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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Crl. A. 233/2003

Date of Decision: 09th July, 2013

PRADEEPTA KUMAR MOHAPATRA Appellant
Through: Mr. S.S. Mishra, Advocate.

versus

STATE Respondent
Through: Ms. Fizani Husain, APP

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this appeal is to the conviction order dated 3rd April, 2003 and order on sentence dated 4th April, 2003 passed by the learned Additional Sessions Judge in Sessions Case No. 29/2002 arising out of FIR No. 398/1998 PS Tilak Nagar under Section 420/498A/376 IPC.

2. Factual matrix of the case is:

Complainant got married to appellant on 1st May, 1982. After her marriage, she got an appointment in Doordarshan and thereafter

she went under training in Pune and thereafter she was transferred to Delhi. Her father was alleged to be the member of Parliament and was residing in Delhi, therefore, she also shifted to the residence of her father in Delhi. In 1993, the accused is alleged to have started harassing complainant by saying that he would divorce her. He also filed divorce petition against the complainant in Family Court at Bhubneshwar of which she received a notice. However, due to intervention of parents of the complainant, the matter got compromised and thereafter they continued to live together. It was alleged that the accused assured the complainant and her parents that he would withdraw the divorce petition and believing this version and further believing that he might have withdrawn the petition, she continued to live with him. The accused, however, obtained an *ex parte* decree of divorce against the complainant on 6th January, 1996 but this fact was concealed by him and he continued to have sexual intercourse with her till 1998. During this period, she allegedly conceived thrice but she was persuaded by the accused to go for abortion which she did. In the month of February, 1998, while going to her office by car, she was chased by some unknown hired person

just to frighten and harass her. In the month of February, 1996, she got refund amount of Rs.1.75 lacs from DDA in her name. Her husband by making false representation forced her to open a joint account and another account with her son in Standard Chartered Bank, Parliament Street, New Delhi. In joint account with minor son, Rs.1 lac was deposited and in another joint account with her, Rs. 75,000/- were deposited. However, without giving any information, he withdrew Rs.25,000/- from the joint account. On 18th March, 1998, he quarrelled with her, assaulted her and abused her son in the room and bolted it from outside and went away from there. She informed her parents who got confirmation from the Family Court, Cuttack that accused got a decree of divorce. After 2nd April, 1998, her husband did not return back and started harassing her on telephone by using abusive and unparliamentary language. On the basis of this compliant, FIR under Sections 420/376/498A IPC was registered. After completing investigation, charge sheet was submitted against the accused.

3. Charges under Sections 498A/420/376 IPC were framed against the accused to which he pleaded not guilty and claimed trial.

4. In order to substantiate its case, prosecution, in all, examined four witnesses out of whom the material witness was the complainant herself.

5. All the incriminating evidence was put to the accused while recording his statement under Section 313 Cr. P.C. wherein he denied the case of prosecution. He denied that in the year of 1998, he co-habited with complainant concealing the fact of obtaining decree of divorce against her. His case was that he was not staying with the complainant since 1990 and only used to go to her residence occasionally in day time to see his son. He examined himself in his defence as DW1 as well as DW2 Pradeep Kumar Puri.

6. After hearing learned counsel for the parties, learned Trial Court came to the conclusion that neither any offence under Section 420 IPC or 498A IPC or 376 IPC was made out, however, it was observed that since the accused concealed the factum of obtaining *ex parte* decree of divorce and continued to co-habit with the complainant, offence under Section 493 IPC is made out. Accordingly, vide order dated 3rd April, 2003 he was convicted of offence under Section 493 IPC and vide order dated 4th April, 2003,

he was sentenced to undergo rigorous imprisonment for one year and was also directed to pay a sum of Rs.50,000/- as compensation to the complainant. Feeling aggrieved by this order, the present appeal has been preferred.

7. It was submitted by learned counsel for the appellant that the essential ingredients of Section 493 IPC are not fulfilled in the instant case inasmuch as it is the admitted case of the parties that the complainant was legally wedded wife of the appellant. There are no allegations that the appellant deceived the complainant into believing that they were lawfully married or under that deception, they cohabited together. Moreover, before the learned Trial Court itself, complainant had stated that she had compromised the matter with the accused and did not want to proceed further. That being so, the impugned order deserves to be set aside.

8. Per contra, it was submitted by the learned Public Prosecutor that for the misdeeds committed by the appellant, he is liable to compensate her and as such, the appellant should at least give compensation to the complainant.

