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Court : Chennai

Decided On : Mar-21-1994

Reported in : 1994CriLJ2238

Judge : Pratap Singh, J.

Appeal No. : Crl. O.P. No. 2039 of 1992

Appellant : Mailsami

Respondent : State

Advocate for Def. : E. Raja, Govt. Adv.

Advocate for Pet/Ap. : Haji P.K. Jamal Mohamed, Adv.

Judgement :
ORDER

1. The accused in C.C. No. 1376/90 on the file of Judicial Magistrate, Palani, has filed this petition under Section 482, Cr.P.C. praying to call for the records in the above case and quash the same.

2. Short facts are : The respondent has filed the charge sheet against the petitioner for offence under section 417, I.P.C. on the allegations that 10 months prior to 15-6-90, at Andinaickanvalasu village, the accused and victim Minnalkodi loved each other that accused had sexual intercourse with Minnalkodi with her

consent by promissing her that he would marry her and Minnalkodi became pregnant and thereafter the accused refused to marry her and thus cheated her.

3. Mr. Hajee P. K. Jamal Mohamed, the learned counsel appearing for the petitioner, would submit that (i) on the evidence available on record, no offence under section 417 is made out. He would submit that the date of offence is not given; but only approximately stated that even as per the first information report, the accused had agreed to marry her even after she become pregnant and that in the F.I.R. it is stated that parents were hiding the accused and in the presence of the above materials, no offence under section 417, I.P.C. is made out.

(ii) The charge sheet is barred by time. Sentence for offence under Section 417, I.P.C. is imprisonment for one year. As per Section 468(2)(b), Cr.P.C. the period of limitation is one year, if the offence is punishable with imprisonment for a term not exceeding one year. As per Section 469, Cr.P.C. the period of limitation, in relation to an offender shall commence,

(a) on the date of the offence, so this charge-sheet filed on 7-9-90 is barred by time.

(iii) For making out offence under section 417, I.P.C. the inducement must not be for doing an illegal act and in this case the inducement was for an illegal act viz. sexual intercourse between two unmarried persons and so the offence is not made out.

(vi) The allegations in the F.I.R. would not make out an offence under Section 420 or 493, I.P.C. and while so, the case was registered for offence under section 420 and 493, I.P.C. and investigation was taken and ultimately the charge sheet was filed for offence under section 417, I.P.C. Section 417, I.P.C. is a non cognizable offence. So the bar imposed under section 155, Cr.P.C. will be there and the proceedings are to be quashed.

I have heard Mr. E. Raja, the learned Government Advocate, on the above aspects.

4. I shall take up the submissions in seriatim. In the first information report, it is stated that when the accused began to move in an improper way she did not agree to accede to his request and at that time the accused told her that he would definitely marry her, that if she agrees, on that very moment both of them can go to some other place and get married and live together and that they can live at Palani and that he would not he afraid of his parents and other relatives and that he cannot live without her and so saying made a promise by touching her head and that she believed him and had sexual intercourse with him. Then she has stated that whenever they had sexual intercourse, he used to say like that and that she became pregnant and requested him to marry, as promised, that he replied that if she delivers a baby within four months of the marriage, people will talk ill of her and so she must dissolve the pregnancy and then he would marry her. She has further stated that he gave Rs. 100/- through Lakshmi and sent her to the hospital at Dharapuram and that the lady doctor said that already she is pregnant by six months and she cannot dissolve the pregnancy. Then she has stated that they reported the matter to Mailsamy and still he said that only if she dissolve the pregnancy, he will marry her. She would further stated this matter came out to her father and relatives that a panchayat was held that Mailsami's father told the panchayats that on an auspicious day, the marriage can be celebrated. But thereafter, they had kept Mailsami in some place and said that he would not available. Then again, when the Sub-Inspector of Police, Keeranur sent for the accused and others. They said that he will marry her; but again they have kept the accused in some place and refused to have the marriage. Then she has stated that Mailsami had cheated her by giving out false promise that he would marry her and had sexual intercourse with her and had made a request to find out Mailsami, the accused and make him to marry her. In this report, it is specifically stated that even after the complainant went to the hospital at Dharapuram for dissolving the pregnancy, as desired by the accused and after the lady doctor told that pregnancy is already six months old and could not be dissolved, still the accused had said that only if she dissolves the pregnancy, he would marry her. That would go to show that he was putting an impossible condition for marriage, which would virtually amount to refusal to marry her. Then it is alleged in the latter portion of the F.I.R. that her parents had kept him in some place and did not allow the marriage.

