

IN THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

Crl. A. No. 13 of 2018

1. Smt. Chandrawati Devi,
Wife of Late R.R. Prasad,
Resident of Bhanu Park Turning,
Singtam, East Sikkim.

2. Shri Santosh Prasad,
Son of Late R.R. Prasad,
Resident of Bhanu Park Turning,
Singtam, East Sikkim.

... Appellants

Versus

1. Smt. Sharda Gupta,
Daughter of Shri Chandrika Sah,
Resident of Quarter No. 206,
Sector 3, R.K. Puram, New Delhi.

2. Smt. Laxmi Sah,
Wife of Shri Chandrika Sah,
Resident of Quarter No. 206,
Sector 3, R.K. Puram, New Delhi.

3. The State of Sikkim,
Through the Chief Secretary,
Government of Sikkim, Gangtok.

... Respondents

BEFORE
HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CJ.

For the Appellants : Mr. Jorgay Namka and Ms. Panila Theengh,
Advocates.

For Respondents No. 1 : Mr. N.B. Khatiwada, Senior Advocate and Ms.
and 2 Gita Bista, Legal Aid Counsel.

For Respondent No. 3 : Mr. Santosh Kumar Chettri, Assistant Public
Prosecutor for the State of Sikkim.

Date of hearing : 23.10.2019

Date of judgment : 13.11.2019

JUDGMENT

(Arup Kumar Goswami, CJ)

Heard Mr. Jorgay Namka, learned counsel for the appellants, Mr. N.B. Khatiwada, learned Senior Counsel for respondents nos.1 and 2 and Mr. Santosh Kumar Chettri, learned Assistant Public Prosecutor, Sikkim for respondent no. 3.

2. This appeal is preferred against the judgment dated 03.04.2017 passed by the learned Judicial Magistrate First Class, Chungthang Sub-Division, North Sikkim at Gangtok in Private Complaint Case No.08 of 2013 dismissing the complaint filed by the appellants against the present respondents nos.1 and 2. Shri Chandrika Sah, father of respondent no.1 and Shri Ankit Gupta, who is brother of respondent no. 1 and son of respondent no.2, were also arrayed as accused persons in the complaint. However, they were discharged by an order dated 19.10.2015. Appellant no.1 is the mother of appellant no.2, her son.

3. The case set out in the complaint petition, in short, is that the marriage between appellant no.2 with the present respondent no.1 was solemnized on 30.04.2012 at Siliguri, West Bengal and marriage reception function was held on 03.05.2012 at Singtam, East Sikkim. The marriage was an arranged marriage and the process was initiated by Shri Chandrika Sah. The appellants had enquired about the education, health and other related issues of respondent no.1 before finalizing the engagement and they were informed that the respondent no.1 does not suffer from any ailment and is in good health. However, soon after

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marriage, it became apparent that the respondent no.1 was not a physically and mentally fit person even to undertake day to day chores as a result of which they felt let down and betrayed at the concealment of various ailments such as extreme case of Thyroid and Abscess from which the respondent no.1 was suffering from prior to marriage. It also came to light that the respondent no.1 was under regular supervision of doctors at New Delhi. When confronted with the above revelation, the respondent no.1 informed the appellant no.2 over telephone that the fact of her true medical condition was not divulged as she had feared that if the disclosure was made, the appellant no.2 would not marry her. It is also stated in the complaint that the said conversation was recorded. When questions were raised about the health issues pertaining to respondent no.1, Shri Ankit Gupta came down to Singtam and took away the respondent no.1 stating that she would be taken to New Delhi for her treatment. Immediately on reaching New Delhi, the respondent no.1, along with the other accused persons named in the complaint, started threatening the complainants with dire consequences and not only that, the respondent no.2 and the maternal aunt of the respondent no.1, with the objective of ruining the marital relationship of the sister of appellant no.2, namely, Smt. Asha Prasad, went to the place of her in-laws at Chapra, Bihar and started complaining about the appellants to the father-in-law of Smt. Asha Prasad. When Smt. Asha Prasad tried to intervene in the matter, she was threatened, abused and insulted in presence of her father-in-law and others. It is stated that a complaint was also lodged against the accused persons before the Officer in-Charge, Singtam Police Station as well as State Women Commission at Gangtok, besides issuing a legal notice dated 13.02.2013.

