

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

233

CRM-M-21816-2014(O&M)

Date of order: 10.04.2024

Surinder Singh

.....Petitioner(s)

Vs.

State of Punjab & Another

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Preetinder S. Ahluwalia, Advocate
for the petitioner.

Ms. Aakanksha Gupta, AAG Punjab.

Mr. Amit Kumar Jain, Advocate
for respondent No.2.

Nidhi Gupta, J.

Prayer in the present petition is for quashing **on merits** of FIR No.129 dated 05.12.2013 (Annexure P1) registered under Sections 420 and 493 IPC at Police Station Women Cell, District Patiala; as well as consequential proceedings arising therefrom.

2. Brief facts of the case as stated in the FIR (Annexure P/1) by the complainant namely Narinder Kaur @ Jyoti/Respondent No. 2 herein, are that she met the Petitioner in 2007, as both were working together in an orchestra group namely Mandeep Group's Maan Punjab Da. (Page 13). It has been alleged that for about 3½ years the parties were living together in a rented house at Rajpura, when the Petitioner established physical relationship with the Complainant/Respondent No. 2, on the pretext of marrying her in the future. (Page 13). Thereafter, the

Complainant/Respondent No. 2 left for abroad in September 2012 and when she came back the Petitioner started ignoring her. It has been alleged that later she got to know that the Petitioner's matrimonial alliance had been fixed somewhere else. (Page 15-16)

3. Learned counsel for the petitioner inter alia submits that present FIR (Annexure P1) had been registered on the basis of statement of the complainant/respondent No.2 herein. The petitioner and the complainant were in a consensual live-in relationship. At the time of registration of the FIR, respondent No.2/complainant was 31 years old. Grievance of the complainant in the present FIR is that despite consensual live-in relationship, the petitioner was not solemnizing marriage with her.

4. Learned counsel contends that the factum of two adults living in consensual relationship is not an offence under the IPC or any other law. It was in this view of the matter that vide opinion dated 22.07.2013 (Annexure P3), District Attorney (Legal), Patiala had categorically opined that as the petitioner and the complainant had lived together out of their free will for 3½ years, no criminal offence is made out. Relevant extract of the DA (Legal) Opinion is being reproduced hereinunder:

“Both of them were working together in an orchestra and were living together from 3½ years by taking a house on rent at Rajpura. There was an agreement between them that both will marry each other. Narinder Kaur alias Jyoti is even ready for getting married but Surinder Singh alias Rinka is lingering on one pretext or the other. From the above, no criminal offence has been found to be made out.”

5. Ld. Counsel also refers to legal opinion dated 11.10.2013 (Annexure P4) of the Deputy District Attorney (Legal), Patiala, who opined that offence if any, is made out under Sections 417 and 493 IPC.

6. It is submitted that despite the above said legal opinions, FIR was registered under Sections 420 and 493 IPC, and even challan (Annexure P2) has been filed for the offences under Sections 420 and 493 IPC. It is contended that no offence under the said Sections is made out. Learned counsel refers to the provision of Section 493 IPC contained in Chapter XX of the IPC, which reads as under:-

“493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage: —

Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

7. It is submitted that in respect of the above provision, a further impediment is created by way of Section 198 Cr.P.C., which stipulates that: -

“198. Prosecution for offences against marriage.-

(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code(45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that-

(a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorized by the husband in accordance with the provisions of sub-section (4) may make a complaint on his behalf;

(c) where the person aggrieved by an offence punishable under [section 494 or section 495] of the Indian Penal Code(45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister

[, or, with the leave of the Court, by any other person related to her by blood, marriage or adoption].

(2) For the purposes of sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under section 497 or section 498 of the said Code:

Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf.

(3) When in any case falling under clause (a) of the proviso to sub-section (1), the complaint is sought to be made on behalf of a person under the age of eighteen years or of a lunatic by a

person who has not been appointed or declared by a competent authority to be the guardian of the person of the minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, the Court shall, before granting the application for leave, cause notice to be given to such guardian and give him a reasonable opportunity of being heard.

(4) The authorization referred to in clause (b) of the proviso to sub-section (1), shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by his Commanding Officer, and shall be accompanied by a certificate signed by that Officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

(5) Any document purporting to be such an authorization and complying with the provisions of sub-section (4), and any document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, be presumed to be genuine and shall be received in evidence.

(6) No Court shall take cognizance of an offence under section 376 of the Indian Penal Code, (45 of 1860) where such offence consists of sexual inter- course by a man with his own wife, the wife being under eighteen years of age, if more than one year has elapsed from the date of the commission of the offence.

(7) The provisions of this section apply to the abetment of, or attempt to commit, an offence as they apply to the offence."

8. It is argued that accordingly, under Section 198(1) Cr.P.C., only a complaint could have been made by the aggrieved person.

Learned counsel then refers to definition of 'complaint' as contained in Section 2(d) Cr.P.C., reproduced hereunder:-

“complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.”