The totality of the allegations made in the F.I.R. would go to show that she must have been a willing party for the same. So it cannot be stated that he never refused to marry her and that there was no cheating whatsoever.

5. The submission that no offence under section 417, I.P.C. is made out, cannot be accepted for the reason that when she refused to have sexual intercourse with him, he made a promise that he will definitely marry her and induced her to subject herself for sexual intercourse by him; but ultimately when she insisted for marriage, after she became pregnant, he evaded and ultimately he put an impossible condition and did not marry her. So, the inducement is there and because of that, she had done something, which she would not do, if she had not believed that inducement and that inducement is shown to be a dishonest one. All the ingredients necessary to make out the offence under Section 417 are available here. So the first submission cannot be sustained.

6. Regarding the second submission that offence under section 417, I.P.C. is barred by time, the date from which the period is to be computed, assumes importance Mr. Hajiee P. K. Jamal Mohamed, would submit that the date on which she agreed to have sexual inter course with the accused would be the material date. I do not accept this submission for the reason that the date of knowledge of the aggrieved person is the material date and on the date on which she agreed to have sexual intercourse, she did not have knowledge that he was going to ultimately cheat her and only the date on which she came to know that she was cheated is the material date, for fixing the starting point of limitation, so far as offence under section 417 is concerned. Any victim of cheating would not know, on the date of cheating that he or she was being cheated. The victim would come to know only on a later point of time, that he or she was cheated. That is the material date. In the instant case, she believed that promise made by the accused and agreed for sexual intercourse. Later she became pregnant by six months. He asked her to dissolve the pregnancy and then he would marry her. The lady doctor said that the pregnancy could not be dissolved because of the advance stage of pregnancy. Then he insisted that he would marry only after pregnancy was dissolved. Panchayat was held. At that time he agreed. But it was not given effect to. Then on 11-4-90 she gave report to the police and the Sub-Inspector, Keeranur

sent for him and his father and others and at that they agreed for the marriage, but later did not do it. Only then, she has come to know that she has been cheated and given this complaint on 15-6-90. Between 11-4-90 and 15-6-90 only about two months had elapsed. So it is not barred by time. Hence the second submission also fails.

7. The third submission also cannot be accepted. I cannot say that sexual intercourse between two unmarried persons out of consent was an illegal act.

8. I shall next pass on to the fourth and last submission. The submission is that the allegations made in the F.I.R. do not make out any offence under section 420, I.P.C. or 493 I.P.C. and at the most, it will make out offence under section 417, I.P.C. which is a non-cognizable offence; but the case was registered for cognizable offence and without permission the Court, investigation was done and ultimately charge-sheet was filed only for offence under section 417, I.P.C. and that this investigation, without obtaining the permission of the Court is illegal and invalid, and hence it has to be quashed. To consider this submission certain provisions in Cr.P.C. need be stated, Section 2(d), Cr.P.C. defines complaint. It reads as follows :

'Complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but dose not include a police report.'

Explanation : A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;'

'Police Report' is defined in Section 2(r) of the Code and it reads as follows :

'Police report' means a report forwarded by a police officer to a Magistrate under subsection (2) of Section 173;'

Section 190(1)(a), Cr.P.C. reads as follows :

'190. Cognizance of offences by Magistrate (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specifically empowered in this behalf under sub-section (2) may take cognizance of any offence.

(a) upon receiving a complaint of facts which constitute such offence.'