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4. On the basis of the said complaint, Complaint case No.08/2013 was registered. Thereafter, on perusal of the complaint petition along with the documents as well as considering the evidence adduced by appellants as well as a witness, namely, Shri Sushil Lepcha, under Section 202 Code of Criminal Procedure, 1973 (for short, Cr.P.C), the learned Magistrate took cognizance of the offences under Sections 406/418/506/34 of Indian Penal Code, 1860 (for short, IPC) against all the persons named in the complaint petition.

5. Subsequently, after hearing the learned counsel for the complainants as well as the accused persons, by an order dated 19.10.2015, while discharging accused no.2 and 4, namely, Shri Chandrika Sah and Shri Ankit Gupta, substance of accusation was prepared against accused Nos.1 and 3, namely, Smt. Sarada Gupta and Smt. Laxmi Saha, who are respondents Nos.1 and 2 herein, under Section 417/506/34 IPC.

6. During trial, appellants examined four witnesses, namely, appellant no.1, appellant no.2, Shri Sushil Lepcha and Smt. Asha Prasad. In their examination under Section 313 Cr. P.C., the respondents no.1 and 2 denied the allegations made against them. They also examined themselves along with Shri Chandrika Sah and Shri Ankit Gupta.

7. On consideration of the materials on record and after hearing the learned counsel for the parties, the learned trial court opined that the complainants had failed to establish the ingredients of the offences under

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Section 417/506/34 IPC against the respondents and accordingly, had acquitted them.

8. Mr. Jorgay Namka, learned Counsel for the appellants has submitted that the learned Trial Court below erred in law as well as in facts in acquitting the respondents and therefore, the impugned judgment of acquittal is liable to be set aside and quashed. He has submitted that the respondents had dishonestly concealed material facts and intentionally deceived the appellant by not divulging the fact of the respondent no.1 suffering from serious illness before the engagement had taken place, that too, despite the fact that the appellants had sought for details with regard to health conditions of the respondent no.1, and it was only because of the fact that it was made to believe that the respondent no.1 was not having any illness, the appellants had agreed to solemnize the marriage of appellant no.2 with respondent no.1. He has submitted that Exhibit-13, a legal notice issued on behalf of respondents by way of a reply, clearly demonstrates that the respondent no.1 had a pre-existing condition of Hypothyroidism. It is contended that respondent no.1 had admitted vide Exhibit-A11 that before the marriage also she had undergone test for Thyroid and therefore, the learned Trial Court was clearly in error in acquitting the appellants of the offence of cheating. He has also contended that learned Trial Court did not even consider Exhibit-11, which is a CD, wherein conversation between the appellant no.2 and respondent no.1, in which the respondent no.1 had admitted that the pre-existing condition of Hypothyroidism had not been disclosed on the apprehension that if the same had been disclosed the appellant no.2 would not have consented to marry the respondent no.1, was recorded. He also submitted that the respondent no.1 had also

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disclosed to Dr. S. Sen about being under medication for Hypothyroidism prior to marriage. However, this aspect of the matter was also not considered by the learned Trial Court, he submits. He relies on a decision of the Hon'ble Supreme Court of India in the Case of *Shafhi Mohammad versus State of Himachal Pradesh*, reported in (2018) 5 SCC 311.

