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HIGH COURT OF DELHI : NEW DELHI

Judgment reserved on : March 03, 2010

Judgment pronounced on : March 12, 2010

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**Crl. M.C. No. 736/2009
& Crl. M.A. No. 2742/2009**

% O.P. Kaim ... Petitioner

Through: Mr. Sudhir Nandrajog, Senior Advocate
with Mr. Ashutosh Shali, Mr. Ramesh
Sanjeev Narula and Mr. Lalit Gupta,
Advocates

versus

State & Anr. ... Respondents

Through: Mr. Amit Sharma, Additional Public
Prosecutor for the State
Dr. Naipal Singh, Advocate for
Respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
 2. To be referred to Reporter or not?
 3. Whether the judgment should be reported in the Digest?
- No

SUNIL GAUR, J.

1. Petitioner along with his co-accused was charge-sheeted in FIR No. 163 of 2004, under Section 498-A/406/420/34 of the IPC, registered at Police Station Anand Vihar, Delhi. Trial court vide order

of 8th December, 2007, had discharged the petitioner and his four co-accused in this case.

2. Aforesaid order of the trial court was challenged by the complainant/ first informant of the FIR in question, i.e. respondent No. 2 herein before the Revisional Court, who vide impugned order has directed the petitioner to face the trial for the offence under Section 415 read with Section 417/ 34 of the IPC and has asked the trial court to frame a separate Charge for the aforesaid offence against the petitioner and his co-accused Ramesh.

3. In this petition, petitioner is seeking setting aside of the impugned order of the Revisional Court and restoration of the order of the trial Court, discharging the Petitioner in this case. Paragraph nos. 7 and 8 of the trial court order take note of the allegations against the Petitioner and have dealt with them in the following manner:-

“Qua the accused O.P. Kem and Ramesh allegations are that they both had visited the house of the complainant in the year 2002 and had represented to the complainant’s father that father of the accused Satya Prakash is permanently disabled and is having failure of both the kidneys and thereby had asked for an early marriage. During the course of arguments the counsel for complainant had admitted that accused Fakir Chand is having permanent disability in his legs. Apart from this the court also had an occasion to see that accused Fakir Chand came on a Wheel Chair, therefore, this fact that accused Fakir Chand is permanently disable is

not in dispute. There is no material on record to show that accused Fakir Chand was not suffering from any ailment of his kidneys. Further, the allegations against the accused O.P.Kem and Ramesh are vague as no date has been mentioned on which they had come to the house of complainant for an early marriage. Therefore, from these allegations made against the accused O.P. Kem and Ramesh, no offence of Section 417/420 read with section 34 of Indian Penal Code is made out.

8. Qua the accused O.P. Kem, Ramesh and Satya Prakash there are allegations that on 31.3.2002 accused Ramesh and Satya Prakash at the instance of accused O.P. Kem had gone to the house of the complainant for the purpose of negotiations of marriage and the fact regarding suspension of accused Satya Prakash during the course of probation and the facts regarding his having illicit sexual relationship with one Kiran wife of his subordinate Vijay were not disclosed despite having knowledge. In the present case Investigating Officer had collected the enquiry report which is pending against the accused Satya Prakash and is being conducted by Sh. V.K. Aggarwal, Supdt. Engineer (Retd) Dakshin Haryana Bijli Vitran Nigam Ltd., Hisar. In the said enquiry report there is a complaint of Sh. Vijay Pal Singh, J.E. against accused Satya Prakash regarding his extra marital affairs with his wife Kiran and in the statement of allegations in the departmental enquiry there are various other allegations against the accused Satya Prakash apart from the allegations of having extra marital affairs with the wife of Vijay Pal Singh, J.E. In his department between the period 16.5.2001 to 3.9.2001. Although there is material on record to show that the accused Satya Prakash was facing a