9. Factual matrix of the case is not much in dispute, inasmuch as it is undisputed case of the parties that the complainant got married to appellant on 1st May, 1982. Out of the wedlock, one son was born. Things, however, did not go smoothly. As such, divorce petition was filed by the appellant at Bhuvneshwar. Although, initially the complainant had taken a plea that she was not aware about filing of the divorce petition, however, it was proved on record that she did received notice of the divorce petition and put her appearance before the Family Court at Cuttack on 1st October, 1993. With the intervention of parents of the complainant, the matter was compromised and the appellant assured the complainant and her parents that he would withdraw the divorce petition. However, the petition was not withdrawn which remained pending from 1993 to 1996 and the decree of divorce was granted by the Family Court at Cuttack on 6th January, 1996. The appellant has taken a plea that he has been staying separately since 1987. He used to visit his wife's house sometimes to see his son but never stayed in her house nor cohabited with her. Complainant, in her cross-examination although admitted that her husband used to work in Bahadurgarh since 1991

and had been staying there but further stated that he used to visit her in Delhi regularly and used to stay with her on Saturday and Sunday. She denied the suggestion that he used to come to her place only to see her son in day time. In fact, the appellant himself put suggestion to the complainant that during the period of 1996 to 1998 he resided with her and had relationship as that of husband and wife. Thus, when such a suggestion was given by the accused himself, it was rightly observed by learned Trial Court that it was admission on his part that during 1996-1998 he resided with the complainant as her husband and cohabited with her. In nut shell, the facts which emerge from the evidence coming on record are that the complainant was the legally wedded wife of the appellant, however, a divorce petition was filed. Appellant assured the complainant to withdraw the divorce petition. Complainant remained under the belief that divorce petition must have been withdrawn by the appellant. However, it remained pending and the decree of divorce was granted only on 6th January, 1996. During the period from 1996-1998, they continued to live together and co-habited as husband and wife.

10. The sole question for consideration is whether under these facts and circumstances, offence under Section 493 IPC is made out or not.

11. Section 493 IPC reads as under:-

“493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.- Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

12. The Section contains two ingredients:

(i) Deceitfully causing a false belief in the existence of a lawful marriage and (ii) co-habitation or sexual intercourse with the person causing such belief.

13. The essence of an offence under Section 493 IPC is, therefore, practice of deception by a man on a woman as a consequence of which the woman is led to believe that she is lawfully married to him although she is not and then make her co-habit with him.

14. *Stroud's Judicial Dictionary (5th Edn.)* explains “deceit” as follows:

“Deceit.- ‘ “Deceit”, *deceptio, fraus, dolus*, is a subtle, wily shift or device, having no other name; hereto may be drawn all manner of craft, subtilly, guile, fraud, wiliness, slight, cunning, coven, collusion, practice, and offence used to deceive another man by any means, which hath none other proper or particular name but offence’.”

Black's Law Dictionary (8th Edn.) explains “deceit” thus:

“Deceit, n. –(1) The act of intentionally giving a false impression <the juror's deceit led the lawyer to believe that she was not biased>. 2. A false statement of fact made by a person knowingly or recklessly (i.e., not caring whether it is true or false) with the intent that someone else will act upon it.”

In *The Law Lexicon* by P. Ramanatha Aiyar (2nd Edn., Reprint 2000), “deceit” is described as follows:

“Deceit.- Fraud; false representation made with intent to deceive; 'Deceit, “deception of fraud” is a subtle, wily shift or device, having no other name, In this may be included all manner of craft, subtlety, guile, fraud, wiliness, slight, cunning, coven, collusion, practice and offence used to deceive another may by any means, which hath none other proper or particular name but offence'.”

15. “Deceit”, in the law, has a broad significance. Any device or false representation by which one man misleads another to his injury and fraudulent misrepresentations by which one man deceives another to the injury of the latter, are deceit. Deceit is a

false statement of fact made by a person knowingly or recklessly with intent that it shall be acted upon by another who does act upon it and thereby suffers an injury. It is always a personal act and is intermediate when compared with fraud. Deceit is sort of a trick or contrivance to defraud another. It is an attempt to deceive and includes any declaration that misleads another or causes him to believe what is false.

16. If a woman is induced to change her status from that of an unmarried to that of a married woman with all the duties and obligations pertaining to the changed relationship and that result is accomplished by deceit, such woman within the law can be said to have been deceived and the offence under Section 493 IPC is brought home. Inducement by a person deceitfully to a woman to change her status from unmarried woman to a lawfully married woman and on that inducement making her cohabit with him in the belief that she is lawfully married to him is what constitutes an offence under Section 493. The victim woman has been induced to do that which, but for the false practice, she would not have done and has been led to change her social and domestic status. The ingredients of

Section 493 can be said to be fully satisfied when it is proved - (a) deceit causing a false belief of existence of a lawful marriage and (b) cohabitation or sexual intercourse with the person causing such belief.