Section 2(d) coupled with explanation is taken, the final report filed in this case, after investigation, discloses, a non-cognizable offence and hence it shall be deemed to a complaint and the Magistrate can take cognizance of the same by virtue of Section 190(1)(a) of the Code. I am unable to accept the submission made by Mr. Hajee P. K. Jamal Mohamed that it cannot be construed as a 'complaint' as defined in S. 2(d) of the Code. This submission ignores the explanation in S. 2(d) of the Code. So though the case was registered for cognizable offences viz. under section 420 and 493, I.P.C. in as much ultimately it turned out to be an offence under section 417, I.P.C. which is a non-cognizable offence, the final report is to be considered as a complaint under S. 2(d) of the Code. So, the investigation, cannot be termed as illegal and the entire proceedings cannot be quashed. In Safdar Hussain v. Abdul Rahim : AIR1967 Mad4 Justice Ananthanarayanan (as he then was) had held in that case that the District Magistrate (Judicial) at Tiruchirapalli took the view that even in respect of a non-cognizable offence, the police could properly file a charge-sheet or report, which would then be treated as a complaint and dealt with according to law, on the authority of Public Prosecutor v. Munusami Naidu 1942 Mad WN 224 The learned District Magistrate (J) also pointed out that a defect or illegality in the investigation, even if it be conceded had no direct bearing on the competence of the trial, or the procedure at trial. This order was challenged in the High Court. The learned Judge upheld the order of the District Magistrate (J) and had dismissed the revision proceedings. The learned Judge has observed as follows :

'This line of argument is clearly misconceived, and the authorities are very clear that, even in non-cognizable cases, nothing will prevent the police from competently filing a report, which should then be treated as a complaint under Section 200(aa), Cr.P.C. with the sole variation that no sworn statement need be

recorded from the police officer lodging the complaint.'

The ratio of this ruling applies to this case. In Kanniah In re , Justice Krishnaswamy Reddy had held that the report of a police officer in non-cognizable offence, without investigation as required under Section 155, Cr.P.C. will be a complaint, as defined in Section 4(h) Cr.P.C. and proceedings in such a case cannot be stopped under Section 249, Cr.P.C. In view of the above, the last submission also fails.

9. In Ravichandran v. Mariyammal) Justice Janarthanam had considered the ingredients of offence under Section 417, I.P.C. In para 8, the learned Judge has held as follows (at p. 1676) :

'The averments in the complaint do prima facie point out false representation said to have been made by the petitioner, in the sense of himself making a promise to marry her, and believing such a promise, the respondent succumbed to his carnal desire, in the sense of sharing her bed with him at his request. But for the representation so made and the deception practiced on her, she would not have been a party for sharing her bed with the petitioner, on the relevant date, which is said to have resulted in her becoming pregnant. The allegations as stated in the complaint do prima facie, establish an offence under section 417, I.P.C. requiring him to undergo the ordeal of trial.'

So observing, the learned Judge had dismissed the petition for quashing the prosecution.

10. Mr. Hajee P. K. Jamal Mohamed would rely upon Hari Majhi v. State . In that case, it was held that where the charge of cheating, as in this case, rests upon a representation, which is false which relates not to an existing fact but to a certain future event, it must be shown by the prosecution that the representation is false to the knowledge of the accused when it was made. It will be of no consequence to show that in fact the representative has ultimately turned out to be untrue. This ruling is not applicable to this case in as much as in this case though at the time she had sexual intercourse with the informant, the accused was repeatedly promising that he will marry her, when the occasion came to marry her, he evaded

and put forth impossible conditions and ultimately did not marry her. From that an inference can be clearly drawn that even at time when he made the promise, he had no intention to marry and had acted in a dishonest manner. The learned counsel would also rely upon the following passage in AIR Manual, Volume 28, 4th Edition at p. 1860.

'A promised to marry B and cohabited with her, with the result that B became pregnant. Subsequently A refused to marry her. For want of proof that A had no intention to marry B at the time of his proposal of marriage, he was acquitted of the offence of cheating and his subsequent conduct in refusing to marry the girl was held not to be the sole criterion of his intention at the time of earlier proposal.'

This observation can be applied to the facts of a case, which are similar to this passage. The facts of the case before me are different and hence it cannot be applied.

11. Since none of the submissions made by Mr. Hajee P. K. Jamal Mohamed finds acceptance with me, the petition fails and shall stand dismissed.

12. Petition dismissed.

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