

favour of the plaintiffs' was void that it could be redeemed. This conclusion runs counter to the decision in *Sewa Ram's Case*.

(7) For the reasons recorded above, I allow this appeal, set aside the judgments and decrees of the Courts below and dismiss the plaintiffs' suit. In the circumstances of the case, there will be no order as to costs.

K. S. K.

REVISIONAL CRIMINAL

Before Pritam Singh Pattar, J.

RAMJI LAL,—Petitioner

versus

THE STATE OF HARYANA,—Respondent.

Criminal Revision No. 188 of 1971.

July 17, 1972.

Indian Penal Code—Section 420—Contract Act (IV of 1872)—Section 23—Fraudulent contract against public policy—Offence of cheating for the breach of such contract—Whether committed—Accused agreeing to give his daughter in marriage in consideration of pecuniary gain—Some other girl given in marriage—Accused—Whether guilty of the offence under section 420.

Held, that a contract against public policy is void under section 23 of Contract Act, 1872. Such a contract cannot be enforced in a civil Court. A party to the contract, even though fraudulent, cannot be allowed to prosecute for cheating the other party alleged to be guilty of its breach when he is not entitled to obtain any relief from a civil Court. A contract for receiving pecuniary gain by a father of the groom or bride in consideration of giving his son or daughter in marriage is opposed to public policy and repugnant to morals. Such an agreement is hit by section 23 of the Act as opposed to public policy and, therefore, not enforceable in a Court of law. Hence if an accused agreeing to give his daughter in marriage in consideration of pecuniary gain, gives some other girl in marriage, commits no offence under section 420 of the Indian Penal Code.

Petition under section 435/439 Cr. P. C. for revision of the order of Shri P. R. Aggarwal, Additional Sessions Judge, Gurgaon Camp at Narnaul, dated 16th February, 1971, modifying that of Shri R. P. Bajaj, Judicial Magistrate, 1st Class, Charkhi Dadri, dated 28th February, 1970; convicting the petitioner.

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A. N. Mittal and Vinay Mital, Advocates, for *the petitioner*.

Subhash Kapur, Advocate, for Advocate-General, Haryana, for *the respondent*.

JUDGMENT

PATTAR, J.—(1) This is a revision petition filed by Ramji Lal, son of Khuba Ram, resident of village Dhani Mala Wali, district Seekar, Rajasthan, against the judgment, dated 16th February, 1971 of the Additional Sessions Judge, Gurgaon at Narnaul, dismissing his appeal against the judgment, dated 28th February, 1970 of Shri R. P. Bajaj, Judicial Magistrate First Class, Charkhi Dadri, by which he convicted him under section 420, Indian Penal Code and sentenced him to rigorous imprisonment for six months and to pay Rs. 500 as fine and in default of payment of fine to further undergo rigorous imprisonment for three months.

(2) The facts of this case are that the wife of Jai Lal (P.W. 11) had died and his relatives wanted to remarry him. Chandan Singh (P.W. 1), who is the uncle of Jai Lal had a talk with Ram Parshad about his marriage. Ram Parshad introduced Ramji Lal, Moti Ram and Nand Ram, sons of Khuba to Chandan Singh (P.W. 1), Bakhtawar Singh (P.W. 3) and Satgurdas (P.W. 2). It is alleged that Ramji Lal agreed to marry his younger daughter aged 16 years to Jai Lal on payment of Rs. 6,000 and out of it Rs. 1,000 was demanded in advance which was to be returned in case the girl was not approved. This sum of Rs. 1,000 was paid to Ram Parshad, who gave the same to Ramji Lal petitioner. About 15 days thereafter Bakhtawar Singh (P.W. 3) the brother of Jai Lal and Satgurdas (P.W. 2) went to village Todakee Dhani in Rajasthan and saw the daughter of Ramji Lal, who was of fair colour and they approved the girl. The marriage was fixed for Basant Panchmi. It is alleged that on 17th January, 1969, Ram Parshad, Moti Ram and Ramji Lal came to village Chiria with *lagan* and after the *lagan* ceremony Chandan Singh paid Rs. 2,800 to Ram Parshad, who passed on the money to Ramji Lal in their presence and at that time other persons were also present there. The marriage was fixed for 22nd January, 1969. The marriage party went to the house of Ramji Lal in village Toda-kee-Dhani in Rajasthan and the remaining sum of Rs. 2,200 was paid by Chandan Singh in the house of Moti Ram to Ram Parshad, who further passed on the same to Ramji Lal. The marriage ceremony was performed at 9.30

p.m. and thereafter the marriage party returned to the village. It is alleged that on return it was found that the girl given in marriage to Jai Lal was not the same that had been shown to Bakhtawar Singh and Satgurdas P.W. and that the girl which was given in marriage was Narbda, who was an old and sick woman. The complainants, therefore, felt cheated and they met Moti Ram and Ram Parshad accused but both of them declined to do any thing in the matter.