9. Mr. N.B Khatiwada, learned Senior Counsel appearing for respondent no.1 & 2, on the other hand, contends that the appellants had miserably failed to establish the ingredients of the offences alleged and therefore, the learned Trial Court was wholly justified in acquitting the respondents. He submits that no documentary evidence had been placed on record by the appellants to demonstrate that respondent no.1 was suffering from Hypothyroidism prior to marriage. While admitting that issues relating to education, health, etc. were discussed prior to formalizing the engagement, as respondent no.1 was not suffering from any disease including Hypothyroidism, it was so stated and therefore, there was no suppression of any material fact. Appellants had merely exhibited the CD without giving any transcription of the same and therefore, the contents and authenticity of the CD are not proved and in that view of the matter, there is no merit in the contention advanced that non consideration of Exhibit-11 has vitiated the impugned judgment, he submits. He also contends that there is no admission in Exhibit-13 that the respondent no.1 was suffering from various illnesses prior to marriage. With regard to Exhibit-A11, he has contended that a receipt for thyroid test does not in any way establish that the respondent no.1 had been suffering from Hypothyroidism. He has also submitted that no reliance can be placed on the alleged disclosure of pre-existing medical

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condition to Dr. S. Sen, as he was not examined. Mr. Khatiwada further submitted that there is no acceptable evidence with regard to criminal intimidation.

10. I have considered the submissions of the learned counsel for the parties and have perused the materials on record.

11. The substratum of the complaint case is that there was dishonest concealment of pre-existing condition of Hypothyroidism despite specific enquiries made and that the appellants were threatened with dire consequences and with filing of false cases.

12. Cheating is defined in Section 415 of the IPC 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.”

13. A perusal of Section 415 IPC goes to show that this Section has two parts. While the first part of the definition relates to property, the second part need not necessarily relate to property. 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.

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In order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was given. The explanation to the Section also provides that a dishonest concealment of facts is a deception within the meaning of the Section. Section 417 provides that 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.

14. Criminal intimidation is defined under Section 503 IPC and Section 506 IPC provides for punishment for criminal intimidation. Section 503 IPC reads as follows:-

“503. Criminal intimidation.-Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation- A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.”

15. In order to appreciate the contentions advanced in the light of the legal provisions as noticed hereinabove, it will be apposite to, broadly, take note of the evidence on record.

16. In her evidence, the appellant no.1 stated that the accused persons were introduced by her son-in-law Dr. S.B. Gupta by forwarding an e-mail received from Shri Chandrika Sah to her younger son Shri Ashok Prasad. The e-mail contained two attachments being the photograph and bio-data of respondent no.1 and that being impressed by

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the bio-data of respondent no.1, they wanted to consider the proposal for marriage with appellant no.2, who is a B. Tech in Electrical and Electronic Engineering and who was working on contractual temporary basis in Aircel. A meeting was, accordingly, held on 10.02.2012 at the Guest House of Central Water Commission, Tadong, which was attended to by the prospective groom and bride along with their family members. They had shared and exchanged information regarding education, health and other issues and it was impressed upon by the accused persons that the respondent no.1 was not under medication for any illness. Accordingly, the appellants and their family members decided to hold an engagement ceremony on 11.02.2012 at Gangtok and finally, marriage was solemnized at Siliguri in between the appellant no.2 and the respondent no.1 on 30.04.2012 and for the marriage ceremony, all arrangements were made by the appellants in view of the request made by Shri Chandrika Sah, the father of the prospective bride, as he was based in New Delhi. The respondent no.1 was seemingly physically and mentally unfit and was unable to perform day to day house hold work which was noticed by all. The respondent no.1 was taken to New Delhi by her father on 02.06.2012 to perform certain rituals. The appellant no.2 had also gone to New Delhi to bring back the respondent no.1 on 07.07.2012 and both of them came back together to Singtam on 12.07.2012. She started complaining of fatigue very frequently and had developed abscess under her arm requiring immediate medical attention and accordingly, she was taken to Medica North Bengal Clinic, Siliguri by the appellant no.2 for treatment where she was attended to by Dr. Shantanu Kar, who suggested surgery. She was also examined by another Doctor, namely, Dr. S. Sen and during the course of interaction

