



Crl.R.C.No.1031 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :22.06.2022

Pronounced on :30.06.2022

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Criminal Revision Case No.1031 of 2014

Kandan

.. Petitioner

/versus/

1.State of Tamil Nadu rep.by
Inspector of Police,
Palacode Police Station,
Dharmapuri District.
(Crime No.370 of 1999)

2.'X'
(R2 impleaded suo motto as per
order in Crl.R.C.No.1031 of 2014
dated 16.11.2021)
(Name Redacted as per the order
of this Court dated 23.11.2021)

.. Respondents

Prayer: Criminal Revision Case has been filed under Section 397
r/w 401 of Cr.P.C., against the judgment dated 08.09.2014 in C.A.No.13
of 2014 on the file of the Principal Sessions Judge, Dharmapuri
confirming the judgment dated 04.12.2003 in S.C.No.334 of 2002 on the
file of the Assistant Sessions Judge, Dharmapuri.



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For Appellant :Mr.R.Selvakumar
For Respondent :Mr.N.S.Suganthan,
Govt. Advocate(Crl.Side)
for R1
Mr.D.J.Venkatesan for R2

ORDER

This Criminal Revision Case by the accused is filed against the concurrent finding of facts by the courts below holding him guilty of offence punishable under Section 417 of IPC.

2. The facts leading to this revision petition are :-

‘X’ aged about 16 years, lodged a complaint to the Inspector of Police, Palacode, on 14/06/1999 to take appropriate action against Kandan S/o Mathan (petitioner herein) of her village, alleging that Kandan used to frequently visit her house, when her parents are not in the house. He befriended with her and promised to marry her. She believing his promise consented for pre-marital sex with him and also got conceived. When she insisted him to marry, he was evading with some excuse. When she was 5 months pregnant, Kandan got job in Postal Department at Hosur and left the village, promising her to marry on his



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return after joining duty. Since he did not return to village as promised, she got worried and disclosed her pregnancy to her brother Kuppusamy.

She, her mother and brother went to Hosur and asked Kandan to marry her. Kandan refused to marry her and also disowned the paternity of the child in womb. One Manickam of Rettari Village and Vadivelu, Ganesan of her village know about the intimate relationship between her and Kandan.

3. PW-8[Mr.Ramandever] Sub-Inspector of Police, Palacode received the above complaint (Ex.P-1) and registered FIR (Ex.P-9) in Crime No.370/1999 under Sections 417 and 376 of IPC against Kandan. PW-9 [Mr.S.K.Gopal], Inspector of Police took up the investigation and filed final report. Based on the documents, the trial Court framed charges under Section 417 of IPC and Section 376 of IPC against the accused Kandan. The accused denied the charges and claimed to be tried. Accordingly, to prove the charges the prosecution examined the defacto complainant—the victim as PW-1. Her complaint marked as Ex.P-1. Manickam, who witnessed the accused and PW-1 in compromise position was examined as PW-2. The brother of the defacto complainant



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was examined as PW-3. Muniappan, who signed the observation mahazar was examined as PW-4 and the observation mahazar was marked as Ex.P-2. Dr.Surabi, who conducted medical examination the victim girl and Dr.Venkatesan, who examined the accused are PW-5 and PW-6 respectively. Through PW-5 the medical report of the victim informing that PW-1 was 20 weeks pregnant marked as Ex.P-3 and through PW-6 the medical examination of the accused indicating he is potent was marked as Ex.P-5. Dr.Sunderavadanan, who conducted ossification test for the victim girl was examined as PW-7, who on examining the X ray[Ex.P-7 series] given the certificate Ex-P 8, with his opinion that the age of the girl on the date of examination may be between 16 to 18 years.

4. The trial Court, on considering the age certificate Ex.P-8 held that the age of the girl must have been between 16 to 18 years and she has consented for sex voluntarily. Therefore, the accused is not guilty of offence under Section 376 of IPC. However, the consent being obtained on the promise to marry and the same has been breached, he is liable for punishment under Section 417 of IPC. Accordingly, the accused was



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sentenced to undergo one year Rigorous Imprisonment and to pay fine of Rs.1,000/- in default, to undergo three months Rigorous Imprisonment.

5. Against the conviction and sentence passed by the Assistant Session Judge in S.C.No.334 of 2002, dated 04/12/2003, the accused preferred appeal before the Principal District and Sessions Judge in C.A.No.13 of 2004. On re-application of the evidence, the appellate Court dismissed the appeal, set aside the judgement of the trial court and remanded the matter for fresh appreciation on the ground that the evidence placed by the prosecution satisfies the second ingredient mentioned in Section 375 of IPC, which attracts punishment under Section 376 of IPC.

6. The order of remand to retry the accused for offence under Section 376 of IPC was challenged by the accused in Crl.R.C.No.1394 of 2006, on the ground that when no appeal against acquittal by the prosecution or revision against acquittal by the victim filed, in the appeal by the accused, the appellate Court cannot pass order to retry the offence for which the accused has gained an order of acquittal. Such order is



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beyond the power vested with the appellate Court. The High Court accepted the above ground and allowed the revision petition with direction to the appellate Court to restrict the hearing of the appeal afresh only in respect of conviction and sentence imposed under Section 417 of IPC, which is the subject matter of the appeal.

7. The appellate Court on re-hearing the appeal, confirmed the order of the trial Court in respect of conviction and sentence of one year Rigorous Imprisonment and to pay fine of Rs.1000/- in default, 3 months Rigorous Imprisonment for the offence under Section 417 of IPC.