(3) Chandan Singh (P.W. 1) made application, Exhibit P.A. to the Superintendent of Police, Narnaul, district Mahendergarh and on its basis Ram Parkash Assistant Sub-Inspector (P.W. 10) registered the first information report, Exhibit P.A./1. After completion of the investigation Ram Parshad, Ramji Lal, Moti Ram and Nand Ram accused were challaned under section 420, Indian Penal Code. The trial Magistrate acquitted Ram Parshad accused but convicted the other three accused namely Ramji Lal and his two brothers Moti Ram and Nand Ram, under section 420, Indian Penal Code and sentenced each of them to rigorous imprisonment for six months and to pay a fine of Rs. 500 and in default of payment of fine to further undergo rigorous imprisonment for three months. Against this judgment these three accused preferred appeal in the Court of Sessions Judge, which was decided by the Additional Sessions Judge, Gurgaon at Narnaul, on 16th February, 1971. The Additional Sessions Judge accepted the appeal of Moti Ram and Nand Ram and acquitted them, but the appeal of Ramji Lal was dismissed. Ramji Lal has filed this revision petition to the High Court.

(4) Dr. Ram Gopal (P.W. 9), who was posted as Senior Medical Officer, Dadri, examined Mst. Narbda on 8th April, 1969, regarding her age. In his opinion she was above 22 years of age and Exhibit P.B./1 is his report to that effect. He did not perform any ossification test for determining the age of the girl, who was alleged to have been married by Ramji Lal accused with Jai Lal. Chandan Singh (P.W. 1), who is the uncle of Jai Lal (P.W. 11) reiterated on oath the aforesaid prosecution story including payment of Rs. 6,000 to Ramji Lal, petitioner on three different occasions. Similar are the statements of Satgurdas (P.W. 2), Bakhtawar Singh (P.W. 3), the brother of Jai Lal, Sis Ram (P.W. 5) and Jai Lal (P.W. 11). Bhagwana barbar (P.W. 4), Pahla (P.W. 7), and Murari Lal (P.W. 8), who were members of the marriage party proved the factum of the marriage of Jai Lal with a girl at the house of Ramji Lal accused and the payment of Rs. 2,200 by Chandan Singh (P.W. 1) to Ram Parshad, who

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paid the same to Moti Ram since acquitted. Morari Lal (P.W. 8) was alleged to have acted as a *prohit* at the time of the marriage. It was stated by these witnesses that when the marriage party returned to the house of the bridegroom, it was found on the next day that the girl sent with them was not the girl who was promised to be married with Jai Lal and on their enquiry the girl told them that her name was Narbda and she was a resident of village Akohla as stated by Chandan Singh (P.W. 1). He deposed that Narbda had stayed at their house for about 15 days. Similar is the statement of Satgurdas (P.W. 2). Assistant Sub-Inspector Ram Parkash (P.W. 10) stated that the woman, Narbda was produced in the police station by Chandan Singh on 15th March, 1969. The marriage took place on 21st January, 1969 and according to Chandan Singh (P.W. 1) and Satgur Dass P.W. Narbada, remained at the house of Jai Lal, for 15 days, that is till about 6th February, 1969. There is no proof on the file to show that where this Narbada remained from 7th February, 1969 to 15th March, 1969, when she was produced before the Police at the Police Station.

(5) After the detection of the alleged substitution of the girl given in marriage Chandan Singh, Bakhtawar Singh and Satgur Dass contacted Ram Parshad and Moti Ram accused since acquitted and asked them as to why they had given them an old woman as bride after having taken Rs. 6,000, but they did not listen to them. The application, Exhibit P.A. was made by Chandan Singh to the police, on 7th February, 1969. Thereafter this case was registered. There is no cogent evidence on the file to show that which girl was promised by Ramji Lal to be married with Jai Lal (P.W. 11), who is aged 28 years. Chandan Singh (P.W. 1) and others did not state that at the time when Ramji Lal agreed to marry his daughter with Jai Lal on receipt of Rs. 6,000, the name, description etc., of the girl were told to them. The statements of the other witnesses are silent on this point.

(6) Satgur Dass (P.W. 2) and Bakhtawar Singh (P.W. 3) about 15-16 days after the alleged agreement went to village Toda-kee-Dhani to see the girl and there they were shown a girl, who was the daughter of Ramji Lal and she was aged about 15-16 years and was of fair colour and her height was 5'-2" and they approved the girl. Bakhtawar Singh (P.W. 3) was not a member of the marriage party and he remained at his house. It was admitted by Satgur Dass (P.W. 2) in cross-examination that he did not know whether at the

time of the marriage ceremony it was the same girl which they had seen who was married because it was dark and she was in *purdah*. However, he stated to the police that the marriage ceremony took place with Kamla, the girl they had seen and they had verified it. Thus he has made altogether a different statement in the Court stating that he did not know whether the marriage ceremony took place with Narbda or with the girl of Ramji Lal, whose name was Kamla. He further admitted in cross-examination that Narbda was also of the same height as that of the girl shown to them, but Narbda was weaker in health as compared to Kamla. None of the witnesses suspected any foul play in the way.