departmental enquiry regarding the allegations of illicit relationship with wife of his subordinate Vijay Pal Singh in the year 2001 but there is nothing on record to show that accused O.P. Kem and Ramesh were privy to the alleged misconduct of accused Satya Prakash and his suspension from the department when they have proposed him for marriage to the complainant. Both accused O.P. Kem and Ramesh were resident of Delhi and the alleged misconduct of accused Satya Prakash happened in a remote place in Narnaul (Haryana) in 2001. Generally the alleged illicit sexual act are done in secrecy and the world at large is not aware about such acts. There is material on record to show that accused O.P. Kem and Ramesh were close relatives of accused Satya Prakash or were regularly visiting him at Narnaul and had the knowledge of alleged sexual misconduct on the part of the accused Satya Prakash. Accused O.P. Kem and Ramesh were only acting as a mediator in the marriage and there is no material to show that despite having the knowledge about the suspension of accused Satya Prakash and his alleged relationship with Kiran the same were not apprised to the complainant and her father.”

4. Aforesaid reasoning of the trial court, did not find favour with the Revisional Court, who has disagreed with the trial court and the basis of disagreement finds mention in the operative paragraphs of the impugned order, which read as under:-

“At the initial stage of inquiry or while considering the plea of charge, the statements recorded during the investigation has probative value and by reading the allegations in the

statements of complainant and other witnesses consolidately, it appears that Respondent No. 1 and 2 were aware not only about the service status/record of Satya Prakash but also about his disease vis-à-vis about the actual pathological or physical condition of Fakir Chand, otherwise there was no occasion for the Respondent No. 1 and 2 to insist the complainant and her father Dr. Naipal Singh that there is no need to make inquiries about their character, reputation, etc. as Respondent No. 1 was ready and willing to marry his own daughter had there been appropriate tunings of age. The assurance like that Sh. O.P. Kaim was ready to marry his own daughter but prevented by the circumstances of the age of his daughter, this induced the complainant and her father to repose their faith in the Respondent No. 1 and 2 and make decision for acceptance of proposal of marriage. However, other parts of statement suggest that facts in the knowledge of Respondent No. 1 and 2 were suppressed from the complainant and her father.

These circumstances, squarely covers in Section 415 Indian Penal Code (part II described above) read with explanation thereof. The circumstances does not fall in Part I of Section 415 of Indian Penal Code. Hence the court of learned Metropolitan Magistrate, Delhi could not consider the record, other than complainant, comprising bundle of facts not only suggesting the date when Respondent No. 1 and 2 went to the complainant and her father but also the venue where entire discussion took place. The Respondent No. 1 and 2 concealed material facts from the complainant and her father and had such facts were not concealed, they would not have omitted their decision otherwise. Prima facie offence under Section 415 read with Section 417/34 of Indian Penal

Code against Respondent No. 1 Sh. O.P. Kaim and Respondent No. 2 Sh. Ramesh. The impugned order dated 8.12.2007 qua discharge of Respondent No. 1 and 2 is altered and set aside to that extent. The said Respondent No. 1 and 2 are directed to appear before the court of Ld. Metropolitan Magistrate, Delhi to face the trial as charge under Section 415 read with section 417/34 of Indian Penal Code is made out against them and trial court will frame a separate charge in respect of Respondent No. 1 and 2 on their appearance there.”

5. The submissions advanced by both the sides have been duly considered and the material on record as well as the decisions cited have been carefully perused.

6. The foremost submission advanced on behalf of the Petitioner is that the ingredients of the offence alleged are not made out, as there were no misrepresentation by the Petitioner. Learned senior counsel for the Petitioner had contended with much vehemence that the Petitioner did not have any role except to introduce the Accused - Satya Prakash to the complainant and her father and admittedly, Petitioner is neither related to the complainant's family nor is related to the family of the accused and there is nothing on record to suggest that the Petitioner was having any knowledge of any misconduct of the prospective groom i.e. accused Satya Prakash. Petitioner claims to be a retired Government servant and it is pointed out on behalf of the Petitioner that he was not the mediator of the proposed marriage

and infact, co-accused – Ramesh was the mediator and there is word of difference between an introducer and a mediator.