9. It is argued that therefore, since offence under Section 493 IPC is non-cognizable, present FIR and final report (Annexure P2) could not have been registered by the Investigating Agency.

10. It is further submitted that second opinion taken by the investigating agency only indicated offences under Section 417 and 493. Both the said Sections are non-cognizable in nature and in view of the mandate of law under Section 155 of the Code of Criminal Procedure, no investigation could have been done by the investigating agency. It is contended that it was only in a desperate move to assume jurisdiction and to investigate the matter, offence under Section 420 of the Indian Penal Code was added in view of Section 417 of the Indian Penal Code despite the fact that the allegation, is not a 'delivery of property' as required under Section 420 IPC. This issue is no longer res integra as Hon'ble Supreme Court in **“Joseph Shine Vs. Union of India”** law Finder Doc ID # 2136498, has already held that a woman is not regarded as a possession or chattel of her husband.

11. It is contended that the said Section 420 IPC envisages the delivery of property by way of cheating or dishonest inducement. It is submitted that in the present case, no property has been delivered. From

the bare perusal of FIR and the final report, it is apparent that no offence is made out; and at any rate, no cognizable offence is made out for which investigation could have been done by the investigating agency. It is submitted that therefore, in view of the above legal provisions, no FIR could have been registered in the present case.

12. Learned counsel argues that Section 420 IPC is the aggravated part of Section 415 IPC which defines 'cheating'. It is contended that however, a woman is neither property nor valuable security and therefore, offence as alleged is not made out. In non-cognizable offences, complaint has to be filed; and if it is clear that offence under Section 420 IPC is prima facie not made out, then needless to say, the FIR cannot be sustained.

13. In support, learned counsel relies upon judgments of the Hon'ble Supreme Court in **"Shambhu Kharwar Vs. State of Uttar Pradesh & Another"** Law Finder doc ID # 2024967; **"Sonu @ Subhash Kumar Vs. State of Uttar Pradesh & Another"** 2021(2) RCR (Criminal) 269; **"Pramod Suryabhan Pawar Vs. The State of Maharashtra & Another"** 2019(4) RCR (Criminal) 135; **"Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra & Others"** Criminal Appeal No.1443 of 2018 decided on 22.11.2018; **"Deepak Gulati Vs. State of Haryana"** 2013(7) SCC 675; **"Ansaar Mohammad Vs. State of Rajasthan & Another"** Law Finder Doc ID # 2012650; and **"State of Haryana & Others Vs. Ch. Bhajan Lal & Others"** law Finder Doc ID # 45480.

14. Per contra, learned counsel for the complainant refers to the FIR to submit that very clear allegations have been made against the petitioner to the effect that the petitioner has continuously physically exploited the complainant for several years on the false promise of marriage and therefore, present FIR not be quashed. It is submitted that the life of the complainant has been ruined by the petitioner and that conduct of the petitioner is deplorable.

15. Learned State Counsel submits that the petitioner allured the complainant for marriage and then after exploitation, he gave deception to the complainant and resiled from the promise of marriage. As such, the petitioner committed an offence under Section 420 IPC.

16. No other argument is made on behalf of the parties.

17. I have heard learned counsel for the parties and perused the case file in detail.

18. A perusal of the record of the case reveals that the complainant was 31 years old at the time of alleged offence. FIR reveals that it has been alleged therein that the complainant had met the petitioner in 2007 as they worked together in an orchestra. Subsequently, in October 2008 the petitioner had asked the complainant to live together as husband and wife. Upon her refusal, he had promised to persuade his family to agree to their alliance. On this assertion, in November, 2008, the petitioner had taken a room on rent wherein they had started living together. It is further alleged in the FIR that at the asking of the petitioner, the complainant went abroad in September, 2012 and stayed there till

03.3.2013. It is further alleged that on 21.04.2013, the petitioner took the complainant to rock garden and lake in Chandigarh and mis-informed her that he was suffering from blood cancer. It is stated that on 27.04.2013, the complainant discovered that the petitioner was getting married to someone else.

19. On the basis of the above allegations, the present FIR has been registered against the petitioner under sections 493 and 420 of the IPC. A perusal of the allegations makes it ostensible that the parties were in a consensual live-in-relationship for as long as 3½ years. It is on this account that the DA (Legal) vide its opinion dated 22.07.2013 (Annexure P/3) had stated that no offence is made out. Pursuant thereto another opinion was obtained from DDA Legal, who vide his opinion dated 11.10.2013 (Annexure P/4) had opined that offence, if any, is made out under Sections 417 and 493 of the Indian Penal Code, 1860, which are non-cognizable offences. However, despite the opinion of the DDA Legal qua only offences under Section 417 and 493 IPC having been made out, the investigating agency has opted to invoke prosecution for the offences 420 and 493 IPC. From the above facts, it appears that offence under Section 420 IPC, being a cognizable offence, has been invoked for the solitary purpose of enabling the investigating agency to take cognizance of the matter; and to evade the mandate prescribed by the Hon'ble Supreme Court, in **“State of Haryana v. Ch. Bhajan Lal”, 1992 AIR (Supreme Court) 604**. Relevant portion of the said judgment is as follows:

