

Gursharan Singh Vs. Smt. Gursharan Kaur

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Court : Delhi

Decided On : Mar-27-1989

Reported in : 1990CriLJ2469; 1989(16)DRJ362

Judge : P.K. Bahri, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 472 and 482; [Dowry Prohibition Act, 1961](#) - Sections 3 and 4 to 8; Dowry Prohibition (Amendment) Act, 1976; Employees' Provident Fund and Family Pension Funds Act, 1952 - Sections 14 and 38; [Indian Penal Code \(IPC\), 1860](#) - Sections 406

Appeal No. : Criminal Misc. (M) No. 340 of 1988

Appellant : Gursharan Singh

Respondent : Smt. Gursharan Kaur

Advocate for Pet/Ap. : K.K. Sud,; Rajesh Batra and; O.P. Dutta, Advs

Judgement :

ORDER

1. This petition has been brought under S. 482 of the Criminal Procedure Code seeking the quashment of the complaint dated July 12, 1984 pending in the Court of Shri Z. S. Solanki, Metropolitan Magistrate under Section 6 of the Dowry Prohibition Act 1961.

2. Gursharan Kaur, respondent had filed a complaint dated July 7, 1984 against the petitioner Gursharan Singh and also against Harbans Singh and his wife Darshan Kaur with the allegations that complainant was married to Gursharan Singh on July 7, 1981 and that all the accused at the time of the settlement of the marriage through one Ajit Singh, retired Sub-Inspector of Delhi Police had demanded dowry articles namely T.V., Fridge, Scooter or Rs. 20,000/- and 21 sarees/suits for the girl and two suits for the husband, one suit for father-in-law, two suits for mother-in-law, 51 utensils, table fan and number of other articles which are generally given in dowry. It is pleaded that complainant's father had expressed his inability to give TV, Fridge and Scooter or Rs. 20,000/- but had agreed to give remaining articles of dowry as consideration for marriage. It was pleaded that the parents of the complainant gave various articles of dowry as consideration of marriage but after three-four months of the marriage, the accused started harassing the complainant for not bringing the sufficient dowry and required her to put pressure on her parents to give remaining articles of dowry. It is pleaded that under pressure of the accused, complainant managed to get Rupees 1,000/- in cash on two occasions from her parents and given the same to her husband. It was then mentioned that a daughter was born out of this wedlock on June 28, 1982 but it is the complainant's parents who bare all the expenses of delivery and complainant was beaten, insulted and abused and turned out of the house in her three clothes on July 2, 1983. It was further mentioned that on persuasion of Gursharan Singh she again came back and lived with the husband but harassment continued at the hands of her husband and on July 17, 1983 she made a report to the police for getting her dowry articles returned from the accused and with the interference of some panchayat people, some of the articles of dowry were returned. She pleaded that rest of the dowry articles as shown in Mark 'X' in Annexure 'A' filed along with the complaint had not been returned and thus the accused had committed an offence punishable under Section 6 of the Act.

3. The accused have been summoned to face trial under said S. 6 of the Dowry Prohibition Act 1961.

4. The learned counsel for the petitioner has argued that the complaint filed in the case was barred by time and thus the whole of the proceedings pending before

the Magistrate on the basis of that complaint should be quashed.

5. The learned counsel for the respondent on the other hand has contended that the offence under Section 6 of the Act is a continuing offence and thus the period of limitation prescribed in S. 7(b) is not applicable to such an offence and therefore the complaint is not barred by limitation and in the alternative he has argued that from the facts disclosed in the complaint and the evidence led before summoning of the accused clearly make out a case that accused have at least committed the offence punishable under S. 406 of India Penal Code and the accused could be tried for the said offence.

6. So, the first question to be decided in the present case is whether the complaint made for trial of the offence under S. 6 of the Dowry Prohibition Act 1961 is barred or not. Section 6(1) reads as follows :-

6. (1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman :

(a) if the dowry was received before marriage within one year after the date of marriage; or

(b) if the dowry was received at the time of or after the marriage; within one year after the date of its receipt; or

(c) if the dowry was received when the woman was a minor, within one year after she has attained the age of eighteen years;

and pending such transfer, shall hold it in trust for the benefit of the woman.

