

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.1097 OF 2003

Santoshkumar Surajbhan Goyal ...Appellant
Versus
The State of Maharashtra and Anr.
...Respondents
Mr. Ganesh Gole with Mr. Viraj Shelatkar for the Appellant.
Mr. S.V. Gavand, APP for Respondent No.1-State.

CORAM : SMT. ANUJA PRABHUESSAI, J.

DATED: 15th NOVEMBER, 2021.

ORAL JUDGMENT:-

By this appeal filed under Section 374 of the Code of Criminal Procedure, 1973, the Appellant (hereinafter referred to as 'the accused') has challenged the judgment and order dated 18/07/2003 in Session Case No.418 of 2002 . By the impugned judgment the learned 5th Ad-hoc Additional Sessions Judge, Pune, has held the accused guilty of offence punishable under Section 417 of the IPC and sentenced him to pay Rs.60,000/- i/d. rigorous imprisonment for three months. Out of the said fine amount, a sum of Rs.40,000/- is ordered to be paid to the prosecutrix as compensation.

2. The brief facts necessary to decide this appeal are as under:-

The prosecutrix is a married woman with a child. Her

husband met with an accident and was admitted in Ruby Hall clinic. After his discharge from the hospital his parents took him to their village Mauje Bandi, District-Washim. The prosecutrix kept her daughter with her parents and started residing at Alandi with her brother. She was in search of job and one Ashok Lodha, friend of her husband took her to the office of the accused, who is a chartered accountant, and requested him to employ the prosecutrix. It is the case of the prosecution that the accused had refused to offer any job to the prosecutrix as she had studied only upto 7th standard. However, on the next day he called her to the office and made enquiries about her family background. He also told her that his first wife had expired and that the second wife had filed a petition for divorce. The accused told her that he was unhappy in his marital life and suggested that they could fulfill the needs of each other.

3. It is further the case of the prosecution that the accused promised to marry the prosecutrix and offered to give her a flat and maintain her and her daughter. The prosecutrix therefore agreed to solemnise the marriage. Accordingly, the accused took the prosecutrix to a temple and solemnised the marriage and established physical relationship with her. The grievance of the prosecutrix is that from March-2002 the accused removed her from service, failed to pay the

rent of the premises, declined to purchase a flat and discontinued the relationship with her. She therefore lodged a complaint on 07/05/2002. Pursuant to which Crime No.67 of 2002 was registered at Samarth Police Station for offences punishable under Sections 376 and 420 of the IPC. Crime was investigated by PW13-PSI Sucheta Khokale. She recorded the statement of witnesses, conducted panchanama, seized incriminating material and after completion of the investigation filed a charge sheet.

4. The case being sessions triable, was committed to the Court of Sessions. Charge was framed against the accused for offences punishable under Sections 376 and 420 of the IPC. The accused pleaded not guilty to the charge and claimed to be tried. The prosecution in support of its case examined 13 witnesses. The statement of the accused was recorded under Section 313 of the Cr.P.C. The defence of the accused was of total denial and of false implications. Upon appreciating and analysing the evidence on record the learned Judge acquitted the accused of offence under Section 376 of the IPC and convicted him for offence under Section 417 of the IPC and sentenced him as stated above mainly on the basis that the accused had sexual relationship with the prosecutrix on a false promise of marriage. Being aggrieved by the conviction and sentence, the Appellant has filed this

appeal under Section 374 of the Cr.P.C.

5. Mr. Gole, learned counsel for the accused submits that the prosecutrix is a married woman with a child. She was also well aware that the accused was a married man with children. He therefore contends that there was no question of deceiving the prosecutrix and / or having sexual intercourse with the prosecutrix under a false promise of marriage. He submits that essential ingredients of cheating are not made out and hence the learned Judge has grossly erred in convicting the accused under Section 417 of the Cr.P.C.

6. Mr. S.V. Gavand, learned APP submits that the evidence of the prosecutrix proves that the accused had promised to marry her and further promised to take care of her child and provide shelter to them. He submits that the accused had induced the prosecutrix to have sexual relationship on the basis of a false promise of marriage.

7. I have perused the records and considered the submissions advanced by learned counsel for the respective parties. The only question for consideration is whether the prosecution has established that the accused has cheated the prosecutrix by inducing her to have sexual relationship with him on a false promise of marriage.