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with him, respondent no.1 disclosed that she had been a patient of Hypothyroidism for last many years and was also under medication. She had also disclosed about the irregular menstrual cycles she was suffering from for many years. The test conducted showed her TSH (Thyroid Stimulating Hormone) was 6.92 as against expected normal range of 0.27-4.2. One more Doctor, namely, Dr. V. Sarkar was also consulted to manage her abscess. On being queried as to why the medical condition existing prior to marriage was not disclosed, the respondent no.1 had responded that she had apprehension that if the same was disclosed, the appellant no.2 would not have married her. It was deposed by the appellant no.1 that the foundation of marriage was laid by the accused persons by concealing material facts and by resorting to falsehood and misrepresentation with dishonest intention. On 12.9.2012, Shri Ankit Gupta came to their residence and made a request to let the respondent no.1 visit her uncle at Chapra. The request being acceded to, they left for Chapra on 15.09.2012. It transpired that, thereafter, they had left for New Delhi on 19.09.2012 and since then respondent no.1 had been residing in New Delhi where she took treatment for her ailment of Hypothyroidism at VMMC and Safdarjung Hospital. She had sent her medical report of October, 2012 via e-mail which showed TSH value at 6.92 (Exhibit-9) and another report showing TSH level at 10.73 as on 05.10.2012. On receipt of the aforesaid reports, the appellant no.2 had consulted doctors who indicated that there would be medical complication during pregnancy and that the children born will have physical as well as mental abnormality. When confronted with such revelation, the respondent no.1 disclosed that she was apprehensive that if her medical condition was disclosed, the appellant no.2 would not have

married her. Thereafter, the accused persons started threatening them over telephone stating that false case of dowry and torture would be filed against the appellants. The appellant no.1 also deposed in tune with the statements made in the complaint petition regarding the visit to the house of the father-in-law of Smt. Asha Prasad and what transpired there. She also deposed that in a reply dated 21.03.2013, Exhibit-13, sent through a lawyer, in response to a legal notice dated 13.02.2013 issued on behalf of the appellants, while leveling false allegations against them it was admitted that the respondent no.1 had been suffering from Hypothyroidism prior to her marriage,

17. In her cross-examination, the appellant no.1 admitted that a case under domestic violence and a case under Section 498 A IPC were filed by respondent no.1 and that on 31.12.2012, the respondent no.1 had filed a complaint before Delhi Women Commission and that they were asked to appear on 17.04.2013. She admitted in her cross-examination that they had not filed any medical documents to affirm that there existed any pre-existing history of Thyroid before marriage. She, however, denied the suggestion regarding demand of dowry and inflicting of mental and physical torture on respondent no.1.

18. The evidence of appellant no.2 is almost identical with the evidence of appellant no.1. The cross-examination is also more or less on the same lines. He admitted that the authenticity of the conversation recorded in Exhibit-11 was not verified from the laboratory.

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19. In his evidence, Shri Sushil Lepcha, who is a friend of the appellant no.2, had deposed that he had attended the marriage of appellant no.2 and was aware that the appellants had made due enquires about education, health and other related issues of respondent no.1 before finalizing the marriage. After marriage whenever he visited the house of the appellants, he found the respondent no.1 sick and unwell and one day he had seen the brother of respondent no.1 taking her away with luggage. He was also told by the appellant no.2 that his in-laws had committed breach of trust by concealing the ailment of the respondent no.1 and that the accused persons were consistently threatening them with filing of false criminal cases against them.

