

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.577 OF 2024
(ARISING OUT OF SLP (CRL.) NO. 6137 OF 2021)

RAJU KRISHNA SHEDBALKAR

...APPELLANT

VERSUS

THE STATE OF KARNATAKA & ANR.

...RESPONDENTS

ORDER

1. Leave granted.

2. The appellant before this Court has challenged the order dated 12.07.2021 by which his 482 petition before the High Court was only partly allowed in as much as though the High Court has quashed the proceedings regarding offences under Sections 406/420/417 of Indian Penal Code as far as they relate to the co-accused, and also against the appellant so far as it relates to offences under Sections 406 & 420, but the criminal proceedings against the appellant have not been quashed

under Section 417. Thus, still aggrieved he has come before this Court.

3. The facts of this case are that the informant Ms. Sushmita present respondent no.2 had lodged her FIR at Malamaruti Police Station, Karnataka under Sections 406/420/417 read with Section 34 IPC against 6 persons including the present appellant. It was stated in the FIR that the informant is M.Tech. graduate and was working as a lecturer. Her elders were searching a suitable bridegroom for her which they found in the present appellant. The appellant and the informant were thereafter talking to each other on phone and her father had also given Rs.75,000/- in advance for the marriage hall, but this marriage never took place as she learnt from a newspaper report that the appellant has in fact married someone else! She then lodges an FIR against 6 persons under Sections 406/420/417 read with Section 34 of IPC. The FIR, primarily related to offence of cheating and criminal breach of trust. The accused persons are the present appellant (i.e. the prospective

bridegroom according to the informant) his mother, sisters and brothers. All the accused had filed a petition under Section 482 of the Criminal Procedure Code for quashing the proceedings as no case under Sections 406/407/420 read with Section 34 IPC was made out against any of them and they would argue that the proceedings initiated by the accused was nothing but an abuse of the process of law. The learned Single Judge of the High Court came to the conclusion that no offences under Section 406 or under Section 420 is made out against any of the accused persons. The reasoning given by the High Court are as under :-

“21. To constitute an offence punishable under Section 406 of IPC, there must be criminal breach of trust as defined under Section 405 of IPC. To constitute criminal breach of trust, there must be entrustment of the property or domain over the property or there must be dishonest misappropriation of such property. In the present case, even though it is stated that a sum of Rs.15,000/- was paid to accused No.1 for purchase of clothes and spent Rs.75,000/- for booking the marriage hall, the ingredients of Section 405 of IPC is not attracted. It cannot be said that there was entrustment of property and there is dishonest, misappropriation of the same.

Therefore, the offence under Section 406 of IPC is not made out.

22. Section 420 of IPC is also invoked against these petitioners. To constitute the offence punishable under Section 420 of IPC, there must be cheating dishonestly by inducing the person to deliver any property or to make alter or destroy the whole or any part of valuable security etc. On going through the first information in detail, it is revealed that even these requirements to constitute the offence punishable under Section 420 of IPC is not made out.”

All the same, the High Court then came to the conclusion that as against the appellant an offence under Section 417 of IPC is made out, though not against the rest of the accused. The reasoning given by the High Court for maintaining the offence under Section 417 IPC, however are not correct. These reasonings are as follows :-

“I do find considerable force in the contention taken by the respondent No.2 that accused No. 1 was having intention to deceive the informant, received the money for purchase of clothes and also got booked the marriage hall. Prima facie it constitutes the offence under Section 415 of IPC punishable under Section 417 of IPC. I do not find any reason to reject this contention ignoring the specific averments made in the first information.”

4. This offence according to the High Court made out against the present appellant as the father of the informant was induced to book a marriage hall by the appellant alone and therefore, there is *prima facie* material which makes out a case under Section 417 IPC. We are afraid that the reasoning by the High Court upholding the proceedings under Section 417 is patently incorrect.

