

inder Saln and Another Vs. the State

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Court : Delhi

Decided On : May-22-1981

Reported in : 1981CriLJ1116

Judge : G.R. Luthra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 406, 415 and 506

Appeal No. : Criminal Misc. (Main) No. 196 of 1980

Appellant : inder Saln and Another

Respondent : The State

Judgement :

ORDER

1. The present petitioner under Section 482 of the Code of Criminal Procedure is for quashing the proceedings pending against the petitioners and three others under Sections 3 and 4 of the Dowry Prohibition Act, 1961 (hereinafter referred to as Dowry Act) in the Court of Shri O. P. Dewedi, Metropolitan Magistrate, New Delhi.

2. The aforesaid proceedings were started on a report having been filed by the police on August 20, 1979. The police was set in motion on account of complaint dated March 13, 1979 of Smt. Meera (hereinafter referred to as Complainant) daughter of Shri R. N. Sahni resident of House No. 29/27 Rajinder Nagar, New

Delhi addressed to Commissioner of Police. The allegations made in the complaint were briefly as follows :

Inder Sen, petitioner was on intimate friendly terms with the father, of the complainant. Inder Sen and his wife Smt. Champa Devi, who both are petitioners used to visit the house of the father of complainant. Friendship between Inder Sen petitioner and father of the complainant, came into existence in 1966 because then former, who is a Sub-Inspector of Police was posted in the Police Station Rajinder Nagar, which had jurisdiction over the residence of the latter.

3. Ashok is son of sister of Inder Sen petitioner. Both the petitioners suggested to the father of the complainant that let there be matrimonial alliance between Ashok and the complainant. Father of the complainant approved and the betrothal took place. After some time, petitioners demanded that father of the complainant should give a refrigerator to Ashok at the time of 'Shagan' ceremony which was fixed for April 16, 1978. Father of the complainant handed over a sum of Rs. 3,850/- to Inder Sen petitioner for purchase of refrigerator because representation of the latter was that he could purchase refrigerator on concessional rate from his friend M/s. Sindhu Traders, E.B. Kamla Nagar, Delhi. A refrigerator was accordingly purchased. On April 14, 1978 the petitioners again compelled the parents of the complainant to purchase clothes of relative on account of which the latter purchased clothes worth Rs. 6,000/-. The refrigerator and the clothes were handed over on April 16, 1978 on which date 'Shagan' (engagement ceremony) was held. The marriage was performed on the night between April 16, and 17, 1978. As soon as the marriage ceremony was over, the petitioner and parents of Ashok, namely Jai Singh and his wife Shanti Devi started demanding T.V. set to be given as dowry on account of which the complainant paid Rs. 2,600/- in cash to the petitioner, Inder Sen.

4. The demands continued even after the marriage and complainant was harassed and maltreated so that her parents should meet the demands. As a result of demand, a sum of Rs. 4,500/- in cash was paid to Ashok Kumar through Inder Sen, petitioner on August 23, 1978 for purchase of scooter. Even afterwards the complainant was maltreated and mercilessly beaten so that she could bring more

dowry. On September 4, 1978 Ashok, his father Jai Singh, his mother Shanti Devi and his brother-in-law Raman forcibly removed all ornaments from the person of complainant and compelled her to go to her parents' house. On October 4, 1978 her father and she were attacked by Ashok his father and three other goondas of Rajinder Nagar, New Delhi in respect of which a case F.I.R. No. 535 dated October 4, 1978 under Section 506, Indian Penal Code was registered at Police Station Rajinder Nagar, New Delhi.

5. According to Section 3 of the 'Dowry Act' giving, taking or abetting the giving or taking of 'dowry' is punishable with imprisonment which may extend to six months or with fine which may extend to Rs. 5,000/- or with both. According to Section 4 demand of dowry directly or indirectly is punishable with imprisonment which may extend to six months or with fine which may extend to Rs. 5,000/-. There is a proviso to Section 4 which reads as under :-

'Provided that no court shall take cognizance of any offence under this section except with the previous sanction of the State Government or of such officer as the State Government may by general or special order, specify in this behalf.

6. For complying with the directions contained in the proviso, sanction of Delhi Administration for prosecuting the petitioner and others was taken on August 17, 1979. Prior to that permission of the Metropolitan Magistrate concerned was taken on March 30, 1979 by Police under Section 155(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) for investigating the case because the case is non-cognizable. After the completion of investigation and obtaining of sanction of Lieutenant Governor a report under Section 173 of the Code was filed by the Police before Sri O. P. Dewedi, Metropolitan Magistrate for prosecuting and punishing the petitioners and some others.