20. The evidence of Smt. Asha Prasad is also more or less in the same line as that of appellant nos.1 and 2. In addition, she had deposed that her father who retired from service as Headmaster passed away in the year 2006. She is a permanent employee of Sikkim Government being a Graduate Teacher (Science). It is stated that before marriage when specific information regarding education, health and other related issues of the respondent no.1 was sought for, they were informed that everything about her health was good and she was not under any medication for any illness and on the basis of such positive assertion only, marriage was solemnized. Immediately after the marriage, it was found that she was physically unfit and was unable to perform simple tasks and without make-up she appeared to be pale. The subject of her illness was brought to the notice of father of the respondent no.1, when he had visited them to take respondent no.1 to New Delhi and even then he had assured that there was nothing to worry about. She stated that they had left on 22.12.2012. She further deposed that after filing of the

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complaint, the respondent no.1, in connivance with the parents and brother, lodged a false domestic violence case in August 2013 and a false case of demand of dowry in the year 2014 and extorted a sum of Rs.3,30,000/-.

21. Her cross-examination was in line with the cross-examination of the appellants and response was also similar. She had, in her cross-examination, admitted that there is no documentary proof of payment of Rs.3,30,000/- by way of demand draft. She also stated that she was not aware of any complaint being lodged against her by respondent no. 1.

22. In her evidence, respondent no.1 stated that she was not suffering from any illness prior to her marriage. She deposed that she was made to work day and night in the matrimonial home and was never allowed to take any rest and even when she was suffering from abscess, there was no respite. The appellants and family members always taunted her. She was beaten and slapped many times by complainants and their family members. She was treated for abscess at Siliguri, where she was advised to check her Thyroid and for the first time Thyroid was checked on 27.8.2012 and then only she came to learn that she was having Hypothyroidism. She had never given any statement to doctors at Siliguri that she had Thyroid problem for many years and that she was under medication for Hypothyroidism. Demand for dowry was also made repeatedly after marriage and the situation became worse after her return from consultations with the doctors at Siliguri. Her brother was compelled to come and she was forced to leave with her brother on 15.09.2012 to stay at her native place for some months. The appellant no.2 who had accompanied them to Siliguri had told her that he would

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come to New Delhi and take her back, but he did not come. She further stated that though she used to call the appellant no.2 and her in-laws to take her back to Singtam and such request was also made by family members, it was informed that only if their demands were met, they would take her back and left with no other option, she had filed a complaint before the Delhi Women Commission on 31.12.2012 (Exhibit-7) in which summons were issued directing the appellants and other family members to appear on 17.04.2013 and as a counter-blast, the complaint case was filed by the appellants on 13.06.2013. It is stated that the appellant no.2 had sent her original educational certificates through the husband of Smt. Asha Prasad and her mother, along with an aunt, had gone to Chapra, Bihar only to collect the educational documents and not to destroy the matrimonial relationship of Smt. Asha Prasad.

23. In her cross examination, the respondent no.1 stated that she had sent the Exhibits 9 and 10 to the complainant. She also admitted the receipt dated 12.01.2011 for test for Thyroid issued by Hindlabs New Delhi (Exhibit-A11). She admitted that before marriage there were specific talks about her health and as she had no health issues and was healthy and not suffering from any disease, it was stated accordingly.

24. Evidence of Smt. Laxmi Sah, Shri Chandrika Sah and Shri Ankit Gupta are also in similar line. The cross-examination is in similar direction and the responses are also in the same line as given by the respondent no. 1.

25. In the complaint petition, Exhibit-20, date of occurrence was shown on 30.12.2012 at around 12.00 hours. However, it is striking that

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neither in the complaint nor in the deposition of the witnesses of the appellants there is any reference to what transpired on 30.12.2012. However, it has come on record that one day later, on 31.12.2012, the respondent no.1 had filed a complaint before the Delhi Woman Commission.

26. In *Shafhi Mohammad (supra)*, the Hon'ble Supreme Court had observed that electronic evidence is admissible and provisions of Section 65A and 65B of the Evidence Act are by way of clarification and are procedural provisions. It is held that if the electronic evidence is authentic and relevant the same can certainly be admitted subject to the Court being satisfied about its authenticity and procedure for its admissibility may depend on fact situation such as whether the person producing such evidence is in a position to furnish certificate under Section 65B(h). In the facts of the instant case where except for tendering a CD as an Exhibit, namely, Exhibit-11, since no attempt was made by the appellants to prove its contents as well as its authenticity, the CD cannot be held to have established the alleged conversation between the appellant no.2 and respondent no.1 wherein respondent no.1 purported to have admitted her pre-existing condition of Hypothyroidism. The respondent no.1 was stated to have told Dr. S. Sen about her pre-existing medical condition of Hypothyroidism prior to marriage. Dr. Sen would have been a disinterested witness and his evidence could have thrown much light. However, the appellants chose not to examine him.