7. The submission advanced is that a mere introduction between the parties cannot be converted into an act of cheating. According to the Petitioner, Mr. Faqir Chand - father of the Accused - Satya Prakash was a permanently disabled person and therefore, early marriage of the Accused - Satya Prakash with the complainant/first informant was insisted upon, but there was no misrepresentation by the Petitioner to the complainant's father of failure of both the kidneys of Mr. Faqir Chand and of his imminent death in near future. It is the case of the Petitioner that complainant's father had personally visited the office of Accused - Satya Prakash and had made inquiries before fixing the date of marriage and in fact, complainant's father was interested in having Class-I officer in a Government service as a son-in-law and so he had married his daughter, i.e., the complainant with accused - Satya Prakash. Reliance has been placed upon *B.L. Bhartiya vs. State & Anr. I (2010) DLT (Crl.) 95*, to emphasize that when there is no concealment or misrepresentation, then the proceedings for the offence of cheating deserve to be quashed.

8. Learned senior counsel for the Petitioner asserts that the prosecution of the Petitioner for the offence in question is barred by time and on this account also, impugned order is bad in law. It has been pointed out that the limitation for initiating the prosecution for

the offence of cheating is one year and herein, the complainant had returned to her parental house in September, 2002 and the FIR of this case was registered in April 2004, i.e., after one year and therefore, the cognizance for the offence of cheating could not have been taken. In this regard, three decisions relied upon are of *State of Punjab vs. Sarwan Singh* (1981) 3 SCC 34; *Anil Sharma & Others vs. S.N. Marwaha & Anr.* 55 (1994) DLT 483; and *Lokesh Tokas & Anr. vs. State* 98 (2002) DLT 178.

9. On behalf of the Respondents, impugned order was stoutly defended and trial court order was condemned by asserting that the learned trial Judge has illegally transgressed into the realm of evidence and had misdirected himself by jumping to a pre-mature conclusion of allegations against the Petitioner being vague and of there being no material on record to show that accused – Faqir Chand was not suffering from any ailment of his kidneys. It has been categorically asserted on behalf of Respondent No. 2 that in the year 2002, it was misrepresented that both the kidneys of accused – Faqir Chand had failed and thereby early marriage was sought and the ulterior motive for early marriage was to save the service of accused - Satya Prakash against whom, disciplinary proceedings were at advanced stage then and complainant's father was a judicial officer, whose good offices could have been used for saving the service of accused - Satya Prakash.

10. Undisputedly, accused – Faqir Chand is alive till date, meaning thereby, obviously he was not having any kidney failure. According to the Respondents, aforesaid facts speak for themselves, which have been illegally ignored by the trial court and therefore, the impugned order of Revisional Court is justified on facts and so far as law is concerned, the question of limitation raised for the first time before this Court, is a mixed question of fact and law, which is required to be decided at the trial of this case. It has been pointed out that the decisions cited on the question of limitation, have no applicability, for the reason that they do not take note of section 473 of the Code of Criminal Procedure, which permits the Court to extend the limitation, where it is necessary to do so in the interest of justice.

11. After having deliberated upon the submissions advanced, this court finds that the question of limitation has not been raised before the courts below and infact, it is a mixed question of fact and law, which is required to be decided at the trial of this case. To embark upon the question of limitation now, would be a pre-mature exercise, which is unwarranted. Therefore, this question is left open to be decided at the trial in the light of the legal position highlighted in *State of Himachal Pradesh vs. Tara Dutt & Anr.*, **AIR 2000 SC 297**, in the following words:-

“It is no doubt true that in view of the fact that an offence under Section 498A is an offence against the

society and, therefore, in the matter of taking cognizance of the said offence, the Magistrate must liberally construe the question of limitation but all the same the Magistrate has to be satisfied, in case of period of limitation for taking cognizance under Section 468(2)(c) having been expired that the circumstances of the case requires delay to be condoned and further the same must be manifest in the order of the Magistrate itself. This in our view is the correct interpretation of Section 473 of the Cr.PC.”

