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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 31st July, 2018

+ CRL.M.C. 4176/2015 and Crl. M.A. 14948/2015

MOHAN LAL & ANR

..... Petitioners

Through: Mr. Mohan Lal, Advocate

versus

SANDEEP AGGARWAL

..... Respondent

Through: Mr. Pankaj Kumar Rajan,
Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The respondent had filed a criminal complaint case (CC no.871/14) on 24.08.2006 impleading the petitioners as second and third prospective accused, in addition to their daughter Priyanka Agarwal as first prospective accused and one Sanjay Gupta as fourth prospective accused, alleging offences punishable under Sections 415, 420, 506, 120B, 34 of Indian Penal Code, 1860 (IPC). On the basis of the preliminary inquiry, in which the respondent examined himself as the sole witness (CW-1), the Metropolitan Magistrate, by order dated 10.10.2011, issued process summoning the petitioners for offence under Section 417 / 34 IPC observing that no case for summoning of other two had been made out.

2. The petitioners challenged the said summoning order by approaching this court in Crl. M.C. 1356-1357/2013 which was disposed of, by order dated 06.05.2014, permission to withdraw the same having been granted with liberty given to raise all pleas before the trial court.

3. The Metropolitan Magistrate considered the material on record for taking the case further into trial. By order dated 24.11.2014, he found all the ingredients of the offence of cheating under Section 417 IPC had not been satisfied. Thus, by order dated 24.11.2014, the petitioners were discharged.

4. The above-said order was challenged by the respondent in the court of the Sessions invoking its revisional jurisdiction by petition (Crl. R. No.03/15) which was decided by order dated 26.08.2015. The Additional Sessions Judge set aside the order of the Metropolitan Magistrate and directed the petitioners to be put on trial for the offence for which they had been earlier summoned.

5. It is the afore-said order which was challenged by the petition at hand under Section 482 Cr. PC.

6. The factual matrix of the case is not very complicated. The respondent (complainant) was married to Priyanka Agarwal, daughter of the petitioners, as per Hindu rites and ceremonies at Delhi on 10.12.2005. It is alleged by him in the complaint that after marriage it was revealed that Priyanka Agarwal suffers from chronic

schizophrenia. He alleged that the petitioners being parents were well aware of such medical condition of the girl and they had themselves represented as to her good health and thereby had introduced him to marry her and consequently he had been cheated. The petitioners deny that their daughter suffers from any such mental ailment, their version being that the allegations are false and concocted, some other reasons (illicit relations with another girl) being the cause for marital discord.

7. The crucial issue that needs to be addressed in these proceedings, however, is as to whether evidence has been adduced to demonstrate that Priyanka Agarwal suffered from any such mental disorder at, around or before the time of her marriage as is attributed and, more importantly, as to whether there is evidence to show that the petitioners were aware of any such condition.

8. In the considered opinion of this court, the Metropolitan Magistrate had examined the matter from the correct perspective and had taken a proper view by the order dated 24.11.2014 which did not merit being set aside by the revisional court, the view of the latter being based on certain unfounded assumptions.

9. As noted earlier, the respondent (complainant) has offered himself as the solitary witness (CW-1). He did depose about certain conduct of Priyanka after marriage particularly on 10.12.2005, 11.12.2005, 14.12.2005 which seems to be not normal or out of the ordinary. But then, from the conduct narrated, one cannot jump to the

conclusion that she is a case of chronic schizophrenia. The complainant is not a medical expert. His words in this regard cannot take his case further.

10. The complainant has relied on three documents purporting to be clinical notes (Ex. CW1/1 to 3); the first of the out-patient department (OPD) of Institute of Human Behaviour and Allied Sciences (IHBAS) dated 03.02.2006; the second, OPD slip of Hindu Rao Hospital dated 01.02.2006; and the third OPD slip of All India Institute of Medical Sciences (AIIMS) dated 06.02.2006. He has not examined any of the medical officers who may have examined Priyanka in the OPD of the said three hospitals on 03.02.2006, 01.02.2006 or 06.02.2006 respectively. Without the said doctors being examined or some official from the said hospital being called in to prove that it was Priyanka who was medically examined in the OPD of such facilities, it cannot be concluded that these clinical notes or prescription relate to her. In the first two OPD slips, there is no diagnosis indicated. Mere prescription of certain medicines cannot lead to the conclusion that the patient (assuming it was Priyanka, daughter of the petitioners), suffered from such mental ill health, as is alleged. In the OPD slip of AIIMS, the diagnosis “hebephrenia” is qualified by a question mark. There is nothing indicated in the said clinic notes from which a detailed diagnostic procedure having been undertaken can be inferred. Even the identity of the doctor or his credentials are not indicated in any material submitted as evidence.

11. In his testimony, CW-1 would not utter even a single word to the effect that the petitioners had prior knowledge of any illness, this assuming Priyanka suffered from ill health.

12. For above reasons, the petition is allowed. The impugned order of the revisional court is set aside and the order of the Metropolitan Magistrate dropping the proceedings against the petitioners is restored, this bringing curtain on the criminal complaint of the respondent.

13. The petition and the pending application are disposed of in above terms.

R.K.GAUBA, J.

JULY 31, 2018

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