27. Exhibit-13 is a reply given by learned Advocate on behalf of the accused persons named in the complaint petition to the legal notice dated 13.02.2013 issued on behalf of the appellants. Much reliance is

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placed on Exhibit-13 by Mr. Namka to contend that there is an admission with regard to pre-existing condition of Hypothyroidism. That enquiries were made by the appellants prior to engagement ceremony with regard to educational, health and other related issues of the respondent no.1 is an admitted position. A perusal of Exhibit-13 goes to show that there is a categorical assertion in Paragraph 7 that the accused persons did not conceal anything including any disease suffered by the respondent no.1 and that since the dowry demands made could not be fulfilled, allegations of cheating are leveled. It is also stated in Paragraph 'e' that the situation turned for the worse after the appellants had learnt about the respondent no.1 suffering from Hypothyroidism. However, at the same time, it was stated in Paragraph '2' that the appellants had responded positively to the disease as curable one and not a serious issue. Though there is some inconsistency, it cannot be deduced from Exhibit-13 that the same established beyond all reasonable doubt that the respondents had concealed a pre-existing disease. It is to be noted that the respondent no.1 was taken to Siliguri for medical attention as an abscess had developed under her arm and during the process of investigation, it was detected that the respondent no.1 was suffering from Hypothyroidism. The respondent no.1, who was working as a Web Designer and had obtained 88.8% of marks in M.Sc (Environmental Science) from Benaras Hindu University, had stated that she was surprised when she came to know that she was suffering from Hypothyroidism. There is no evidence that after marriage the respondent no.1 was taking any medicine. It is, however, admitted by the respondent no.1 in her cross-examination that Exhibit-A11, which is dated 12.01.2011, i.e., prior to marriage, relates to her. Exhibit-A11 is marked

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as a report. A perusal of Exhibit-A11 goes to show that it is a receipt for test of Thyroid panel-I and not a report. A test conducted for Thyroid Panel-I does not mean that one is suffering from a Thyroid disease as the report may either indicate evidence of parameters being outside the normal range from which attending doctor may diagnose that the patient is suffering from some Thyroid disorder, or the parameters being within range. Exhibit-A11 does not, by itself, establish a pre-existing disease relating to Thyroid. The appellants did not examine any witness from Hindlabs, the diagnostic centre which had issued the receipt Exhibit-A11, for bringing on record the test report of Thyroid Panel-I test. There is no documentary evidence demonstrating in categorical terms that the respondent no.1 was suffering from Hypothyroidism or was taking medicine since before marriage. In that context, though the respondent no.1 in her evidence had stated that for the first time Thyroid was checked on 27.08.2012, which is in contradiction to Exhibit-A11, the same will not have any material bearing in the facts and circumstances of the case.

28. Though allegations of dowry and torture have been deposed to by the respondents, this Court has refrained from making any observation on that aspect as cases in relation to such allegations are pending and such issues have not fallen for consideration in this case. Whether aforesaid cases had been filed falsely or without any basis is for the Court adjudicating such cases to determine. Filing of a case, per se, cannot come within the purview of criminal intimidation. The father-in-law of Smt. Asha Prasad was also not examined by the appellants to lend credence to the allegation that Smt. Asha Prasad was threatened in his presence.

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29. In view of the above discussion, I find no merit in this appeal and accordingly, the appeal stands dismissed.

30. Registry will send back Lower Court Record.

(Arup Kumar Goswami)
Chief Justice

Approved for reporting : Yes
Internet : Yes

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