“35. In this connection, it may be noted that though a police officer cannot investigate a non cognizable offence on his own

as in the case of cognizable offence, he can investigate a non cognizable offence under the order of a Magistrate having power to try such non-cognizable case or commit the same for trial within the terms under Section 155 (2) of the Code but subject to Section 155(3) of the Code. Further, under the newly introduced sub-section (4) to Section 155, where a case relates to two offences to which at least one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the other offences are non-cognizable and therefore, under such circumstances the police officers can investigate such offences with the same powers as he has while investigating a cognizable offence.

XXX

107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

1. XXX

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an

order of a Magistrate within the purview of Section 155(2) of the Code.”

20. Furthermore, it is my opinion that the allegations levelled, even if believed to be correct, do not meet the criteria of the offence under Section 420 IPC. Said provision is reproduced herein below: -

“420. Cheating and dishonestly inducing delivery of property.—

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

21. A bare reading of the above provision shows that the two key ingredients required to constitute an offence under Section 420 IPC are:

- i.) cheating; and
- ii.) dishonestly inducing delivery of valuable property.

‘Cheating’ is defined under Section 415 IPC as follows: -

“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”.

22. Therefore, to constitute an offence of ‘cheating’ dishonest delivery of property is to be established. Thus, for the purpose of assuming jurisdiction the investigating agency has extended the meaning of the term 'property' as used under Section 420 IPC, to mean women or the chastity to women; which is a notion that has been believed to be incorrect by the Hon'ble Supreme Court in **“Joseph Shine v. Union of India”, AIR 2018 (SC) 4898.**

23. The non-applicability of Section 420 IPC was delineated upon by the Madras High Court in **“Seeyathammal vs Vinayagamoorthy”, Criminal Revision Case No.1138 of 2008 (dated 17.09.2008).** Relevant extract of the judgment is as follows:

“6. Section 420 IPC specifically deals with cheating and dishonest inducement of valuable property. A reading of Section 420 IPC shows that it does not cover the cheating dealt with by second class of Section 415 IPC whereas it deals with cheating defined in the first class of Section 415 IPC. When the Statute contains two different provisions to deal with two different kinds of offence and when the allegations contained in the complaint attract a particular offence as defined in a particular provision, the Court can only convict the person of that offence which he has committed. The Court by interpretation of its own notions cannot convict a person for a different offence if such acts committed by the accused do not fall within the definition of such offence. With great respect of the learned Judge of the Andhra Pradesh High Court, I am not able to subscribe to the view expressed by him. By no stretch of imagination the chastity and / or virginity of a woman could be

compared with property. This is something more valuable and precious. Such type of offences like the offence committed by the respondent herein may be required to be dealt with seriously and severe punishment should be imposed but when the Section itself prescribes a maximum punishment, the Court cannot impose more than the prescribed sentence. Admittedly the petitioner not being satisfied with the sentence imposed on the petitioner has already filed a revision seeking enhancement of sentence and the same will be dealt with in accordance with law. But as far as the case on hand is concerned, the reasoning of the learned Magistrate for not convicting the first respondent under Section 420 IPC cannot be said to be either illegal or unsustainable.”

24. In the instant lis, the only other offence invoked is under Section 493 IPC, for which an FIR cannot be registered as per the mandate prescribed under Section 198 CrPC, which prescribes that cognizance for any offence covered under Chapter XX of IPC (which is inclusive of Sec 493 IPC) the same can only be taken on a private complaint being moved by the Complainant. Relevant extract of Section 198 is as follows:

“198. Prosecution for offences against marriage.

(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence.”

25. In the above facts, reference to the following enunciation of the Hon’ble Supreme Court in “**Arnab Manoranjan Goswami vs. State of Maharashtra**”, (SC) : Law Finder Doc Id # 1772977 is apposite that: *“The settled principles which have been consistently reiterated since the judgment of this Court in **State of Haryana v. Bhajan Lal 1992 Supp. 1***

***SCC 335** ("Bhajan Lal") include a situation where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused. This legal position was recently reiterated in a decision by a two-judge Bench of this Court in **Kamal Shivaji Pokarnekar v. State of Maharashtra (2019) 14 SCC 350.**"*

26. Ld. Counsel for the respondents have been unable to controvert the legal position as noticed above. Accordingly, the present petition is **allowed**; and FIR No.129 dated 05.12.2013 (Annexure P1) registered under Sections 420 and 493 IPC at Police Station Women Cell, District Patiala; as well as consequential proceedings arising therefrom, is quashed qua the petitioner.

27. Pending application(s) if any also stand(s) disposed of.

10.04.2024

Sunena

Whether speaking/reasoned

Whether reportable

(Nidhi Gupta)

Judge

Yes/No

Yes/No