7. Reliance of the learned counsel for the petitioners is on Section 7(b) of the 'Dowry Act' which reads as under :-

'Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898)

(b) no court shall take cognizance of any such offence except on a complaint made within one year from the date of offence.'

8. It is contended by the petitioners that the report by the police to a Magistrate was filed more than a year after the alleged offence of giving or taking of dowry and demand of the same which took place prior to and on the date of marriage and that, therefore, Metropolitan Magistrate concerned could not take cognizance of the offence.

9. According to the allegations of the complainant, demands from the side of the petitioners and parents of Ashok continued even after the marriage and it was on August 23, 1978 for the last time that a sum of Rs. 4,500/- was paid in cash to Ashok through Inder Sen, petitioner. therefore, it is to be seen as to what is the meaning of dowry and whether demand of articles made and met after the marriage constitute dowry in the present case. The word 'dowry' is defined in Section 2 of the Dowry Act as under :-

'means any property or valuable security given or agreed to be given either directly or indirectly :-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to the marriage or by any other person, to either party to the marriage or to any other person;

at or before or after the marriage as consideration for the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.'

10. It is apparent from the definition that it is necessary that property or valuable security so as to constitute dowry must be given 'as consideration for the marriage' The word 'consideration' is not defined in the Act. The meaning of the word 'consideration' as per Chambers' 20th Century Dictionary 1969, Revised Edition reprinted in 1969 is :

'motive or reason; compensation, reward, the reason or basis of a compact.' therefore, the words as a consideration for marriage in Section 2 of the Act will mean motive, reason or reward for the marriage. 'For the marriage' obviously means for the act of marrying or in other words for solemnization of marriage. Hence only those articles are 'dowry' which are given or agreed to be given as reward or reason or motive for solemnization of marriage. Anything given after the marriage, may be on account of demand from boy or his parents or relative, is only a consideration for continuance of marriage or for happy, or conducive to good matrimonial relationship. Anything given after the marriage was dowry if it was agreed or promised to be given as 'consideration for marriages. Here there is no allegation that any article given after the marriage was on account of any promise made or agreement arrived at as consideration for marriage.' Hence offence of demand and giving of dowry was complete as soon as marriage took place on the night between April 16 and 17, 1978.

11. The word 'consideration' is defined in Clause (d) of S. 2 of the Indian Contract Act. The same reads as under :-

'When at the desire of the promisee the promisee or any other person has done or abstained from doing or does or abstains from doing or promises to do or to abstain from doing something such act or abstinence or promise is called a consideration for the promise;' The word 'Promise' in clause (c) is defined :-

'a person making a proposal.' The word proposal is defined in clause (a) as under :- 'When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence he is said to make a proposal.' The word 'promise' in clause (c) of Section 2 of the Contract Act is defined as; 'The person accepting the proposal.'

The net result of the aforesaid definition of the word 'consideration' is when a person has already done something or abstained from doing something in the past, or does or abstains from doing anything in the present or promises to do or to abstain from doing in future, such act or abstinence is called consideration. With reference to the passing of property or valuable security 'consideration' means that such property or valuable security should have been given or is given or promised

to be given in future in order that there may be performance or solemnization of marriage. Thus the definition of the word 'consideration' as given in the Contract Act also leads to the conclusion that the property or valuable security should be demanded or given whether in the past, present or future for bringing about solemnization of marriage. After the marriage giving of property or valuable security by the parents of the bride cannot constitute a 'consideration' for marriage unless it was agreed at the time of or before the marriage that such property or valuable security would be given in future.

The complaint does not spell out that the articles mentioned in the same after the marriage of Ashok with the complainant were given as a result of some agreement for the purpose of marriage. Actually, as already explained allegations in the complaint indicate that those articles after the marriage were given with a view to have smooth sailing and continuance of good marital relations. thereforee, that did not constitute any consideration or reward or motive 'for marriage'.

12. It was contended by the learned counsel for the State that the word 'complaint' in clause (b) of Section 7 of the Dowry Act (reproduced already) did not give any indication that it should be made to a Magistrate, that, thereforee, a complaint could be made to the police, that in the present case complaint to the police was made on March 13, 1979 which was within one year from the date of the offence, and that thereforee, cognizance of the offence was not barred. Learned counsel for the complainant Shri G. C. Lalwani reinforced that argument by saying that in any case a Court of Metropolitan Magistrate had taken cognizance of the offence on March 30, 1979 when said Magistrate had given permission under Section 155(2) of the Code to the police for investigating the non-cognizable offence punishable under the Dowry Act. Learned counsel urged that in that way cognizance of the offence was within one year from the date of the commission of the same.

