

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL REVISION CASE No.1154 of 2006

ORDER:

This criminal revision case is filed by the petitioner – accused aggrieved by the judgment and sentence dated 29.06.2006 passed by the III Additional Sessions Judge (I – Fast Track Court), Nalgonda in Crl.A. No.102 of 2003 confirming the conviction passed by the Judicial Magistrate of First Class, Nakrekal in CC No.292 of 2001 vide judgment dated 31.07.2003 for the offence punishable under Section 420 IPC to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months.

2. The brief facts of the case are that on 31.10.2001 at 3.00 PM, the victim girl, aged 18 years, came to the Saligouraram Police Station of Nalgonda District and lodged a report stating that the petitioner-accused on the promise of marrying her, induced her and had sexual intercourse with her and the same was continued for a year but later he tried to marry another woman, as such, she confronted with him, but he refused to marry her and denied to have any relationship with her. She, and her mother brought the same to the notice of the village elders and got conducted a panchayat, but the accused refused to marry her. Basing on the said report, the police registered Crime No.72 of 2001 under Sections 493 and 420 IPC and after completing investigation filed charge sheet against the accused

for the above offences. The learned Judicial Magistrate of First Class, Nakrekal had taken cognizance of the case for the above offences and conducted trial. After considering the oral and documentary evidence on record the learned Magistrate acquitted the accused for the offence under Section 493 IPC, but convicted him for the offence under Section 420 IPC.

3. Aggrieved by the same, the petitioner – accused preferred an appeal. The III Additional Sessions Judge, (I – FTC), Nalgonda, on re-appreciation of the evidence confirmed the conviction of the accused under Section 420 IPC in CC No.292 of 2001.

4. Aggrieved further, the petitioner – accused preferred this revision contending that the trial Court ought not to have believed the evidence of PWs.2 to 4 as they were mother and nearest relatives of PW.1 and were interested witnesses. The Courts below fell in serious error in not observing the omissions and improvements in the evidence of PW.2 to 4. None of them witnessed the incident of marriage between the revision petitioner and PW.1. The Courts below ought not to have believed the version of the revision petitioner, as the performance of marriage was prohibited in Papamma and Maremma Temple as they were considered as Grama Devathalu. The Courts below ignoring the said fact came to a wrong conclusion and convicted the revision petitioner which was not proper. Both the Courts below misread the evidence of the prosecution witnesses and on mere presumptions and assumptions came to a wrong conclusion

that the accused committed the offence under Section 420 IPC. When once the offence under Section 493 IPC was not proved, convicting the revision petitioner under Section 420 IPC was not sustainable in the eye of law and prayed to allow the revision.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

6. Learned counsel for the revision petitioner submitted that the criminal revision case was dismissed for non-prosecution earlier on 09.12.2019 as such, the revision petitioner was arrested and was taken into custody for undergoing the sentence of imprisonment as ordered by the trial Court and as confirmed by the appellate Court. The matter went up to the Hon'ble Apex Court and it was remanded back to the Hon'ble High Court. The petitioner had already undergone sentence for one and half year by that time, as such, prayed to set off the sentence to the period already undergone.

7. Learned Public Prosecutor reported to decide the case on merits.

8. Perused the record. The trial Court, on considering the evidence of PW.1 that the accused married her in Papamma and Maremma temple in their village by exchanging garlands and that there was no poojari in the temple and there were no elders for the marriage and PW.1 did not inform it to anyone including her parents, observed that no prudent man could say that it was a marriage and by

no stretch of imagination it could be considered as a valid marriage and there was no material to show that the accused made believe the victim to be his lawfully married wife, acquitted the accused under Section 493 IPC. However, the trial Court observed that there was ample material to show that the accused induced the victim and developed illicit intimacy with her on the pretext of a false promise of marrying her and a too narrow interpretation could not be given to the definition under Section 420 IPC, convicted the accused for the above offence. The appellate Court also on re-appreciating the evidence on record considered that the prosecution proved the guilt of the accused under Section 420 IPC and confirmed the conviction and sentence imposed by the trial Court.

9. To constitute an offence under Section 420 IPC, the accused should have dishonestly induced the person deceived:

- i) to deliver any property to any person or
- ii) to make, alter or destroy the whole or any part of a valuable security or anything which is signed or sealed or which is capable of being converted into a valuable security.

10. Thus, to constitute an offence of cheating, it must be established that the accused deceived the complainant dishonestly inducing him/her to part with any property in his favour which he would not have parted but for the deception played on him.

11. There is no delivery of any property attracting the offence under Section 420 IPC on considering the facts of this case. But, it would attract the definition of cheating under Section 415 IPC which covers the simple case of cheating as the definition includes intentionally inducing 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 caused or is likely to cause damage or harm to that person in body, mind, reputation or property attracting the punishment under Section 417 IPC, which is for a term which may extend to one year or with fine or with both. As the evidence would disclose that the accused made a promise to marry the de facto complainant and induced her to subject herself to sexual intercourse with him but ultimately when she insisted for marriage, evaded her and as she had done something which she would not have done but for the inducement of the accused and that inducement was dishonest as such, it is considered fit to modify the conviction and sentence imposed by the trial Court and confirmed by the appellate Court under Section 420 IPC to Section 417 IPC as per Section 222 Cr.P.C. as the offence proved under Section 415 IPC included in the offence charged under Section 420 IPC. As per Section 222(1) Cr.P.C., when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

12. Accordingly, the Criminal Revision Case is allowed modifying the conviction and sentence imposed by the Judicial Magistrate of First Class, Nakrekal in CC No.292 of 2001 vide judgment dated 31.07.2003 and confirmed by the III Additional Sessions Judge (I – Fast Track Court), Nalgonda in Crl.A. No.102 of 2003 vide judgment dated 29.06.2006 for the offence under Section 420 IPC to Section 417 IPC and reducing the imprisonment to one year and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months. The sentence already undergone by the petitioner-accused shall be given set off.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. G. RADHA RANI, J

November 02, 2021

Note:

Registry is directed to issue copy of the order to the Central Prison, Cherpalli.

B/O.KTL/RKK