(7) In his statement made under section 342, Criminal Procedure Code, Ramji Lal accused denied the allegations made against him in the prosecution story. From the statements of the prosecution witnesses it is established that Ramji Lal had agreed to give his girl to Jai Lal in marriage on payment of Rs. 6,000. The payment of the money made on different occasions as stated in the prosecution story is also proved. The learned counsel for the petitioner contended that there is no reliable and legal evidence to prove the allegations of the petitioner that Ramji Lal had a girl named Kamla and he agreed to give her in marriage and that assuming that the facts alleged by the prosecution were established even then no offence was committed by Ramji Lal under section 420, Indian Penal Code because it was a case of a sale of a girl and the contract was not enforceable in civil Court being against public policy in view of the provisions of section 23 of the Contract Act. Section 23 of the Indian Contract Act (IX of 1872) says that every agreement of which object or consideration is unlawful is void. The consideration of an object or an agreement is lawful unless it is forbidden by law or is of such a nature that, if permitted, it would defeat the provisions of any law or is fraudulent or the Court regards it as immoral or opposed to public policy.

(8) In the instant case the agreement between the parties was that Ramji Lal would give his daughter in marriage to Jai Lal (P.W. 11) in consideration of Rs. 6,000 to him. In other words it was an agreement to sell a girl for Rs. 6,000. An agreement to sell a girl for money is opposed to public policy and, therefore, the consideration of this agreement with the accused was unlawful and the agreement of marriage was void and was not enforceable in a Court of law. If Ramji Lal had refused to marry the girl with Jai Lal even then this agreement could not be enforced in a Court of law

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and in that situation he cannot be said to have committed any offence. In this connection reference may be made to illustration (k) of section 23, of Indian Contract Act, which reads as follows:—

“A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral though the letting may not be punishable under the Indian Penal Code.”

In a Division Bench decision of the Orissa High Court in *A Suryanarayan Murthy v. P. Krishna Murthy and another* (1), it was observed that a contract for receiving pecuniary gain either by the father of the groom or the bride in consideration of giving his son or daughter in marriage has been condemned as opposed to public policy and repugnant to morals. Thus the agreement alleged to have been arrived at between the complainant and the accused for marrying the daughter of the accused with Jai Lal (P.W. 11) in consideration of Rs. 6,000 was hit by section 23 of the Contract Act as being immoral and opposed to public policy and as such it was not enforceable in Court.

(9) In a Division Bench decision of Bombay High Court in *Emperor v. Jani Hira* (2), the accused agreed to let her daughter on hire to B for concubinage for a period of one year in consideration of B paying her Rs. 70. B paid A Rs. 35 in advance. Subsequently, A refused to deliver her daughter to B, or to return the sum of Rs. 35 advanced by him. On these facts, A was convicted of cheating by the trial Court. It was held that the conviction should be set aside, as a party should not be allowed to prosecute on a charge of cheating when he would not be entitled to obtain from a Civil Court any relief for breach of the contract.

(10) In another Division Bench decision of the Patna High Court in *Jamadar Rai and others v. Emperor* (3), the facts were—A arranged the marriage of his brother with the daughter of the accused B, the transaction being more or less a sale of the young girl. Some earnest money was paid and one of the ceremonies connected with the marriage was performed. Later on A went to B's village to have the marriage performed but found the girl being married to another

(1) A.I.R. 1957 Orissa 124.

(2) (1912) XIII Cr. L.J.R., 521.

(3) A.I.R. 1930 Patna 504.

person and was told that his brother was to be married to a daughter of D and the earnest money was not repaid. B was tried under section 420. It was held as under:—

“That the criminal offence under section 420 had not been disclosed. There was nothing more in the circumstance of the case than a breach of contract that is refusal to marry the girl to A’s brother giving cause of action in a civil Court.”

(11) The observations made in these authorities apply to this case. In the instant case the consideration for the agreement between the accused and the complainants was opposed to public policy and, therefore, the agreement was void and the complainants were not entitled to obtain any relief for breach of this agreement from a Civil Court. Consequently no offence under section 420, Indian Penal Code was made out against the accused in view of the law laid down in the aforesaid authorities. As a result the revision petition is accepted and the conviction and sentence of Ramji Lal are set aside and he is acquitted.

N. K. S.

LETTERS PATENT APPEAL

Before Harbans Singh, C.J. and Bal Raj Tuli, J.

THE UNION OF INDIA, ETC.,—Appellants.

versus

LACHHI RAM, ETC.,—Respondents.

Letters Patent Appeal No. 303 of 1970.

July 17, 1972.

Evacuee Interest (Separation) Act (LXIV of 1951)—Section 20—Property—Whether composite or not—Jurisdiction of civil Courts to decide—Whether ousted—Limitation Act (IX of 1908)—Section 19—Acknowledgment under—Requisites of, stated—Order of Revenue Officer making reference to a statement of a person—Whether amounts to acknowledgment by that person.

Held, that according to section 20 of the Evacuee Interest (Separation) Act, 1951, any claim to composite property has to be decided