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Court : Rajasthan

Decided On : Jul-22-1985

Reported in : 1985(2)WLN589

Judge : Kishore Singh Lodha, J.

Appeal No. : S.B. Cr. Misc. Petition No. 464 of 1984

Appellant : Shiv Singh

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

Kishore Singh Lodha, J.

1. Shiv Singh has filed this application under Section 482 Cr.P.C. praying that the order of the learned Munsif and Judicial Magistrate, Balotra, dated 14-11-1984 taking cognizance of an offence under Section 406 IPC against him, may be set aside and the proceedings be quashed.

2. Briefly stated the facts leading to the present petition are as under On 22-6-1984, Bhanwar Singh filed a report at police station Mandli in which it was stated that on 19-4-1983, the present petitioner Shiv Singh along with some other persons came to his village and offered to marry his two daughters to his two sons

Bhagwan Singh and Mohan Singh. According to the complainant, he first declined to accept this proposal but on the instance of Shiv Singh, he agreed to it and fixed 21-4-1983 for the formal engagement. The complainant goes on to allege that on 21-4-1983, the formal engagement was made and cocounts were given to Bhagwan Singh and Mohan Singh in the presence of the neighbours. His daughter Saroj was engaged with Bhagwan Singh and Indra with Mohan Singh. At that time, Shiv Singh and his associates told him that there was a custom of 'mitai-kothali' according to which the in-laws of the girl give ornaments and clothes to the girl and, therefore, he may also give ornaments and clothes to the daughters of Shiv Singh whereupon the complainant gave four gold churies weighing four tolas, a pair of gold tops weighing one tola and a set of clothes worth Rs. 500/- to each of the two girls and entrusted these articles to Shiv Singh on behalf of the two girls. It was alleged that Shiv Singh agreed that at the time of the marriage, these ornaments and clothes will be returned to the complainant when the two girls come to his house.

3. Later Shiv Singh put off the marriages of his two daughters dispute the willingness of the complainant to perform the marriages of his sons with the daughters of Shiv Singh, for one reason or the other. Later, however, on 14-6-1984 when the complainant went to Phalad, the village of Shiv Singh, he came to know that Shiv Singh had already married his two daughters elsewhere on 9-5-1984. On verification of this information, he found that Saroj was married to Guman Singh and Indra to Jor Singh.

4. On this, the complainant along with some other persons went to Shiv Singh to accost him and his associates why they had defrauded them and also to ask them for the return of the ornaments and clothes. According to the complainant, Shiv Singh and his associates refused to return the ornaments and thus they had committed offences under Sections 420 and 406 IPC.

5. The Police registered the case and after investigation, put up a chal-lan against the accused Shiv Singh when the accused Shiv Singh appeared before the learned Munsif Magistrate, copies of the challan papers were given to him and thereafter on 14-11-1984, the learned Magistrate framed a charge under Section

406 IPC against him but discharged him under Section 420 IPC. The learned Magistrate was of the opinion that no deception was practised upon the complainant by Shiv Singh because he had the two daughters and wanted to marry them to the sons of the complainant. No dishonest representation appears to have been made by Shiv Singh at the time the engagement was made but so far as the ornaments were concerned, they were entrusted to him for being returned to the complainant when the marriage would have taken place but as he refused to return the ornaments when the marriage could not be performed, he appeared to be guilty under Section 406 IPC. It is against this order that the present application under Sections 482 Cr.P.C. has been filed by Shiv Singh.

6. I have heard the learned counsel for the parties and have gone through the record.

7. It is urged by the learned counsel for the petitioner that the learned Magistrate was not at all justified in directing a charge under Section 406 IPC being framed against on the accused petitioner since there is nothing on the record to indicate that as a matter of fact these ornaments and clothes were entrusted to the petitioner and later he may have misappropriated them. According to the learned counsel, it only may be a case of breach of contract but not breach of trust and in the face of the allegations made by the complainant in the complaint as also in his evidence wherein he had been alleging fraud and cheating against the petitioner the question of entrustment does not at all arise as the two acts are mutually inconsistent. He, therefore, prayed that the order of the learned Magistrate may be set aside, and the proceedings be quashed. The learned counsel for the non-petitioner could not seriously challenge this contention of the learned counsel for the petitioner and I also find considerable force in it. In the complaint itself, the complainant had come forward with the case that at the very inception when the proposal was made for the marriages of his sons with the daughters of the petitioner Shiv Singh, he was reluctant but on their insistence, he agreed and later the engagement ceremony was performed and it was at that stage that Shiv Singh and his associates asked for the ceremony of 'mithi kothali' whereupon the aforesaid ornaments and clothes were given for the girls and they were entrusted to the accused Shiv Singh. Later Shiv Singh did not perform these marriages and

