

THE HON'BLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.153 OF 2011

ORDER:

Heard the learned counsel for the petitioner as well as the learned Public Prosecutor appearing for the respondent-State.

The facts, in brief, are that the petitioner married the de facto complainant/P.W.1 on 10.02.2000. They lived happily for a period of four months after the marriage. Later, it is alleged that the petitioner demanded additional dowry. Since it was not paid, the de facto complainant was necked out of her matrimonial house on 25.09.2000. On 26.09.2000 a complaint was lodged against the petitioner and pursuant thereto, a crime was registered vide F.I.R.No.78 of 2000 for the offences under Sections 498-A, 417 and 420 I.P.C. After completion of investigation, a charge sheet was filed. The learned Judicial Magistrate of First Class, Cheepurupalli, after taking cognizance of the offence against the petitioner, numbered the same as C.C.No.943 of 2000. After the case is taken on file and after entering appearance, the petitioner was furnished with the documents as contemplated under Section 207 of Cr.P.C. and during the course of examination under Section 251 of Cr.P.C., the petitioner has pleaded not guilty. Thereafter, the prosecution, in order to prove the guilt of the petitioner-accused, examined P.Ws.1 to 6 and marked Exs.P.1 to P.7 documents on its behalf. After closure of the evidence, the petitioner was examined under Section 313 of Cr.P.C. and when the incriminating material adduced against him by the prosecution is put to him, he denied the same and reported that he has no

defence evidence. The learned Magistrate, after hearing and appreciating the evidence available on record, by judgment dated 30.06.2006 found the petitioner not guilty for the offence under Section 498-A and 420 I.P.C. and accordingly, he was acquitted under Section 248(1) of Cr.P.C., but he has been convicted for the offence under Section 417 I.P.C. under Section 248(2) of Cr.P.C. Aggrieved by the said judgment, the petitioner filed an appeal in CrI.A.No.28 of 2009 on the file of the Judge, Family Court-cum-Additional District and Sessions Judge at Vizianagaram. After hearing, the lower appellate Court, was pleased to dismiss the appeal confirming the judgment passed by the trial Court in C.C.No.943 of 2000. Against the said judgment, the present Criminal Revision Case is filed.

The learned counsel appearing for the petitioner strenuously contended that both the Courts below committed an error in convicting the petitioner for the offence under Section 417 I.P.C. in the absence of any clinching evidence more so, satisfying the ingredients of 'cheating'. He also contended that the de facto complainant/P.W.1 is not the wife of the petitioner and the prosecution miserably failed to establish that the de facto complainant is the legally wedded wife of the petitioner. In fact, both the Courts below failed to note that the petitioner was working as a home guard in the Government and without considering the consequences of conviction for the offence under Section 417 I.P.C. on his employment, passed the judgment.

Per contra, the learned Public Prosecutor appearing for the respondent-State submitted that the prosecution has proved

beyond reasonable doubt with regard to the ingredients of 'cheating' based on evidence of P.Ws.1 to 3. In fact, he brought to the notice of this Court the finding given by the learned Magistrate in paragraph 22 of the judgment in C.C.No.943 of 2000.

Having heard both the counsel and from the perusal of the material on record, the undisputed facts are that the petitioner herein has been charged for the offence under Sections 498-A, 420 and 417 I.P.C. Since the case against the petitioner for the offence under Sections 498-A and 420 I.P.C. have not been proved, he has been acquitted by the trial Court by judgment dated 30.06.2006. However, he has been convicted for the offence under Section 417 I.P.C. since it is established from the evidence of P.Ws.1 to 3 that prior to contracting the marriage with the de facto complainant/P.W.1, the petitioner has already married one Rama Devi. Aggrieved by the said judgment, CrI.A.No.28 of 2009 has been filed on the file of the Court of Judge, Family Court-cum-Additional District and Sessions Judge, Vizianagaram. The lower appellate Court, having considered the aspect of the first marriage of the petitioner, held that the offence under Section 417 I.P.C. has been proved and dismissed the appeal by judgment dated 26.10.2010 confirming the judgment of the trial Court.

Basing on the above, the issue that crops up for consideration in the present Criminal Revision Case is:- 'whether the prosecution proved the guilt of the petitioner-accused for the offence under Section 417 I.P.C.'

For the purpose of deciding the issue, it is appropriate to refer the provisions of Section 415 I.P.C., which 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 fact is a deception within the meaning of this section.”

From a perusal of the above said provision, dishonest concealment of fact is a deception within the meaning of the Section. In the case on hand, the evidence of P.Ws.1 to 3 clinchingly established the factum of marriage of the petitioner with one Rama Devi prior to contracting the marriage with the de facto complainant. When once it is proved that the petitioner has married the de facto complainant/P.W.1 during the subsistence of his marriage with Rama Devi, which is an inter caste marriage, there is no hesitation in holding that the petitioner having knowledge that he has already a married person and suppressing the same with an intention to cheat the de facto complainant/P.W.1, fraudulently induced her to give her consent and married her. Therefore, relying on the language employed under Section 416 and 417 of I.P.C., the petitioner is liable to be punished for the offence under Section 417 I.P.C. In fact, both the Courts below, after appreciation of evidence in proper perspective, have categorically found that the offence under Section 417 I.P.C. has been established in the light of evidence of P.Ws.1 to 3. In these circumstances, this Court is of the opinion that there are no merits in the Criminal Revision Case and the same is liable to be dismissed.

Accordingly, the Criminal Revision Case is dismissed.

Pending miscellaneous petitions, if any, shall also stand closed.

P.KESHAVA RAO,J

14th AUGUST 2018.
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