17. In order to commit deceitfully causing a false belief in the existence of a lawful marriage some misrepresentation by the offender is necessary. Mere omission to mention or even suppression of the fact of divorce does not bring one within the mischief of the first ingredient of Section 493 of the Indian Penal Code. That it is so, will be apparent if we refer to Section 415 Indian Penal Code, which defines 'cheating'. This Section reads as under:-

415. Cheating.- 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 were 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".

Explanation.- A dishonest concealment of facts is a deception within the meaning of this section.

18. A perusal of Section 415 IPC makes it clear that the word ‘deception’ is also found but the explanation appended to this Section makes it clear that a **dishonest concealment of facts** is also a deception within the meaning of this Section. However, such an explanation is missing under Section 493 of the Indian Penal Code. Section 493, Indian Penal Code, contemplates of punishing a man either married or unmarried who induces a woman to think that she is his wife but in reality she is concubine. Such an offence can be committed by a person by inducing a woman to believe that she is lawfully married to him although in fact there is no legal or valid marriage between them in the eyes of law and thereby to co-habit or have sexual intercourse with him.

19. In *Kaumuddin Sheikh vs. State* (1997) ILR 2 CAL 365, facts were substantially the same. In that case, the husband gave irrevocable ‘Talak’ and continued to live as husband and wife. It was held that it was not the case of prosecution that even though a valid and effective ‘Talak’ was given to the complainant, the appellant caused her to believe that there was no such valid or effective ‘Talak’ and thereby managed to co-habit or have sexual intercourse with her

in the belief that she continues to be legally married wife of the appellant. It was a case where the appellant is said to have sexual intercourse with the complainant by not mentioning or suppressing the 'Talak'. From such non-mention or suppression of the 'Talak', it cannot be said that the appellant by deceit caused complainant to believe that she was lawfully married to him and to co-habit or have sexual intercourse with him in that belief. It may be that the appellant suppressed the 'Talaknama' to complainant but he is not alleged to have made any misrepresentation to her as to cause her to believe that she continues to be his legally married wife and induced her to co-habit or have sexual intercourse with him in that belief. This being the position, it was held that the case does not fall within the four corners of Section 493 of the IPC and the conviction of the appellant was set aside.

20. Things are substantially the same in the instant case, inasmuch as, it stands proved that the filing of the divorce petition by the appellant was within the knowledge of the complainant inasmuch as she had also caused her appearance before Family Court at Cuttack on 1st October, 1993. The whole case of prosecution revolves around the

fact that an assurance was given by the appellant that he would withdraw the divorce petition, despite that, he did not withdraw the same. Complainant remained under the impression that he must have withdrawn the petition and under that belief continued to co-habit with him. Complainant was an educated lady, therefore, she should have ensured that the divorce petition had been withdrawn by the appellant. However, she believed the assurance given by the appellant and then stayed with him. However, it is not the case of the prosecution that the appellant, at any point of time, caused the complainant to believe that the divorce petition had been withdrawn or under that belief the complainant continued to cohabit or have sexual intercourse with him in the belief that she continues to be the legally married wife of the appellant. The allegations at the most are that the appellant continued to have sexual intercourse with complainant by non-mentioning or suppressing the factum of divorce. From such non-mention or suppression of divorce, it cannot be said that the appellant by deceit caused complainant to believe that she was lawfully married to him and to co-habit or have sexual intercourse with him in that belief. It may be that the appellant suppressed the

factum of obtaining divorce decree from the complainant, but he was not alleged to have made any representation to her as to cause her to believe that she continues to be his legally married wife and induced her to co-habit or have sexual intercourse with him in that belief. That being so, the case is not covered within the four corners of Section 493 IPC.

21. There is another aspect of the matter. The complainant in her deposition, before the Court had categorically stated that she had settled her disputes with the appellant and she does not want to pursue her complaint and the consequent case. Under those circumstances, it was even otherwise futile to proceed further with the case.

22. In the result, the appeal is allowed. The orders of conviction and sentence passed by learned Additional Sessions Judge against the appellant are set aside. He be discharged from his bail bonds.

23. Trial Court record be sent back.

**SUNITA GUPTA
(JUDGE)**

**July 09, 2013
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