

**Parimal Gorai Vs. State of Bihar and anr.**

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**Court :** Patna

**Decided On :** Aug-01-2000

**Judge :** Deoki Nandan Prasad, J.

**Appeal No. :** Criminal Misc. No. 10076 of 1998 (R)

**Appellant :** Parimal Gorai

**Respondent :** State of Bihar and anr.

**Disposition :** Application Dismissed

**Prior history :** Deoki Nandan Prasad, J. 1. This application under Section 482 of the Code of Criminal Procedure has been filed by the sole petitioner for quashing the order dated 16.11.1998 passed by the learned Sessions Judge, Dhanbad in Nirsa PS Case No. 0090/1996 corresponding to G.R. No. 1896 of 1996, under which the learned Sessions Judge held that the accused/petitioner was prima facie liable under Sections 323, 417, 452, I.P.C. and as such charge therein were required to be framed against him. The peti

**Judgement :**

**Deoki Nandan Prasad, J.**

1. This application under Section 482 of the Code of Criminal Procedure has been filed by the sole petitioner for quashing the order dated 16.11.1998 passed by the

learned Sessions Judge, Dhanbad in Nirsa PS Case No. 0090/1996 corresponding to G.R. No. 1896 of 1996, under which the learned Sessions Judge held that the accused/petitioner was prima facie liable under Sections 323, 417, 452, I.P.C. and as such charge therein were required to be framed against him. The petitioner had also moved earlier before this Court vide Criminal Revision No. 83/98 (R) challenging the order dated 27.3.1998 passed by Sessions Judge, Dhanbad and this Court remitted the matter to the learned Sessions Judge, Dhanbad for fresh consideration on the discharge petition. Thereafter, the petitioner again moved before the Sessions Judge, who passed the impugned order.

2. The short facts giving rise to this application that one Manju Kumari lodged First Information Report on 5.7.1996 alleging therein that she was living with the petitioner as husband and wife for the last one year and the petitioner used to have sexual intercourse with her on an assurance that he would marry her. This relation continued for quite some time and whenever Manju Kumari asked the petitioner to marry her in future. It is further alleged that on 21.2.1996 at about 6 p.m., the family members including the petitioner entered into her house and assaulted the relatives of the informant. The mother of the Opposite party No. 2 took the matter to the Mukhiya and Sarpanch and asked the petitioner to marry but when the Panchayati failed, the matter was reported in the police, who took up the investigation in the case and submitted charge-sheet against the petitioner.

3. The learned Counsel appearing on behalf of the petitioner vehemently argued that the offence under Section 376, I.P.C. is not made out as the hymen of the victim girl was found to be intact and as such the allegation for committing rape is false and fabricated. It is further submitted that there was a specific direction of this Court in Revision No. 83 of 1998(R) while remitting the case to the Sessions Judge that the Sessions Judge shall consider the medical report and if the girl was examined by a doctor and medical report is found to be genuine indicating that hymen was intact and so the learned Magistrate should have passed the impugned order only on the pointing to whether the offence under Section 376, I.P.C. is made out or not. But, the learned Magistrate exceeded his jurisdiction by holding that the offence is made out under Sections 417, 323, 452, I.P.C. which is

beyond the observation as made out by this Court. It is further argued that the offence under Section 417, I.P.C. is not applicable in the instant case as nothing has been delivered dishonestly in the instant case. He also relied upon a case reported in 1990 Cr. L.J. 650 (Calcutta)(Hari Majhi v. The State)

It is further argued that there was no material on the case diary or in the medical report which will go to establish that a prima facie case under Sections 323, 417, 452 I.P.C. is made out against the petitioner and as such the impugned order is fit to be quashed.

4. On the other hand, the learned Counsel for the Opposite parties contended before me that there is no illegality in the impugned order, as the learned Court below has rightly passed the impugned order. It is further argued that there is a specific allegation in the FIR that the accused-persons entered into the house assaulted the informant parties. It is further submitted that there is also specific allegation and evidence that the petitioner committed cheating by giving false allurement and false promises to marry the Opposite party No. 2 and accused/petitioner induced fraudulently the victim girl and as such, the offence under Section 417, I.P.C. is made out. It is also submitted that there was a clear observation of this Court while remitting the matter to the Sessions Judge, that the Sessions Judge would consider the entire case diary and the medical report and then would pass a fresh order and accordingly, the learned Sessions Judge passed the impugned order by considering the entire diary and the medical evidence and as such, there is no illegality in the impugned order.

5. Obviously, this Court remitted the matter to the Sessions Judge for passing fresh order after considering the entire case diary and the medical report. There is a specific allegation in the written report/f FIR that the accused-persons entered into the house of the victim/opposite party No. 2 and they assaulted brutally. The matter was also reported to the Sarpanch Niranjana Gorai. There is also specific allegation that the victim girl was subjected to sexual intercourse on the false pretext and assurance that the petitioner would marry her and admittedly the petitioner has not married with her as yet. The victim girl reiterated the same position in her statement under Section 164, Cr.P.C.

Section 417, I.P.C. reads as follows:

Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year or with both.

This section punishes simple cases of cheating. The question of delivery of property or anything else does not arise for simple cheating. Assault by entering in the house is very specific in the F.I.R.

6. In Hari Manjhi's case (supra), it was observed while deciding the Criminal Appeal that there is no evidence that representation by accused was false to the knowledge of the said accused at the time when it was made. Such representation by the accused to his knowledge as being false can only be ascertained or established in the trial when the witnesses on the point would be examined and cross-examined. In the said case, there was evidence adduced during trial on the basis of which it was found that there was no representation by the accused to be false to his knowledge and as such, the stage of facts of the instant case is quite distinguishable to the said finding.

7. it is well settled that charge can even be framed on the material on record capable of inferring strong suspicion about the commission of offence.

8. Same view was taken by this Court in the case of Mir Wali Mohammed alias Kalu v. State of Bihar 1990 (2) B.L.J. 551 : 1991(1) BUR 247 as the allegation is identical to the instant case. There was also assurance given to marry and the complainant permitted him to have sexual intercourse and subsequently, he refused to marry. Cheating has been defined in Section 415, I.P.C. which reads as under:

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 was 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'.

9. In the instant case, the petitioner also fraudulently induced the victim Manju Kumari that he would marry her and then only she permitted him to have sexual intercourse and that act of petitioner obviously causes damage and harm to the reputation and dignity of the victim who cannot live gracefully in the society as the rape for a woman is deathless shame. Being holding out false promise or false assurance, one has enjoyed and satisfied his desire and on such inducement, the victim sacrificed her whole dignity and chastity, then what more is required to be delivered by a poor woman. Moreover, Section 417, I.P.C. is for a simple cheating whereas Section 420, I.P.C. is specifically for cheating and dishonestly inducing delivery of property. For the reasons mentioned above, there is no substance in the argument of the learned Counsel of the petitioner.

10. Thus, there appears no illegality in the impugned order and it does not require for any interference.

11. In the result, I do not find any merit in this application which is accordingly dismissed.

12. It is needless to say that the trial Court would proceed with and decide the case in accordance with law and he will not be influenced by any observation made in this order.