

(1974) 02 BOM CK 0021

Bombay High Court

Case No: Criminal Appeal No. 443 of 1972

Ramkrishna Baburao Maske

APPELLANT

Vs

Kishan Shivraj Shelke

RESPONDENT

Date of Decision: Feb. 5, 1974

Acts Referred:

- Penal Code, 1860 (IPC) - Section 23, 24, 269, 34, 415

Citation: (1974) 76 BOMLR 424 : (1974) MhLj 659

Hon'ble Judges: Bhole, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Bhole, J.

This is an appeal by the complainant, who has failed in getting the accused, whom he prosecuted, convicted. He prosecuted them for offences punishable u/s 417 read with Section 34, Indian Penal Code, but the learned Magistrate, Kaij, District Bhir, was not satisfied with the merits of the case and, therefore, acquitted all the six accused.

2. The complainant is the unfortunate husband of accused No. 3 who is said to have been offered by her parents, accused Nos. 1 and 2 and some mediators, who were discharged. It is said that the marriage of the complainant with accused No. 3 was settled on May 25, 1970 and was performed on June 1, 1970. Accused No. 3 came to stay with the complainant on that day. They lived as husband and wife and she delivered a child on November 19, 1970 after about five months from the date of the marriage. She was taken to Ambejogai hospital and the doctor's report was that the child was delivered with seven months' pregnancy. The complainant's case is that he had married her at the time when she had already conceived much before the time of the marriage. It is, therefore, his case that her parents as well as she concealed from him the fact of her pregnancy at the time of the settlement of

marriage and also at the time of marriage and thereby they have cheated him. The parents denied having any knowledge about the conception of their daughter and accused No. 3 also denied having cheated the complainant.

3. The learned Magistrate after considering Section 415, Indian Penal Code found that "dishonesty" is one of the ingredients of that section and that it is connected with property. He was therefore, satisfied that the case of the complainant did not fit within the purview of Section 415, Indian Penal Code. He, therefore, acquitted all the accused. The point, therefore, that arises here for consideration is whether the order of acquittal passed by the learned Magistrate is legal and proper.

4. Section 415, Indian Penal Code, is as follows:

415. 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".

Explanation.--A dishonest concealment of facts is a deception within the meaning of this section.

5. Therefore, this section requires deception of any person not only in the case of one who fraudulently or dishonestly induces that person to deliver any property or to consent that any person shall retain any property but also in the case of one who intentionally induces that person to do or omit to do any thing which he would not do or omit if he was not so deceived. Therefore, deception of any person is a common factor. This ingredient has necessarily, therefore, to be established. In the explanation of the section, "dishonest concealment of fact" is a deception within the meaning of this section. Therefore, the prosecution has to establish, dishonest concealment of facts. "What is "dishonesty" is also defined in Section 24, Indian Penal Code, Whoever does any thing with intent of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly. Wrongful gain and wrongful loss are also defined in Section 23, Indian Penal Code. Wrongful gain is gain by unlawful means of property to which the person gaining is not legally entitled. Wrongful loss is loss by unlawful means of property to which the person losing is legally entitled. Therefore, in the matter of deception there should be intention of wrongful gain to one person or wrongful loss to another person. This means that, there should be a gain by wrongful means of property. In so far as the facts and circumstances of our case are concerned, the question of property does not arise at all.

6. Now it is true that accused No. 1 has offered his daughter accused No. 3 to the complainant by not disclosing- the fact of pregnancy. There was also naturally harm to the reputation of the complainant on account of concealment of the facts. The

delivery of the child as a result of conception much before the marriage lies also harmed his reputation. All this is because of the concealment of pregnancy by the bride, accused No. 3 herself, and also perhaps by her parents. They have also induced the complainant to marry accused No. 3 by concealing: this fact. The dominant motive was to perform the marriage of accused No. 3 with the complainant. All this, however, does not at all show that there was a kind of deception within the meaning of Section 415, Indian Penal Code, because there cannot be a dishonest concealment of fact. which in turn is with respect of property.

7. An offence u/s 415, Indian Penal Code, would be complete only when somebody by deceiving any person intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he was 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. Under the explanation to Section 415, Indian Penal Code deception of any person would be as a result of dishonest concealment of fact. It is necessary for the prosecution also to establish that there was deception of any person and in consequence of the deception intentional inducement to do or omit to do must be there. In my view when there is dishonest concealment of fact that should be with intention of causing "wrongful gain to one person or wrongful loss to another person. For the purpose of causing wrongful loss or wrongful gain the prosecution has to establish that gain or loss was by unlawful means and that was of property to which the person gaining or losing was not legally entitled. In other words, the result of concealment of fact should be for the purpose of wrongful gain by unlawful means of property. In the instant alleged cheating such a dishonest concealment of fact is absent. The facts of our case, therefore, show that there was no wrongful gain to the accused nor there was any wrongful loss to the complainant. If that is so, then one of the ingredients viz. dishonest concealment of fact cannot be said to have been established in this case.

8. Mr. Dabir invites my attention to Queen Empress v. Rakma Kom Sadhu ILR (1886) 11 Bom. 59 where the Division Bench of this Court was considering the case of a prostitute u/s 269, Indian Penal Code. This section is with reference to a negligent act likely to spread infection of a disease dangerous to life. It was held that the prostitute who while suffering from syphilis communicates the disease to a person who has sexual intercourse with her is not liable to punishment u/s 269, Indian Penal Code for a negligent act of spreading infectious disease dangerous to life. There was an obiter observation by West J. in his separate judgment that if there was any offence, it was one of cheating punishable u/s 417 or 420, Indian Penal Code and to establish it there should be evidence believed by the Magistrate that intercourse was induced by misrepresentation on the part of the diseased person. Such obiter observations, in my view, will not be of any help to Mr. Dabir but then he relies on another case: [In Re: K. Rama Rao](#), . This was a case of an accused who had applied for the post of a Supervisor (Civil Engineering) to the Public Service Commission and who after considering his application selected him as one of the

candidates for appointment. After his appointment in the temporary post he was arrested and charged u/s 416, Indian Penal Code, for personation. Two sets of circumstances against the accused were found by two lower Courts. The first was that the accused represented himself to be IC.V. Ram rao holding the qualification of a licentiate in Civil Engineering from an Engineering College, (luindy, Madras to secure the post of an Overseer and was appointed as such. The second was with respect to obtaining a professional certificate on which the accused relied to entitle him to B.E. degree. He was convicted for the offence under Sections 419 and 420, Indian Penal Code. It was urged on conviction of the accused u/s 420, Indian Penal Code in the revision application that that was not a case in which on account of any deception any person has been induced to deliver any property. The ground that had been taken was that it was the Government who had appointed the accused and mere selection by Public Service Commission for appointment by Government would not constitute delivery of any property to the accused by the Public Service Commission, but it was conceded in that case that the posting of a person to any service was property and, therefore, the Division Bench did not find it necessary to go into the nicety of the question inasmuch as the restrictive scope Section 420, Indian Penal Code, created difficulties in the matter of application of that section to the facts of that case. The conviction u/s 420, Indian Penal Code was therefore held to be not proper and the accused was acquitted of the offence under that section but the conviction u/s 419, Indian Penal Code was upheld. I do not, therefore, think that: this case can also in any way help Mr. Dabir. I am of the view that all the ingredients of the offence u/s 417, Indian Penal Code, with which the accused was charged have not been established in this case. The learned Magistrate, therefore, was right in acquitting the accused.

9. I, therefore, confirm the order of acquittal of the accused passed by the trial Court and dismiss the appeal filed by the complainant.