12. This court is being called upon to exercise its inherent jurisdiction under Section 482 of Code of Criminal Procedure and its ambit is circumscribed. Recently, in *State of Maharashtra vs. Sayed Mohammed Masood and Another*, **(2009) 8 SCC 787**, the Apex Court has reiterated as under:-

The legal position in regard to exercise of jurisdiction by the High Court for quashing of an FIR is now well settled. Propositions of law which emerge are:

1. The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.
2. For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.
3. Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same

and pass an favour of the accused to hold absence of any mens rea or actus reus.

4. If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

13. The question herein is whether the Petitioner ought to be put on trial or not. What is required to be seen at this stage, is as to whether a prima facie case against the Petitioner is made out or not. Even on strong suspicion, an accused can be called upon to face the trial for a criminal offence. Recently, on this aspect, in *Onkar nath Mishra & Others vs. State (NCT of Delhi) & Another.*, **(2008) 2 SCC 561**, Apex Court has reiterated as under:-

“It is trite that at the stage of framing of charge the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the Court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.”

14. The basis of the prosecution of the Petitioner is the FIR in question, which is quite detailed one and the facts disclosed therein are quite startling and have to be taken on their face value. The material assertions in the FIR in question, are self speaking and are as under:-

“Satya Prakash, his father Fakir Chand, Ramesh and O.P. Kaim, these four persons had entered into connivance and conspiracy to get my marriage solemnized with Satya Prakash by misrepresentation of facts and cheating. In the year 2002 Satya Prakash was bitterly in need of solemnization of his marriage in order to save his service because he was placed under suspension on the ground of his misconduct of illicit relationship with Kiran on the complaint of her husband Vijay while he was posted at Narnaul and thereupon he was transferred to Hissar. In Narnaul he used to live with Kiran in her house and he had paid money in lacs to her by earning through his corrupt practices and misusing his official position. He managed Ramesh and O.P.Kaim to get the marriage negotiated as early as possible for which he paid Rupees fifty thousand to them. O.P. Kaim was enjoying the confidence and faith of my father and he sent Ramesh and Satya Prakash to my house at the above given address, on 31.3.2002 for the first time and by referring O.P. Kaim they proposed for marriage. The factum of his illicit sexual relationship with Kiran wife of Vijay a Junior Engineer of his department at Narnaul, his suspension during the period of probation on the complaint of her husband, enquiry against him for such

misconduct and the need to save his service by entering into marriage as early as possible were well within the knowledge of his father Fakir Chand, Satya Prakash, Ramesh and O.P.Kaim, but none of them had disclosed such facts of his grave misconduct. On the other hand, all of them and particularly, O.P. Kaim and Ramesh had assured all sorts of virtues and asked not to be worried and nothing to be enquired in respect of his and his family members.”

15. In the face of the aforesaid specific assertions, it can be safely said that a prima facie case of cheating is made out against the Petitioner. In any case, there is a strong suspicion of the complicity of the Petitioner in commission of the offence of cheating, which is infact, the main offence, as the subsequent graver offences by the co-accused could not have taken place, had this offence of alleged cheating not been committed by the Petitioner. Prima facie, explanation to Section 415 of the Indian Penal Code, amply covers this case and this explanation reads as under:-

“A dishonest concealment of facts is a deception within the meaning of this section.”

16. At this stage, what is required to be seen is whether there are grounds for presuming that the offence has been committed by the Petitioner and it is not required to be seen at this stage as to whether the material on record is sufficient to convict the Petitioner or not. A

single Bench decision of this court, in *B.L. Bhartiya (supra)* case, is on its own facts and has no application to the facts of this case.

17. In the light of the aforesaid, this court finds no illegality or infirmity in the impugned order. Without making any observation on the merits of this case, this petition is dismissed. Interim order stands vacated.

18. The petition and the pending application are accordingly disposed of.

Sunil Gaur, J.

March 12, 2010
rs/pkb