8. In the case of ***Tilak Raj vs State of Himachal Pradesh, (2016) 4 SCC 140*** the prosecutrix, a lady of around 40 years, had alleged that the Appellant had allured her on the pretext of marriage and he had not only ravished her but had physically assaulted her and later declined to marry her. On the basis of the first information report lodged by the prosecutrix crime was registered for offences under Section 376, 417 and 506 of the IPC. The Sessions Court after examination of the evidence on record acquitted the Appellant of all the charges levelled against him. In an appeal filed by the State, the High Court upheld the acquittal of the Appellant for offence under Section 376 of the IPC but convicted the Appellant for offences punishable under Sections 417 and 506 (part I) of the IPC. While setting aside the order of the High Court and acquitting the Appellant of offence under Section 417 of the IPC, the Apex Court has observed thus:-

" 18. As far as conviction of the appellant under Sections 417 and 506 part I of IPC is concerned, a close scrutiny of evidence of the prosecutrix (PW 2) along with other prosecution witnesses is done by this Court. Section 417 of IPC prescribes punishment for the offence of Cheating as defined under Section 415 of IPC. Section 415 of IPC reads thus:

"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.”

19. The ingredients required to constitute the offence of Cheating have been discussed by this Court in the case of Ram Jas v. State of U.P. (1970) 2 SCC 740 as under:

- “(i) there should be fraudulent or dishonest inducement of a person by deceiving him;**
- “(ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or**
- “(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and**
- “(iii) in cases covered by (ii)(b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.”**

20. A careful reading of evidence on record clearly shows that there is no evidence against the appellant from which it can be conclusively inferred by this Court that there was any fraudulent

or dishonest inducement of the prosecutrix by the appellant to constitute an offence under Section 415 of IPC. For conviction of the Appellant for above said offence, it is important that all the necessary ingredients constituting an offence under the said Section must be proved beyond reasonable doubt. In the instant case, the appellant cannot be convicted for the offence of cheating punishable under Section 417 of IPC as the prosecution has failed to prove all ingredients of the said offence beyond reasonable doubt."

9. In the instant case the prosecutrix has alleged that the accused had promised to marry her, to take care of her child and provide shelter to them. In this regard it is relevant to note that PW1-prosecutrix has herself deposed that she was married on 20/04/1998 to one Kailash and that they have a child from the said marriage. She has stated that about a year prior to lodging of the complaint, her husband had met with an accident and was admitted in Ruby Hall Clinic for three months. After his discharge, his parents took him to Mauje Bandi District-Washim. She kept her daughter with her parents at Pangara Bandi, Taluka-Malegaon, District-Akola. PW1 has deposed that she was looking for a job, hence one Ashok Lodha, who was known to her husband, took her to the office of the accused. Accused told her that she will not get the job since she was not well educated. She claims that the accused also told her that his first wife has expired and that his

children are not taking care of him. He promised to look after her daughter, to maintain both and to provide a flat at Pune. About 3 to 4 months later, she learnt that the accused was married. She has deposed that when she enquired with the accused, he told her that his relationship with the second wife is strained, and matter is pending before the Family Court. The accused promised to marry her after divorcing his second wife and after the marriage of his son.

10. PW1 claims that after joining the service, she stayed in a rental room for about a month. The landlord demanded some deposit but the accused refused to pay the deposit and asked her to reside in his office at Quarter gate. PW1 claims that she had sexual intercourse with the accused during her stay in the office.

11. The evidence of the prosecutrix clearly indicates that she was a married woman with a child. She was also well aware that the accused was a married man. She had not entered into a relationship with the accused under deception or misconception of facts. She had also not succumbed to the carnal desire of the accused believing his promise of marriage. On the contrary, the evidence of PW1 indicates that she had voluntarily entered into a consensual sexual relationship with the accused despite knowing that both of them were married and

that it was not possible for either of them to remarry while the previous marriage was in subsistence. Furthermore, the tenor of her evidence indicates that she had lodged the first information report not because the accused had refused to marry her but because he had removed her from service and stopped her from entering or residing in the office premises.

12. Thus, the evidence does not prove that the accused had deceived or dishonestly, fraudulently or intentionally induced the prosecutrix to enter into sexual relationship under a false promise of marriage. The prosecution having failed to establish the essential ingredients of 'cheating', conviction of the accused for offence under Section 417 of the IPC cannot be sustained.

13. Under the circumstances and in view of discussion supra, the appeal is allowed. The impugned judgment and order is quashed and set aside. The accused is acquitted of offence punishable under section 417 of IPC. Fine amount, if deposited, be refunded to the accused.

(SMT. ANUJA PRABHUESSAI, J.)