5. Cheating is defined under Section 415 of 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”.

A perusal of the aforesaid provision shows that the offence of cheating is in two parts. The first is where a person fraudulently or dishonestly deceives another in

inducing that person to deliver any property to any person etc. The second part of the offence would be made out if somebody is deceived to do an act which causes damage or harm to that person “in body, mind, or reputation or property is said to have cheated”. Time and again, this Court has reiterated that in order to make out an offence under cheating the intention to cheat or deceive should be right from the beginning. By no stretch of imagination, this is even reflected from the complaint made by the informant.

6. In the case of ***Hridaya Ranjan Prasad Verma vs. State of Bihar (2000) 4 SCC 168***, this Court held as under:

“15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest

intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

(Emphasis supplied)

Further, in the case of **Indian Oil Corporation v.**

NEPC India Ltd. and Others (2006) 6 SCC 736 this

position was reiterated in the following manner:

33. The High Court has held that mere breach of contractual terms would not amount to cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction and in the absence of an allegation that the accused had a fraudulent or dishonest intention while making a promise, there is no “cheating”. The High Court has relied on several decisions of this Court wherein this Court has held that dishonest intent at the time of making the promise/inducement is necessary, in addition to the subsequent failure to fulfil the promise. Illustrations (f) and (g) to Section 415 make this position clear:

“(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery, A cheats; but if A, at the time of obtaining the money, intends to

deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.”
(emphasis supplied)

7. The Punishment of cheating is given under Section 417 of IPC which reads as under:

“417. Punishment for Cheating.—Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

8. We do not see how an offence even under Section 417 of IPC is made out against the present appellant. There can be multiple reasons for initiating a marriage proposal and then the proposal not reaching the desired end. It may in a given case involve cheating; it is possible theoretically yet in order to prove an offence of cheating in such cases prosecution must have reliable and trustworthy evidence in order to first prosecute such a case. There is no such evidence before the prosecution and therefore no offence under Section 417 is also made out. Consequently, we allow the appeal and set aside the order of the Trial Court to the extent it has refrained from quashing the proceedings under Section 417 IPC against the present

appellant. The petition succeeds, the appeal is allowed, to the extend stated above.

.....**J.**
[SUDHANSHU DHULIA]

.....**J.**
[PRASANNA BHALACHANDRA VARALE]

New Delhi.
February 02, 2024.

ITEM NO.36

COURT NO.17

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 6137/2021

(Arising out of impugned final judgment and order dated 12-07-2021 in CRLP No. 100898/2020 passed by the High Court of Karnataka Circuit Bench at Dharwad)

RAJU KRISHNA SHEDBALKAR

Petitioner(s)

VERSUS

THE STATE OF KARNATAKA & ANR.

Respondent(s)

(IA No. 101126/2021 - EXEMPTION FROM FILING O.T.)

Date : 02-02-2024 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSHU DHULIA

HON'BLE MR. JUSTICE PRASANNA BHALACHANDRA VARALE

For Petitioner(s) Mr. Sharanagouda Patil, Adv.
Mr. Shivprasad Shantanagouda, Adv.
Ms. Shupreeta Sharanagouda, Adv.
Mrs. Supreeta Patil, Adv.
Mr. Jyotish Pandey, Adv.
M/S. S-legal Associates, AOR

For Respondent(s) Mr. V. N. Raghupathy, AOR
Mr. Manendra Pal Gupta, Adv.
Mr. M. Bangaraswamy, Adv.
Mr. Premnath Mishra, Adv.
Mr. Dhanesh Ieshdhan, Adv.

Mr. Rana Ranjit Singh, AOR
Mr. Vivek Kumar Singh, Adv.
Mr. Ravish Singh, Adv.
Ms. Akanksha Singh, Adv.
Mrs. Sweta Singh, Adv.
Mr. Abhilash Tripayhy, Adv.
Mr. Avijeet Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of signed order.

(NEETA SAPRA)

(RENU BALA GAMBHIR)

COURT MASTER (SH)

COURT MASTER (NSH)

(Signed order is placed on the file)