

Tajuddin Vs. State of Assam and ors.

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Court : Guwahati

Decided On : Sep-15-2006

Judge : D. Biswas and B.P. Katakey, JJ.

Appellant : Tajuddin

Respondent : State of Assam and ors.

Disposition : Petition dismissed

Prior history : B.P. Katakey, J. 1. This revision petition is directed against the Judgment dated 24.06.2002 passed by the learned Session Judge, Karimganj in Criminal Appeal No. 9(1) of 1999 dismissing the appeal preferred by the revision petitioner by upholding the judgment of conviction dated 15.02.99 passed by the learned Sub-Divisional Judicial Magistrate (Sadar), Karimganj in C.R. Case No. 1489 of 1997 convicting the revision petitioner under Section 417 IPC and sentencing him to under go rigorous impri

Judgement :

B.P. Katakey, J.

1. This revision petition is directed against the Judgment dated 24.06.2002 passed by the learned Session Judge, Karimganj in Criminal Appeal No. 9(1) of 1999 dismissing the appeal preferred by the revision petitioner by upholding the judgment of conviction dated 15.02.99 passed by the learned Sub-Divisional

Judicial Magistrate (Sadar), Karimganj in C.R. Case No. 1489 of 1997 convicting the revision petitioner under Section 417 IPC and sentencing him to under go rigorous imprisonment for six months with a fine of Rs. 5,000/-, in default to under go rigorous imprisonment for the period of three months and further directing that the fine, if realized, shall be paid to the victim girl as compensation under Section 357(3) to the Code of Criminal Procedure.

2. The complainant i.e. the victim girl filed the complaint petition being C.R. Case No. 1489 of 1997 in the Court of learned Chief Judicial Magistrate, Karimganj, alleging that the accused/ revision petitioner who is her cousin brother and stays near the house of the complainant, used to visit her house off and on the thus, developed intimacy and insisted for having sexual relation, which was though initially refused by her, but, when he assured her to marry; she consented for such sexual relation and as a result of which she become pregnant. It has further been alleged in the said complaint petition that when the fact of pregnancy was reported to the accused/ revision petitioner, though he initially assured her to marry, but subsequently he refused to marry and thereby deceived her by dishonestly inducing her to give consent for sexual relationship and by intentionally inducing her to surrender to the accused/ revision petitioner and there by causing damage to the complainant. The complainant has also alleged that she gave birth to a male child. The complainant's case was subsequently transferred to the Court of the learned Chief Judicial Magistrate (sadar) Karimganj for trial and disposal.

3. After examination of the complainant under Section 202 Cr. P.C. the cognizance under Section 493/417 IPC was taken against the accused/revision petitioner, who on receipt of the summons appeared before the learned Trial Court. Four witnesses including the complainant herself was thereafter examined and on the basis of the evidences on record the charge under Section 417 IPC was framed against the accused revision petitioner, which when read over was denied by him claiming trial. After cross-examination of the witnesses of the complainant by the accused/revision petitioner, his statement under Section 313 Cr. P.C. was recorded. The accused was given the opportunity to examine the defence witness, if any, to which he declined. On conclusion of the trial the learned Trial Court passed the judgment of conviction as aforesaid and against which, though the

appeal was preferred before the learned Session Judge, Karimganj, the same was also dismissed and hence the present revision petition.

4. We have heard Mr. H.R.A. Choudhury, learned Senior counsel for the revision petitioner and Mr. K. Munir, the learned Public Prosecutor, Assam.

5. Mr. Choudhury, learned senior counsel for the accused/revision petitioner referring to Section 417 of IPC has submitted that from a bare reading of the said penal provision it is evident that the conviction under Section 417 IPC can be maintained only when the factum of cheating under Section 415 IPC is proved. According to the learned Counsel it is evident from the definition of cheating in Section 415 IPC that to constitute cheating the deception must be in relation of the property, though property may or may not be delivered. In the instant case it is being the allegation that the prosecutrix has suffered damage or harm in body because of the deception by the revision petitioner for which she surrendered to him and there being no allegation of deception in relation to the property, there cannot be any question of conviction under Section 417 IPC. Hence, according to the learned Counsel, the conviction of the revision petitioner is liable to be set aside. It has further been submitted by the learned Counsel that even assuming that the conviction can be maintained under Section 417 IPC for deceiving any person and for inducing him/her to surrender for which he/she has suffered damage or harm in body, mind and reputation, in the instant case the prosecutrix having failed to prove the ingredients to constitute the offence of cheating within the meaning of Section 415 IPC, no conviction under Section 417 IPC can be maintained. It has further been submitted by the learned Counsel in any case the sentence of imprisonment ought not to have been passed as the revision petitioner has, in fact, married the prosecutrix and they are now leading a happy married life along with a minor son who is about five years old.

