

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 365 OF 2005

Rohit Kumar Bhoi S/o Parsuram Bhoi, Aged about 22 years, R/o Village Chhatal, Dabhra, PS Kasdol, Distt. Raipur (CG).

... Appellant

Versus

State of Chhattisgarh through PS Kasdol, District Raipur (CG).

... Respondents

For Appellant	:	Shri Vikram Dixit, Advocate.
For Respondent/State	:	Shri Anupam Dubey, Deputy Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/07/2016

1. The appellant stands convicted for the offence under Section 417 IPC and has been sentenced to undergo RI for one year vide judgment dated 06.04.2005 passed by the First Additional Sessions Judge, Baloda Bazar, in Sessions Trial No.28 of 2005.
2. Facts in brief necessary for disposal of this appeal are that, the appellant is said to have had love affair with the prosecutrix Purnima Bai, PW-1 and it is alleged that he is said to have assured the prosecutrix of marrying her and on that pretext and assurance, the appellant had physical relationship with the prosecutrix on more than one occasion and in the course she got conceived from appellant and subsequently he disowned the prosecutrix ditching her away leading to the filing of an FIR by the prosecutrix on 04.11.2004.

3. Based on FIR, statement of witnesses were recorded and in the course of investigation, the police authorities initially filed charge sheet against the appellant for the offence under Sections 376(1) and 417 IPC. Taking into consideration the deposition of prosecutrix, the court below ultimately found that offence under Section 376(1) IPC is not made out against the appellant and acquitted him of the charges under Section 376(1) IPC. However, the court below found him to be guilty of having committed an offence of cheating against the prosecutrix and convicted him for offence under Section 417 IPC and sentenced to RI for one year leading to filing of this appeal.
4. Learned counsel appearing for the appellant assailing the judgment submits that no ingredient of cheating is made out against the appellant nor any act of cheating is reflected from the deposition of the prosecutrix, Purnima Bai herself. Therefore, conviction of the appellant for the offence under Section 417 is bad in law. According to him, if we take note of the statement of the prosecutrix, it clearly reflects that the prosecutrix firstly was a grown up girl and had already attained the age of majority on the date of incident, secondly she was well aware of the fact that the appellant was already married and also having children and thirdly, she was also well aware of the fact that in the social background in which she belongs to, second marriage was not permissible and that second marriage, if any, also is an offence. These are all facts which by itself discloses the fact that the prosecutrix, Purnima Bai was fully conversant with the social status and customary practice in the society and was also quite

aware what was the permissible and not permissible in the society when she acceded to the request of the appellant in having, firstly an affair with him and secondly in accepting the request of the appellant of having physical relationship with him.

5. It is next submitted that constituting of an offence under Section 417 IPC, the necessary ingredient of cheating as is required under Section 415 IPC has to be made and the first and foremost ingredient required for making out a case of cheating under Section 415 IPC is inducement on the part of the accused person whereas, in the instant case it cannot be said that there was any inducement made by the appellant. It is also not the case of the prosecutrix that she was not aware of the marital status of the appellant neither is it a case of prosecution that the appellant had suppressed his marital status from the prosecutrix.
6. In support of his contentions, reliance has been placed upon the decisions of Supreme Court in case of Uday Vs. State of Karnataka, reported in AIR 2003 SCW 1035 and Tilak Raj Vs. State of Himachal Pradesh, reported in AIR 2016 SC 406, wherein in somewhat similar factual background, the Supreme Court has laid down that under the given facts and circumstances of the case, it would not constitute an offence under Section 417 IPC.
7. Learned counsel appearing for the State however opposing the appeal submitted that the case of the prosecution stands proved and established from the examination in chief of the prosecutrix itself who, in her statement, has stated that the appellant had approached her

for having relationship which she initially refused, but subsequently the appellant is said to have promised the prosecutrix of marrying her and keeping her all through his life with him. The appellant even went on to the extent even of eloping with her in case he is not able to marry her as a result of which she acceded to the request of the appellant in having physical relationship. Thus, in the given factual matrix of the case, there was a clear case of inducement on the part of appellant, and therefore, the case of cheating is made out and prayed for rejection of the appeal and maintaining the order of conviction of the appellant.