8. The learned counsel for the appellate submitted that the Courts below having concurrently held that PW-1 is a consenting party to the sexual intercourse and therefore, the accused is not guilty of offence under Section 376 of IPC, ought to have held that the accused had no intention of cheating while having sex with PW-1. In the absence of any evidence that PW-1 consent was after the promise to marry and such promise was made with intention to deceive PW-1, the ingredient of cheating as defined under Section 415 of IPC is not attracted. The Courts



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below failed to consider properly the deposition of PW-2, who alleged to have seen the accused and PW-1 in a compromising position. According to this witness, when he saw them in compromising position and scolded the accused, he said that he is going to marry PW-1. This statement alleged to have been made by the accused to PW-2, wrongly construed by the Courts below that it was a promise made to the victim girl (PW-1) before the act of intercourse.

9. The learned counsel for the petitioner further stated that, while in the complaint Ex.P-1, the defacto complainant has stated that for nearly 6 months, she and the accused were moving intimately and she got conceived. The complaint is silent about the date or place of intercourse which lead to pregnancy. In her deposition, she had stated that Manickam (PW-2) saw them in intimate position at the sugarcane field of one Sevathappa and he reprimanded them. This is not stated in the complaint. The belated complaint with embellishment made after the accused got job in Postal Department are crucial facts in favour of the accused which has been totally ignored by the Courts below.



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10. The learned counsel for the petitioner summed up his submission, stating that the prosecution failed to prove the paternity of the child born to the defacto complainant (PW-1). The prosecution failed to prove that there was any promise by the accused to marry PW-1. The delay for filing complaint belatedly not satisfactorily explained. Contrarily, the accused has denied any affair with PW-1. He has suggested to PW-1 that many other male members known to her used to visit her house and also suggested that this complaint is motivated complaint to fix the accused as cause for PW-1 pregnancy and force to get him married to PW-1 since he was employed in Postal Department. Hence, the petitioner is entitled for honourable acquittal.

11. The learned Government Advocate (Crl.Side) in response to the above said arguments placed by the learned counsel appearing for the petitioner submitted that the prosecution has proved beyond doubt that the petitioner herein under false promise had sexual intercourse with the minor girl aged 16 years she became pregnant and when she asked the petitioner to marry her, he refused. Hence, PW-1 has lodged the complaint. The prosecution has proved the fact that the petitioner and



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PW-1 were in compromise position in the sugarcane field and the same was witnessed by PW-2. The medical evidence prove that PW-1 was 20 weeks pregnant at the time of lodging the complaint. Through PW-1 and PW-3 the prosecution has proved that when they went to Hosur and requested the accused to marry PW-1, since he has impregnant her, he refused to marry her. The prosecution through the independent witness has established the fact that the accused promised to marry PW-1. PW-1 in her evidence has specifically stated that when she informed the accused about her pregnancy, the accused gave evasive reply and delayed the marriage and left the village to Hosur. Therefore, the Government Advocate (Crl. Side) submitted that the prosecution proved that by obtaining consent on false promise the petitioner had sexual intercourse with PW-1 and thereafter, when she asked him to marry her, he gave evasive reply and delayed the marriage but allowed PW-1 to carry the fetus. Later he denied the paternity and refused to marry her thereby deceitfully made PW-1 to give consent and caused damage to her reputation, which squarely attracts ingredients of Section 415 IPC-cheating which is punishable under Section 417 of IPC. To buttress their respective case, several judgments were cited on either side.



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12. The proven facts in this case is that PW-1 was 20 weeks pregnant, when the complaint Ex.P1 was registered. PW-2 had deposed that he saw PW-1 and the accused in compromise position in the sugarcane field of one Sevathappa. PW-3 has deposed that he, his mother and his sister (PW-1) went to Hosur and requested the accused to marry PW-1 but he refused. Thereafter, the complaint under First Information Report (Ex.P1) came to be registered. The victim had deposed that the accused promised to marry her but delayed it on one excuse or the other. It is clear from her evidence that she was carrying fetus believing that the petitioner will marry her. This promise, which has been breached by the petitioner, has caused damage to the reputation of PW-1. She has been forced to be an unwedmother.

13. Section 415 of IPC defines cheating as below:-

“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”.

14. The evidence relied upon by the prosecution clearly proves the fact that the petitioner herein had promised PW-1 to marry her but later breached the promise. It is clear that the accused dishonestly made PW-1 to carry the fetus on the hope that he will marry her. The intentional inducement to do an act which caused damage to the reputation of the defacto complainant is sufficient ingredient to punish for cheating.

15. The plea of the learned counsel that the illustration (g) under Section 415 of IPC will apply in this case does not carry merit. Sexual intercourse, pregnancy and delivery, has to be considered as three distinctive events. Even if the intercourse based on promise to marry to be considered as consensual, to believe the petitioner had no intention to deceive the victim girl at that point of time but when she became pregnant and carrying the baby, his promise to marry her and induced her to carry the baby, on such promise, was not done honestly or *bona fide*,



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but with fraudulent intention to deceive PW-1. This squarely attracts Section 415 of IPC. Therefore, in the given facts and circumstances, the finding of the Courts below holding the petitioner guilty of offence punishable under Section 417 of IPC is legally sustainable.

16. In the above said reasons, **this Criminal Revision Case is dismissed.**

30.06.2022

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Index:yes/no

To:

- 1.The Principal Sessions Court, Dharmapuri.
- 2.The Assistant Sessions Court, Dharmapuri.
- 3.The Inspector of Police, Palacode Police Station, Dharmapuri District.
- 4.The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.
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Pre-delivery Order made in
Crl.R.C.No.1031 of 2014

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