6. The learned Public Prosecutor on the other hand has submitted that it is not that to constitute 'cheating' under Section 415 IPC it must be in respect of the property only. The conviction under Section 417 Cr. P.C. can be maintained if the prosecution proves the factum of deception which induces the prosecutrix to surrender to the accused which causes or is likely to cause damage or harm to her

body, mind and reputation. In the instant case, according to the learned Public Prosecutor, the prosecution having proved the ingredients of Section 415 IPC, learned Court below has rightly convicted the revision petitioner under Section 417 IPC. The learned Public Prosecutor, however, has submitted that keeping in view the fact that the revision petitioner has married the prosecutrix subsequently, the sentence awarded by the learned Courts may be modified by imposing fine only and by maintaining the conviction.

7. To appreciate rival contentions of the parties, we shall first deal with the necessary ingredients require to constitute the offence of 'cheating' within the meaning of under Section 415 IPC. For better appreciation Section 415 and 417 IPC are quoted below:

Section 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'.

Section 417. Punishment for cheating.-Whoever cheats shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

8. On reading of Section 415 IPC it is evident that in the definition of 'cheating' two separate classes of acts are set forth, which the person deceived may be induced to do. A person may be induced fraudulently or dishonestly to deliver any property to any other person, which constitute the first class of act and the second class of act 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. To come within the definition of 'cheating', in the first class of cases, the inducement must be fraudulent or dishonest, but in the second class of acts the inducement though must be intentional but may not fraudulent or dishonest. (Reference-Hridaya Ranjan Prasad Verma and Ors. v. State of Bihar and Anr.: (2000) 4 SCC 168).

9. Section 415 IPC requires (a) deception of any person (b) fraudulently and dishonestly inducing that person to deliver any property to any person, or to consent that any person shall retain any property, or he/she intentionally induces that person so deceived to do or omit to do anything which he/she would not do or omit if he/she 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. Deception of any person is common to the second and third requirements of the provision. From a reading of the definition of 'cheating' it appears that the said requirements are alternative to each other, which has been made clear by the legislature by use of disjunctive conjunction 'or'. If any of the requirement is fulfilled then a person can be said to have committed the offence of 'cheating' within the meaning of Section 415, which necessarily does not relate to the conclusion that for the purpose of constituting the offence of 'cheating' within the meaning of Section 415 IPC, it must relate to the property of another person. The offence of cheating would also be complete if it is proved that any person intentionally induces another person to do or omit to do anything, which the other person would not do or omit if he/she were not so deceived, or act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

10. The word 'harm' has not been defined in the Indian Penal Code. According to the Black's Law Dictionary 'harm' means injury, loss or detriment, which can be bodily harm meaning thereby physical pain, illness or impairment of the body, which again includes grievous bodily harm or the physical harm i.e. any physical impairment of land, chattels, or the human body or the social harm i.e. the adverse effect of any social interest i.e. protected by the criminal law.

The word 'harm' has been defined in Webster's Encyclopedic Unabridged Dictionary as follows:

Harm-injury, damage hurt, to do him bodily harm, moral injury evil wrong - to do or cause harm to injure, damage, hurt, to harm one's reputation.

11. The Apex Court in *Mrs Veeda Menezes v. Yusuf Khan Haji Ibrahim Khan and Anr.* : 1966 CriLJ1489 has held that 'harm' in Section 415 IPC means injury to a person in body, mind, reputation or property. The relevant portion of the said

judgment is quoted below:

4. The expression 'harm' has not been defined in the Indian Penal Code: in its dictionary meaning it connotes hurt: injury: damage: impairment: moral wrong or evil. There is no warrant for the contention raised that the expression 'harm' in Section 95 does not include physical injury. The expression 'harm' is used in many sections of the Indian Penal Code. In Sections. 81, 87, 88, 89, 91, 92, 100, 104 and 106 the expression can only mean physical injury. In Section 93 it means an injurious mental reaction. In Section 415 it means injury to a person in body, mind, reputation or property. In Ss. 469 and 499 'harm', it is plain from the context, is to be reputation of the aggrieved party. There is nothing in Section 95 which warrants a restricted meaning which counsel for the appellant contends should be attributed to that word. Section 95 is a general exception, and if that expression has in many other Sections dealing with general exceptions a wide connotation as inclusive of physical injury, there is no reason to suppose that the Legislature intended to use the expression 'harm' in Section 95 in a restricted sense.

