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(2006) 05 GAU CK 0029

Gauhati High Court

Case No: None

Aparajita Nath — APPELLANT

Vs

State of Assam — RESPONDENT

Date of Decision: May 6, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 315, 415, 416, 419, 420

Citation: (2007) 2 GLR 567 : (2006) 4 GLT 776

Hon'ble Judges: P.G. Agarwal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

P.G. Agarwal, J.
Heard Mr. J.M. Choudhury, learned senior counsel for the petitioner and Mr. D. Das, learned Public Prosecutor.

2. This revision is directed against the order dated 31.3.2005 passed by the Sessions Judge, Kamrup, Guwahati in Sessions case No. 132(K)/ 2004 whereby charge u/s 419 IPC has been framed against the petitioner Aparajita Nath.

3. The prosecution allegation, in brief, is that on 11.1.99 the petitioner along with one Sidhartha Rai went to Sacred Home Nursing Home for the purpose of abortion and at that time she identified herself as Anita Rai although she knew that she is not Anita Rai but she is Aparajita Nath.

4. At this stage, Mr. Choudhury in his usual fairness has not challenged the materials on record in that respect. But it is submitted that even if the above fact is taken as true it does not construe an offence of cheating as defined u/s 416 IPC. Section 416 IPC reads as follows:

416. Cheating by personation. - A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

5. In this case, we find that the name Anita Rai taken by the accused was an imaginary name and in view of the explanation given above, we find prima facie materials to hold that the accused had pretended to be some other person. The question that needs to be determined is whether mere pretension to be some other person is in itself sufficient to constitute an offence of cheating. From the provisions of Section 416 IPC as quoted above, we find that pretending to be some other person is one part of the offence but the other part is that one must cheat somebody by pretending to be some other person. Cheating has been defined u/s 415 IPC which reads 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".

6. In the case of Devender Kumar Singla Vs. Baldev Krishan Singla, the Apex Court while defining cheating u/s 415 IPC had this to say:

7. In order to appreciate the rival submissions, it would be necessary to consider on the background of the factual position as to whether offence punishable u/s 420 IPC is made out. Section 420 deals with certain specified classes of cheating. It deals with the cases whereby the deceived person is dishonestly induced 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 singed or sealed and which is capable of being converted into a valuable security. Section 415 defines "cheating". The said provision requires : (i) deception of any person, (ii) whereby fraudulently or dishonestly inducing that person to deliver any property to any person or to consent that any person shall retain any property, or (iii) intentionally inducing that person 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. Deception of any person is common to the second and third requirements of the provision. The said requirements are alternative to each other and this is made significantly, clear by use of disjunctive conjunction "or". The definition of the offence of cheating embraces some cases in which no transfer of property is occasioned by the deception and some in which such a transfer occurs. Deception is the quintessence of the offence. The essential ingredients to attract Section 420 are : (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security ; and (iii) the mens rea of the accused at the

time of making the inducement. The making of a false representation is one of the ingredients for the offence of cheating u/s 420.

7. A conjoint reading of Sections 415 and 416 IPC show that cheating is an essential ingredient of the offence and as such the act of cheating in addition to impersonation is a must to constitute an offence u/s 419 IPC. Section 415 IPC no doubt speaks about dishonest concealment of facts but mere deception is not cheating unless the person so deceived is induced to do certain acts as stated under the section. In the case of Bashirbhai Mohamedbhai Vs. The State of Bombay, wherein the Apex Court observed that making of the false representation is one of the ingredients for the offence of cheating and delivery of property is another ingredient and both of these ingredients are required to establish the charge.

8. In the instant case, there is no allegation that the petitioner has deceived the complainant/informant in any manner or that the informant/complainant was induced to part with any property which is the first part of Section 415 IPC.

9. Now coming to the second part of Section 415 IPC we find that there is no material on record to show that the complainant doctor had performed the abortion only because the petitioner gave her name as Anita Rai and not Aparajita Nath. The doctor would have performed the abortion even if the name was reported as Aparajita Nath.

10. The learned Counsel has submitted that the sole purpose for giving an imaginary name and not the real name was to conceal the identity of the young woman as she had conceived while still single and she wanted to keep the matter of pregnancy a secret. In the circumstances it cannot be said that the intention was to cheat the informant Dr. Bibharani Goswami or others.

11. In the world of literature, we find there are prominent authors who write under their pen name or anonymous names as they are not inclined to disclose their identity. Hence, merely writing in other names or identifying oneself in another name without any intention to deceive others cannot be said to constitute offence of cheating.

12. In the instant case, although police had submitted chargesheet u/s 315 IPC. The learned trial court did not find material to frame charge u/s 315 IPC and the charge was framed u/s 419 IPC.

13. In view of what has been stated above, we find that criminal impersonation even if true, the facts do not constitute an offence u/s 419 IPC and as such the revision is allowed and the impugned order is set aside. The accused stands discharged.

14. Send down the records.