Section 7 of the Act laid down that notwithstanding anything contained in the Code of Criminal Procedure 1898, no Court shall take cognizance of any such offence except on a complaint made within one year from the date of the offence. Reading the above provisions, it is clear that the offence under S. 6 comes to be committed as soon as a dowry is received by any person other than the woman in connection with whose marriage it is given and that person fails to transfer the said dowry to

the said woman within one year after the date of his marriage if the dowry was received before marriage and within one year after the date of its receipt if the dowry was received at the time of or after the marriage. The offence is complete when the periods specified above expire and Section 7(b) makes it very clear that such an offence cannot be taken cognizance of unless a complaint is made within one year from the date of the offence. I do not understand how the offence enumerated in S. 6 of the Act read with S. 7(b) of the Act could be treated as a continuing offence.

7. The learned counsel for the respondent has cited *Bhagirath Kanoria v. State of M.P.* : [1985]1SCR626 in support of his contention that offence under S. 6 of the Act should be treated as a continuing offence for which there cannot be any period of limitation. In the case before the Supreme Court provisions of Ss. 14 and 38 of the Employees' Provident Fund and Family Pension Funds Act 1952 came up for consideration. Section 38 of the said Act laid down that the employer shall before paying the Member his wages in respect of any period or part of period for which contribution is payable, deduct the employees contribution from his wages which together with his own contribution shall within 15 days of the close of every month pay the same to the fund and S. 14 lays down the penalties to be imposed if any contravention was to be made in respect of any provisions of the Act. The question which arose for decision before the Supreme Court was whether the offence contemplated by S. 38 read with S. 14 of the said Act was a continuing offence or not. It was held by the Supreme Court that the question whether the particular offence is a continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and above all the purpose which is intended to be achieved by constituting the particular act as an offence. It was held that (sic) (in the case of) failure to pay the employees contribution before the due date, considering the object and purpose of that provision which is to ensure the welfare of the workers it cannot be said that the offence is not of a continuing nature. However, this judgment is distinguishable because under the provisions of the Employees' Provident Fund and Family Pension Fund Act there is no particular section which lays down any limitation within which the cognizance of the complaint is to be taken. In the Dowry Prohibition Act 1961 there is a clear provision made in S. 7 that no Court shall take

cognizance of any such offence except on a complaint made within one year from the date of the offence. Thus statute really contemplates a particular date of the offence from which point the limitation for filing the complaint has to commence. The Legislature did not intend that an offence under the said Act should be treated as a continuing offence. If this had been the intention of the Legislature then there was no necessity for the Legislature to have put in S. 7 in the Act prescribing the period of limitation for filing of complaint. The learned counsel for the petitioner (sic) (respondent) has then referred to Swaran Lal v. Smt. Bimla Devi; 1982 Chand Cr C 6 (HC). This judgment is based on the view taken by the same Punjab & Haryana High Court in Criminal Misc. No. 4981-M of 1977 and the relevant portion from that judgment has been extracted in para 7 of the case which I reproduce :

'The further argument is that the offence for the non-return of the dowry articles must be held to have been committed on July 20, 1974, and the present complaint by respondent No. 2 having been filed long after the lapse of one year from that date, the trial Court was not competent to take cognizance of the offence. The argument is quite fallacious on account of two reasons. Section 7 of the Act has since been amended by Punjab Act No. 26 of 1976 which received the assent of the President of India on May 12, 1976 and was published in the Punjab Government Gazette on May 20, 1976. As per this amendment Section 7 of the Act has been modified to the extent that the bar to taking cognizance of an offence upon a complaint made in respect of the offences under Sections 3, 4 and 4-8 (as added by amendment). The result is that there is no such bar for an offence under S. 6 of the Act. Apart from this amendment which merely clarifies the position of law, it is obvious that the non-return of dowry items is not an offence which can be said to have been committed on a particular date only. In fact, it is a continuing offence and as long as the dowry items are not returned, the offence continues. The mere fact that the complaint is not filed within one year of the first date when the cause of action accrued would not absolve the offenders of their responsibility. Even under the amended Criminal Procedure Code, a provision has been made under S. 472 that in the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues. The amendment to S. 7 has in any case clinched the matter. There is, thus, no substance in the second argument of the learned counsel that the trial Court

cannot take cognizance of the offence on account of bar of limitation.'