married his daughters some where else and thus cheated the complainant. Now the learned Magistrate has clearly found that there was no question of any cheating on the part of Shiv Singh. It therefore, gives rise to the conclusion that at the time the engagement was performed, Shiv Singh had the intention of performing the marriages but he later could not fulfil the promise made by him for reason with which we are not at present concerned. It was on the occasion of the engagement of the sons of the complainant with the daughters of the accused that the aforesaid ornaments and clothes etc. are said to have been offered for the girls, they were actually handed over to Shiv Singh according to the complaint. There was thus as a matter of fact an entrustment in the sense of term to Shiv Singh because the ornaments and the clothes were meant for the girls. If the marriages would have been performed, the ornaments and clothes would have been the properties of the girls. Shiv Singh could not have retained them and when the marriages could not be thus performed and the girls or for the matter of that, Shiv Singh failed to return the ornaments and clothes, assuming that they were thus handed over, the failure on the part of Shiv Singh may only amount to a breach of trust; In a decision of a Full Bench of the Madras High Court in *Emperor v. John Molver* (1936) 37 Cr.L.J. 637, the term 'entrustment' came up for consideration and their Lordships observed as under:

We have here to construe that word as it occurs in a Section of -the Penal Code headed 'of Criminal Breach of Trust'. The notion of trust in the ordinary sense of that word is that there is a person, the trustee or the entrusted in whom confidence is reposed by another who commits property to him; and this again supposes that the confidence is freely given.

Now in the present case, as already stated above, the case of the complainant appears to be that Shiv Singh did not have the intention of marrying his daughters to the sons of the complainant from the very beginning and was only tricking him by offering such marriages and his real intention was to grab the ornaments and clothes etc. from him. If that be so, then there is no question of any such entrustment as is envisaged by the term 'entrustment'. In the aforesaid Madras case, their Lordships have further observed as under:

A person who tricks another into delivering property to him bears no resemblance to a trustee in the ordinary acceptation of that term; and Section 405 gives no sanction to regard him as a trustee. The illustrations to the Section show that it is intended to cover the case of property honestly obtained by the person entrusted with it, and subsequently dishonestly misappropriated by him in breach of his trust.

These observations clearly and fully apply of the present case.

8. This Court also had an occasion to consider this aspect of the matter in *Bheru Singh v. The State of Rajasthan* (1985) Cr. L.R. (Raj.) 232, where also the case put forward by the complainant was under Section 420 and 406 IPC and the transaction was said to be in agreement to sell. On the facts, this Court came to the conclusion that there was no question of any deception and the accused could not been held guilty under Section 420 IPC as at the inception, of the transaction, he had no dishonest intention. Thereupon the learned counsel for the petitioner in that case urged that even if the offence under Section 420 was not made out, an offence under Section 406 was made out when the accused refused to return the part of the sale money and this Court observed as under:

Faced with this situation, the learned counsel for non-petitioner No. 2 at the fag end of the arguments submitted that if the offence under Section 420 cannot be said to be made out, the offence under Section 406 must be deemed to be made out. I am unable to agree with this contention. In the first place, the two submissions are mutually inconsistent. If it is urged that the money had been obtained by cheating, then the question of entrustment does not at all arise. On the other hand, if it is held that the money was entrusted to the petitioner, then the very case of the non petitioner No. 2 would fall to the ground. Then it will clearly be a case of mere breach of contract.

9. As already stated above, the trial court refused to frame charge under Section 420 IPC against the petitioner and part of the order has not been challenged by the complainant or the State and in these circumstances, for the reasons already stated above, the charge under Section 406 IPC could not be framed against the petitioner. The order of the learned Magistrate, therefore, deserves to be quashed.

10. I, therefore, accept this petition, set aside the order of the learned Munsif and Judicial Magistrate, Balotra, dated 14-11-1984 and quash the proceedings against the petitioner for offence under Section 406 IPC.

11. I have already stated above that this may be a case of breach of promise or breach of contract and the remedy, if it all, lies before the Civil Court. Nothing said in this judgment will in any case be taken to the prejudice any of the parties before any Civil Court.

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