviction and sentence dated 8.5.2009 passed in C.C.No.160/2008 by the Additional Civil Judge (Jr.Dn.) and JMFC., Doddaballapura, confirmed in Criminal Appeal No.34/2009 vide order dated 24.12.2009 by the Sessions Judge, Fast Track Court-II, Bangalore Rural District, is set aside. The Material Object Nos. 1 to 6 shall be disposed of by the Trial Court as per the observations made supra.