13. The word 'complaint' is not defined in Dowry Act. Provisions of the Code are applicable to the criminal trials under the special laws also. This is clear from a plain reading of Section 4 of the Code. Sub-section (1) of Section 4 deals with the investigation and trials etc. of the offences under the Indian Penal Code. Sub-

section (2) deals with the investigation and trials etc., of the offences under any other law. therefore, according to sub-section (2) of Section 4 offences under the Dowry Act are to be investigated, tried etc., under the provisions of the Code. The word complaint is defined in clause (d) of Section 2 of the Code which reads as under :-

'complaint' means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence, but does not include a police report.'

'Explanation : A report made by a police officer in a case which discloses, after investigation the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.'

It is apparent from the definition that the complaint is always made to a Magistrate and any allegations made orally or in writing to a police officer is not a complaint. Hence complaint made by the complainant in the present case to the police officer on March 13, 1979 was not a complaint within the meaning of provisions of the Code. As is clear from the definition of the word 'complaint' reproduced above report made by the police officer in respect of commission of no cognizable offence is also complaint. In the present case report under Section 173 of the Code was made to Shri O. P. Dewedi, Metropolitan Magistrate on August 20, 1979. therefore, in the present case complaint was filed more than one year after the offences committed under the Dowry Act.

14. There is no doubt that on March 30, 1979 police applied to Metropolitan Magistrate under Section 155(2) of the Code and obtained permission to investigate offences committed under the Dowry Act. But that was an application made to a Magistrate and was not a complaint definition of which has been reproduced above. It is apparent from that definition that only such report made by Police Officer which has been made after investigation which constitutes a complaint and any application made before investigation for the purpose of obtaining permission to investigate is not a complaint. The word 'after investigation' occurring in the Explanationn in the aforesaid definition clearly

indicate to the above effect.

15. Further as was held in *Devarapalli Lakshminarayana v. V. Narayana* : 1976 CriLJ1361 cognizance on a complaint is taken after some proceedings are taken by way of recording statements of the complainant or witnesses under Section 200 of the Code. In that case a Magistrate on receipt of a complaint directed investigation by the Police of cognizable offence under Section 156(3) of the Code. It was held that the Magistrate had not taken cognizance of the offence. In the similar way in the present case permitting investigation of non-cognizable offence under Section 155(2) of the Code did not amount to taking cognizance of the offence by the Magistrate.

16. The learned counsel for the complainant Shri G. C. Lalwani relied upon a judgment of Punjab and Haryana High Court is *Bhai Sher Jang Sing v. Smt. Virender Kaur*, . It was held that even if a person or persons could not be proceeded against under the Dowry Act, cognizance of any offence under the Indian penal Code be taken if facts warranted the same. In that case prosecution under Section 406 Indian Penal Code was held to be justified. Learned counsel contended that in the present case even if prosecution for the petitioners under the Dowry Act could not be held in view of the bar of limitation they could be prosecuted for cheating as, according to the complainant as stated in the complaint, petitioners falsely represented to the father of the complainant that Ashok was a very brilliant boy having passed his B.A. in Second Division and was doing a big business of manufacturing of Cold storage locks and had huge bank balance.

17. But in the present case neither complainant nor the Police in its report ever prayed that petitioners and their other co-accused should be prosecuted for cheating. Prayer of the complainant and the Police has been that the petitioner and other co-accused should be prosecuted for having committed offences under the Dowry Act. In fact the Police never investigated on these lines otherwise they need not have obtained permission under Section 155(2) of the Code. Offence of cheating is cognizable and in such a case Section 155(4) of the Code permits investigation by police even of a no cognizable offence like one under the Dowry

Act. Further for the purpose of constituting an offence of 'cheating' as defined in Section 415 Indian Penal Code it is necessary that the person cheated should have been induced by false representation to do an act which he or she would not have done otherwise had the true facts been known to him. In the present case there is no allegation that the complainant or her parents would not have agreed to the marriage had it been known that Ashok was not a graduate or was not doing big business of manufacturing cold storage locks. therefore, complaint, as it is, cannot constitute a basis for prosecuting petitioners. Under these circumstances authority relied upon by the learned counsel for the complainant has no application in the present case.

18. For the foregoing reasons I accept the present petition under Section 482 of the Code and quash the proceedings pending before the Magistrate. A copy of this order be sent to the learned Magistrate along with file of that court.

19. Application Allowed.

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