8. The bare perusal of the above shows that there has taken place an amendment in the Punjab Act by which the provision of limitation has been removed vis-a-vis the offence covered by Section 6. After referring to this amendment the learned Judge has proceeded to lay down that the offence contemplated under Section 6 of the Act is a continuing offence. I am not in agreement with this proposition of law laid down in this judgment. No discussion has been made with regard to the provisions of Sections 6 and 7 of the Act in order to see whether the Legislature had intended to make the offence under Section 6 of the Act a continuing one.

9. The learned counsel for the respondent has argued that the laudatory object of enacting S. 6 of the Act was to force the persons who continue to retain the dowry items with them belonging to the woman so that the womenfolk of this country should have some economical security if they have control over the dowry items. Hence, such an offence should be treated as a continuing offence. It is not possible to agree with this contention because if we read S. 6 and S. 7 together, it becomes evident that the offence under Section 6 cannot be treated to be a continuing offence when S. 7(b) lays down that the complaint has to be made within one year from the date of the offence. The date of the offence is evident from Section 6 i.e. if the articles of dowry are not transferred to the woman within one year from the date of the marriage or date of the receipt of dowry articles whichever is applicable, then the offence is complete. So, I hold that offence under S. 6 of the said Act is not a continuing offence and thus the complaint in which the allegations are made for summoning the accused for facing the trial for an offence under S. 6 was barred by limitation because admittedly the marriage took place on July 12, 1981 while the complaint was filed on July 12, 1984.

10. However, it is clear from the allegations made in the complaint as well as in the evidence led before summoning the accused that the articles of dowry claimed by the complainant have been retained by the accused and thereby the ingredients of the offence punishable under Section 406, I.P.C. stood made out. In *Pratibha Rani v. Suraj Kumar*, : 1985 CriLJ817, it has been now clearly laid down that articles which are given at the time of the marriage are stridhan of the woman and have to

remain in trust with the husband and the in-laws and if they are not returned on the demand being made, the offence under S. 406, Indian Penal Code can be stated to be committed. It has been held by this Court in *Inder Raj Malik v. Smt. Sunita Malik* : 1986RLR220 , that the Court has full discretion to frame any charge on the basis of evidence produced before it by the complainant including the charge in respect of the offence for which the accused are summoned. In *K. Shanmugasundara Nadar v. V. Sadasivan*, : AIR1968 Mad60 , it was held that even if a Magistrate had taken cognizance of an offence triable as a summons case but the evidence led discloses an offence triable with a warrant case, the Magistrate has power to covert the same case into the warrant case. In *re Satyanarayana Reddy* AIR 1947 Mad 174 : 1947 Cri LJ 664, it was held that if initially a charge is framed under particular provisions of the Indian Penal Code, nothing deprives the Magistrate to frame charge on the evidence and the material before him for any other offence which may be prima facie made out.

11. So, in view of the above discussion I hold that the accused including the petitioner in the present case are not to face the trial for an offence under S. 6 of the [Dowry Prohibition Act, 1961](#) as the complaint having been filed beyond the period of limitation as prescribed in Section 6 of the Act could not be looked into. But the evidence on record shows that prima facie case under S. 406, Indian Penal Code stood made out. Hence the Magistrate is directed to proceed against the accused for the offence punishable under S. 406, I.P.C.

12. Learned counsel for the petitioner also tried to argue that on facts no case is made out against the accused as accused has not retained any of the articles of dowry. The Magistrate had come to the conclusion prima facie from the evidence led before the passing of the order summoning the accused that prima facie some of the articles of dowry are still in possession of the accused and have not been returned. It is not of this Court to reappraise the evidence and come to a different conclusion in its jurisdiction under S. 482 of Criminal Procedure Code. It would be only in the course of trial that Magistrate will have to give findings on merits of the case. I hence partly allow the petition and quash the summoning order for trial of the accused for an offence punishable under S. 6 of the [Dowry Prohibition Act, 1961](#) but I direct that the Magistrate shall proceed against the accused for an

offence punishable under S. 406, Indian Penal Code.

13. Petition partly allowed.

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