12. From the meaning of the 'harm' as discussed above, it is therefore, evident that the word 'harm' under Section 415 IPC means the injury caused to the body, mind, reputation or property of the person deceived. Therefore, the submission of the learned Counsel for the revision petitioner that as the offence alleged does not relate to the any property no offence under Section 417 IPC is made out, cannot be accepted for the simple reason that to constitute the offence of 'cheating' within the meaning under Section 415 IPC the involvement of property is not the must and a person can be convicted under Section 417 IPC if he made a promise that he will definitely marry the girl and thereby induced her and subjected to sexual intercourse and thereby become pregnant and ultimately evaded from marrying the girl. Such inducement need not be fraudulent or dishonest so as to come within the second part of the meaning of 'cheating' under Section 415 IPC, but it must be intentional.

13. So as to constitute the offence of 'cheating' the intentional inducement of the person must be proved and such intention must be at the time of making promise or misrepresentation. Mere failure to keep up the promise, without the intentional

inducement at the time of making the promise or misrepresentation, is not sufficient to prove the existence of such intention right from the beginning. However, there may not be any direct evidence as to the factum of intention to deceive, which can be implied from the facts proved. Such intentional inducement and deception can be proved by number of circumstances from which a reasonable inference can be drawn *Devendra Kumar Singla v. Baldev Krishna Singla* : 2004 CriLJ1774 .

14. In the instant case it has been proved that the revision petitioner has intentionally induced the prosecutrix to surrender to his sexual lust with the promise or misrepresentation that he will marry the prosecutrix and as a result of which she became pregnant, thereby causing damage or harm to the prosecutrix in her body, mind and reputation, which constitute the offence of 'cheating' within the meaning of Section 415 IPC. The revisional Court in exercise of the power of revision cannot disturb the finding of fact arrived at by both the Court's below unless such finding is perverse. But for the purpose of scrutinizing as to whether intentional inducement and deception on the part of the revision petitioner is present in the instant case, we have scrutinize the evidence on record and found that such intentional inducement and deception on the part of the revision-petitioner is present at the time of making the promise or misrepresentation to marry her, which induces the prosecutrix to surrender herself to the sexual lust of the revision petitioner.

15. In view of the aforesaid discussion we are of the view that the revision petitioner has rightly been convicted under Section 417 IPC for the offence of 'cheating' within the meaning of Section 415 IPC.

16. It has been submitted by the learned Counsel for the revision-petitioner that in fact subsequently the revision petitioner has married the prosecutrix and they have a minor child of about five years old and are living together peacefully, after the conviction of the revision petitioner by the learned Trial Court and during pendency of the appeal before the learned Session Judge.

17. The revision petitioner in the revision petition has stated so in paragraph 6 as well as in ground 'F'. Though the prosecutrix is a party to the present revision

proceeding, she did not appear in the revision petition and contest the proceeding before this Court and disputed such statement made in the revision petition.

18. The offence under Section 417 IPC is compoundable with the permission of the Court and at the instance of the person cheated. The revision petitioner though in the revision petition has made a statement that he has married the prosecutrix after the judgment of conviction was recorded by the Trial Court, no application for compounding offence has been filed by the prosecutrix. Therefore, the statement made by the revision petitioner cannot be the ground for compounding the offence, in the absence of any application filed by the prosecutrix. However, as the prosecutrix did not contest such statement made in the revision-petition, in the interest of justice, we are of the view that sentence of imprisonment awarded by the learned Trial Court is required to be interfered with and the ends of justice would be met if the revision petitioner is imposed with the fine only, in view of the fact that punishment for the offence of 'cheating' it can either be imprisonment, which may extend to one year or with fine or with both. Accordingly we modify the sentence imposed by the learned Trial Court by imposing the fine of Rs. 5,000/-, in default to under to rigorous imprisonment for one month. In the event the fine is realized, the same shall be paid to the prosecutrix.

19. The revision petition is therefore dismissed, however, the sentence imposed by the learned Trial Court is altered as indicated above.