

Subhransu Sekhar Samantray Vs. the State

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Court : Orissa

Decided On : Sep-03-2002

Reported in : 2002CriLJ4463

Judge : P.K. Tripathi, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 161, 228, 240, 246 and 482;
[Indian Penal Code \(IPC\), 1860](#) - Sections 415, 417 and 493

Appeal No. : Case No. 65 of 2002

Appellant : Subhransu Sekhar Samantray

Respondent : The State

Advocate for Def. : A.K. Mishra, Adv.

Advocate for Pet/Ap. : G. Tripathy, ;A.K. Swain, ;D.R. Mohapatra and ;R.K. Satpathy, Advs.

Disposition : Application dismissed

Judgement :

ORDER

P.K. Tripathi, J.

1. Learned Standing Counsel states that he possesses the case diary. Heard both the parties and on their consent this application under Section 482, Code of Criminal Procedure, 1973 (in short 'the Code') stands disposed of at the stage of admission.

2. Petitioner is the accused in T.R. Case No. 5/6 of 2002 arising out of G. R. Case No. 1106 of 2000. On 18-6-2002 learned Additional Sessions Judge, Khurda framed charge against the petitioner on Four Heads inter alia for the offence under Sections 493 and 417, Indian Penal Code (in short 'I.P.C.') which is objected to by the petitioner on the ground of lack of prima facie case for the said two offences.

3. Learned Counsel for the petitioner argues that at the time of consented co-habitation between petitioner and the prosecutrix admittedly there was no marriage and for the purpose of co-habitation no deceitful means was used by the petitioner so as to make out a prima facie case for the offence under Section 493, I.P.C. He further argues that when there is no allegation of cheating with respect to any property therefor, the offence of cheating as defined under Section 415, I.P.C. and punishable under Section 417, I.P.C. is not made out. Accordingly, he argues that the trial Court without considering the legal requirement and the factual backing for the said two offences has mechanically framed charge and therefore the charge for the offence under Sections 493 and 417, I.P.C. are liable to be quashed. He reads out the F.I.R. in support of his argument.

4. Learned Standing Counsel while contesting the above argument of the petitioner reads the statement of the prosecutrix recorded under Section 161 of the Code and states that a prima facie case exists for both the offences and the petitioner is wholly misconceived in claiming for discharge from the offence under Section 417, I.P.C. because of non-involvement of any property as the subject-matter of cheating.

5. A charge is a written notice of the specific accusation in precised form which the accused is required to meet. That is the nicety of Criminal Jurisprudence in Anglow-Saxon Law by providing a fair opportunity of trial to accused of an offence. Charge is framed under Section 228 of the Code in the Court of Session when one of the offences involved is triable exclusively by the Court of Session. Such charge

is framed under Sections 240 and 246 of the Code if one of the offences is triable by Chapter XIX of the Code. In the said three sections procedural law clearly mandates that if the Judge or the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence which is triable in his Court then he may frame charge accordingly in accordance with the relevant provision from Chapter XVII of the Code. Framing of charge is not a mere formality but it is a judicial act which the trial Court is to perform with due application of mind to the facts and law involved to find out whether there is any ground for presuming that the accused has committed any offence. At the stage of consideration of charge, therefore, Court is to find out whether there exists prima facie case from the materials available on record. Learned Counsel have no dispute on legal position in the above manner relating to framing of charge.

6. Section 493 provides punishment for the offence of 'Co-habitation caused by a man deceitfully inducing a belief of lawful marriage'. Therefore, there must be prima facie evidence on record to show that-

- (i) accused cohabited with prosecutrix
- (ii) at the time of such cohabitation, he knew that he was not legally married to her;
- (iii) the prosecutrix consented to cohabitation believing that she is his wife, and
- (iv) such belief in her was induced by deceit on the part of the accused.

In the case at hand though in the F.I.R. it is not stated in so many words about the belief in the mind of the prosecutrix about a lawful marriage but in her statement under Section 161 of the Code prosecutrix has stated that when the petitioner embraced and kissed her she resisted but when he put vermilion on her head and declared her as his wife with the assurance to accept her publicly after getting a job, thereafter she submitted for sexual inter course. The aforesaid statement of the prosecutrix is sufficient to satisfy the requirements of law as provided in Section 493, I.P.C. to constitute that offence. Under such circumstance, petitioner's contention about absence of a prima facie case for the offence under Section 493, I.P.C. is without any merit.

7. Section 415, I.P.C. defines the offence of cheating and Section 417, I.P.C. provides the punishment for cheating. When by the act of deceiving the offender intentionally and dishonestly induces the victim so deceived to do or omit to do anything which the victim would not do or omit to do if not so deceived and because of that act or omission it resulted in or is likely to result in damage or harm to the victim in body, mind, reputation or property, then that is a case of cheating. Therefore, it is not only deceiving with respect to property but also the act of deceiving resulting in or likely to cause damage or harm in body, mind or reputation that constitutes the offence of cheating as defined in Section 415, I.P.C. Thus, in this case, as per the prosecution allegation the prosecutrix was cheated by body, mind and reputation because of the deception made by the petitioner with the dishonest intention to sexually exploit her. This Court feels that petitioner read half the law in Section 415, I.P.C. to advance the above noted argument that in the absence of involvement of property offence of cheating cannot be imagined. On an analysis of the allegations available in the case diary and the provision of law, this Court finds existence of a prima facie case for the offence under Section 417 too.

8. For the reasons indicated above, this Court finds no merit in the contention advanced by the petitioner that charge has been framed in the absence of any material. In the result, the application under Section 482, Cr.P.C. is found without any merit and accordingly dismissed. The trial Court be immediately intimated about the result of the application so as to proceed with the trial.