8. Having considered the rival contentions put forth on either side and on perusal of record what is an admitted fact which is not disputed by either side is that, the prosecutrix was major at the time of incident, she was aware of the fact that the appellant was already married person and also having children, she was also aware of knowing the fact that the social status from which she belongs does not permit second marriage and also the fact that second marriage is an offence. This is reflected in the evidence of the prosecutrix itself.
9. The statement of prosecutrix further clearly gives an indication that she was not averse to have physical relationship with the appellant. She also did not, in any manner, protest or opposed the appellant when for the first time he had physical relation with her. She even did not wait for the appellant to marry her or at-least give her the status of wife/second wife or a wife under the customary practice prevailing in

the State of Chhattisgarh before having physical relationship with the appellant.

10. If we take into consideration the judgment cited by the counsel for the appellant, it would reveal that case of Uday (Supra) was against the judgment of conviction for the offence under Section 376 IPC. The issue of cheating or offence under Section 417 IPC was not discussed by the Supreme Court while deciding the said case, and therefore, the same is distinguishable from the facts of present case, and as such cannot be made applicable or equated in the facts of the present case.
11. However, so far as case of Tilak Raj (Supra) is concerned, the ratio of law laid down in this case is squarely apply to the facts of the case on hand for the reason that the said judgment also was in the context of dealing with the provisions of Section 417 IPC i.e. act of cheating. In para-21, it was held as under:

“21. As far as conviction of the appellant under Sections 417 and 506 part I of IPC is concerned, a close scrutiny of evidence of the prosecutrix (PW 2) along with other prosecution witnesses is done by this Court. Section 417 of IPC prescribes punishment for the offence of Cheating as defined under Section 415 of IPC. Section 415 of IPC reads thus:

“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.”

The ingredients required to constitute the offence of Cheating have been discussed by this Court in the case of Ram Jas v.State of U.P. as under:

- “(i) there should be fraudulent or dishonest inducement of a person by deceiving him;
- (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or
- (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and
- (iii) in cases covered by (ii)(b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.”

A careful reading of evidence on record clearly shows that there is no evidence against the appellant from which it can be conclusively inferred by this Court that there was any fraudulent or dishonest inducement of the prosecutrix by the appellant to constitute an offence under Section 415 of IPC. For conviction of the Appellant for above said offence, it is important that all the necessary ingredients constituting an offence under the said Section must be proved beyond reasonable doubt. In the instant case, the appellant cannot be convicted for the offence of cheating punishable under Section 417 of IPC as the prosecution has failed to prove all ingredients of the said offence beyond reasonable doubt.”

12. So far as the judgment cited by the court below while convicting the appellant for the offence under Section 417 is concerned, the facts of those cases are somewhat different from the facts of the instant case. In the present case, the prosecutrix knew that the appellant was a married man having children, secondly; she was also aware of the fact that the appellant having already married person, could not marry her during the lifetime of his first wife and she was further aware of the fact that second marriage is not permissible in the society and the same was illegal. Thus, it is a case where the prosecutrix was not an ignorant person nor was she a minor girl and therefore, it can be safely presumed that she acceded to the request of the appellant in

having physical relationship voluntarily without hesitation and without any sort of promise or inducement on the part of the appellant.

13. The judgment cited by the court below are those cases where the appellant/accused was not a married man, but was a simple case where the accused therein had physical relationship with the prosecutrix on the pretext of false hope, promise of marriage, believing and trusting the accused person, the prosecutrix had acceded to the request of sharing the bed. Whereas, in the instant case the facts are different, right from the first date itself the prosecutrix knew about the marital status of the appellant and therefore, it cannot be a case where he has falsely induced or have given false hope and promise to the prosecutrix while having physical relationship.
14. Thus, in the given facts and circumstances of the case, more particularly the ratio of law laid down by the Supreme Court in case of Tilak Raj (Supra), this court is of the opinion that the judgment of conviction passed by the court below convicting the appellant for the offence under Section 417 IPC is not proper, legal and justified.
15. Thus, the Appeal is allowed. The conviction of Appellant for offence under Section 417 IPC is set aside. The Appellant is acquitted of the charge. The bail bond of the Appellant shall remain in operation for a further period of six months from today in view of provision contained in Section 437-A Cr.P.C.

Sd/-
(P. Sam Koshy)
JUDGE