

G.V. Rao vs L.H.V. Prasad & Ors on 6 March, 2000

Author: S.Saghir Ahmad

Bench: S.S.Ahmad, D.P.Wadhwa

PETITIONER:

G.V. RAO

Vs.

RESPONDENT:

L.H.V. PRASAD & ORS.

DATE OF JUDGMENT: 06/03/2000

BENCH:

S.S.Ahmad, D.P.Wadhwa

JUDGMENT:

S.SAGHIR AHMAD, J.

This Special Leave Petition was dismissed by us on 04.10.1999. We, hereinbelow, give our reasons for dismissing the Special Leave Petition. The petitioner is a Post-Doctoral fellow at Centre for Cellular and Molecular Biology, Hyderabad. He invited marriage proposals for himself through advertisement in Deccan Chronicle dated 27th of January, 1994, in pursuance of which respondent No.1 approached the petitioner and furnished the particulars of respondent No.4 who is his sister. It was represented by respondent No.1 that respondent No.4 was born on 29th of June, 1966 and they belonged to Thurupukapu Community. The petitioner himself gave out that he belonged to Gujara Balija Community which was a forward community and, therefore, he wanted a wife from a forward community. The parents of respondent No.4, who are respondents 2 to 3 in this petition, met the parents of the petitioner and they talked and the marriage proposal was finalised. Betrothal ceremony took place on 27th of June, 1994 and later the marriage took place on 19.8.94. On 4th of March, 1997, the petitioner, allegedly, came to know that respondents 1 to 4 belonged to Kondakapu Community, which was a Scheduled Tribe, and it was then that he realised that by misrepresenting themselves as members of Thurupukapu Community, they had lured the petitioner into wedlock, for which the petitioner would not have agreed at all, had he known that the respondents did not belong to Thurupukapu Community but belonged to Kondakapu Community. It was in these circumstances that he filed a complaint in the Court on 10.7.1996 under Section 415, 419, 420 read with Section 34 IPC which was referred to Station House Officer, Police Station Alwal, Rangareddy District, Andhra Pradesh for investigation and report. Since the investigation was considerably delayed, the petitioner filed Writ Petition No.11477 of 1997 in the High Court for a Writ of Mandamus directing

the Station House Officer to expedite the investigation. While the Writ Petition was pending, an affidavit was filed by the Station House Officer that after completing the investigation, he had submitted the chargesheet in the Court on 28.5.1997 against the respondents. The respondents, however, approached the High Court through a petition under Section 482 Cr.P.C. seeking the quashing of the FIR which was allowed by the impugned judgment and it is in these circumstances that this petition has been filed in this Court. Learned counsel for the petitioner has contended that the High Court was not justified in quashing the complaint (FIR) as a chargesheet had already been submitted after the investigation and a prima facie case was made out against the respondents. He has further contended that the High Court was wrong in its interpretation of Section 415 IPC. Before considering the contention of the learned counsel for the petitioner on merits, we may state another important fact that the petitioner himself is facing a case under Section 498-A IPC instituted by the respondents against him. It is stated in the petition that this prosecution was launched by the respondents against the petitioner as a counter-blast to the notice dated 13.6.1995 which was issued by him to respondent No.1 as to why he had misrepresented about his caste and why had he represented to the petitioner that he belonged to Thurupukapu Community instead of Kondakapu Community. The CHEATING is defined in Section 415 of the Indian Penal Code which provides as under:- "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". Explanation.- A dishonest concealment of facts is a deception within the meaning of this section." The High Court quashed the proceedings principally on the ground that Chapter XVII of the Indian Penal Code deals with the offences against properties and, therefore, Section 415 must also necessarily relate to the property which, in the instant case, is not involved and, consequently, the FIR was liable to be quashed. The broad proposition on which the High Court proceeded is not correct. While the first part of the definition relates to property, the second part need not necessarily relate to property. The second part is reproduced below:- ".....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"." This part speaks of intentional deception which must be intended not only to induce the person deceived to do or omit to do something but also to cause damage or harm to that person in body, mind, reputation or property. The intentional deception presupposes the existence of a dominant motive of the person making the inducement. Such inducement should have led the person deceived or induced to do or omit to do anything which he would not have done or omitted to do if he were not deceived. The further requirement is that such act or omission should have caused damage or harm to body, mind, reputation or property. As mentioned above, Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in *Jaswantrao Manilal Akhaney vs. State of Bombay*, AIR 1956 SC 575 = 1956 Cr.L.J. 1611 = 1956 SCR 483, a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating,

"mens rea" on the part of that person, must be established. It was also observed in Mahadeo Prasad vs. State of West Bengal, AIR 1954 SC 724 = 1954 Cr.L.J. 1806, that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered. Thus, so far as second part of Section 415 is concerned, "property", at no stage, is involved. Here it is the doing of an act or omission to do an act by the complainant, as a result of intentional inducement by the accused, which is material. Such inducement should result in the doing of an act or omission to do an act as a result of which the person concerned should have suffered or was likely to suffer damage or harm in body, mind, reputation or property. In an old decision of the Allahabad High Court in Empress v. Sheoram and another, (1882) 2 AWN 237, it was held by Mahmood, J.:- "That to palm off a young woman as belonging to a caste different to the one to which she really belongs, with the object of obtaining money, amounts to the offence of cheating by personation as defined in s.416 of the Indian Penal Code, which must be read in the light of the preceding, s.415." In an another old decision in Queen-Empress v. Ramka Kom Sadhu, ILR (1887) 2 Bombay 59, it was held that a prostitute may be charged for cheating under Section 417 if the intercourse was induced by any misrepresentation on her part that she did not suffer from syphilis. In Queen vs. Dabee Singh and others, (1867) Weekly Reporter (Crl.) 55, the Calcutta High Court convicted a person under Section 417 who had brought two girls and palmed them off as women of a much higher caste than they really were and married to two Rajputs after receiving usual bonus. It was further held that the two Rajputs who married the two girls on the faith that they were marrying women of their own caste and status, were fraudulently and dishonestly induced by deception to do a thing (that is to say, to marry women of a caste wholly prohibited to them) which but for the deception practised upon them by the accused, they would have omitted to do. In another case which was almost similar to the one mentioned above, namely, Queen vs. Puddomonie Boistobee, (1866) 5 Weekly Reporter (Crl.) 98, a person was induced to part with his money and to contract marriage under the false impression that the girl he was marrying was a Brahminee. The person who induced the complainant into marrying that girl was held liable for punishment under Section 417 IPC. Having regard to the above discussion, the High Court, as we have already observed earlier, was not correct in its interpretation of the provisions contained under Section 415 IPC but the important question for our consideration is that, should we, having regard to the facts of this case, interfere under Article 136 of the Constitution. There has been an outburst of matrimonial disputes in recent times. The marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different courts. The petitioner himself is a Scientist at the Centre for DNA Finger Printing & Diagnostics, Hyderabad which is a prestigious Institution of the country. In this capacity, he can be reasonably presumed to be aware of the bio-diversity at the Cellular and Molecular level amongst human beings without the "caste" having any role in the field of Human Biotechnology. It was for these reasons that the Petition, being without merit, was dismissed on October 4, 1999.