

R.P. Sharma and ors. Vs. State

R.P. Sharma and ors. Vs. State

SooperKanoon Citation : sooperkanoon.com/692183

Court : Delhi

Decided On : Jul-12-1990

Reported in : 42(1990)DLT241; II(1990)DMC390; 1990(19)DRJ160

Judge : P.K. Bahri, J.

Acts : [Dowry Prohibition Act, 1961](#) - Sections 4

Appeal No. : Criminal Revision Appeal No. 12 of 1983

Appellant : R.P. Sharma and ors.

Respondent : State

Advocate for Pet/Ap. : S.K. Agarwal and; R.P. Lao, Advs

Judgement :

P.K. Bahri, J.

(1) This revision petition has been brought under Sections 397 & 401 read with Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') seeking quashment of the order dated July 22, 1982, of a Metropolitan, Magistrate, New Delhi, by which the preliminary objections raised by the petitioners to the maintainability of the complaint filed under Section 4 of the Dowry Prohibition Act were negated.

(2) The learned counsel for the petitioners has urged that the complaint was barred by limitation having been presented beyond one years of commission of the offence and secondly, earlier the complaint was stayed till proper sanction was to be obtained and no consent of the Magistrate had been obtained under Section 300(5) of the Code for presenting a fresh complaint and thus, the said complaint was not maintainable. Lastly, it has been urged that the Magistrate had not given any sound reasons for condoning the delay made in filing the said complaint.

(3) SMT.NIRMLESH Bhardwaj had made a complaint to the police in which she made allegation that she was married to Anil Bhardwaj on January 30, 1979 and two hours to the marriage ceremony Anil's father Shri R.P. Sharma Along with other accused had made a demand of scooter or Rs. 6000.00 in lieu of the scooter to be given in dowry but her father expressed his inability to meet such a demand and assured that be would meet this demand later on and the marriage was performed and thereafter. Anil Kumar and his parents harassed the complainant for, bringing less dowry and for not meeting the demand of scooter or in lieu thereof payment of Rs. 6,000.00 It was alleged that as the said demand for dowry was not met Nirmlesh complainant was turned out from the house by the said accused on March 12, 1979. After taking necessary permission from the Magistrate under Section 155 (2) of the Code, the police had investigated the case and had filed a complaint in the court but during the trial it was found that the sanction which was a pre-requisite in filing the complaint under the Dowry Prohibition Act before amendment of the Act was not obtained in a proper manner. The complaint was stayed to enable the police to obtain the necessary sanction

(4) It appears that there occurred a delay in obtaining the sanction. in fact, no action was taken either by the complainant or by the police for obtaining the necessary sanction turn a period of about three months and thereafter, the complainant had moved an application dated December 19, 1981. requesting the police to obtain the necessary sanction and file the complaint against the accused. On December 21, 1981, a permission was obtained under Section 155(2) of the Code from the Magistrate for investigating the case and after obtaining the necessary sanction the complaint was again filed for prosecution of the accused under Section 4 of the Dowry prohibition Act. The application was moved under

Section 470 of the Code by the prosecution seeking condensation of delay in which it was mentioned that the original complaint was filed well in time but the accused came to be discharged on September 1, 1981, on account of technical defect in the sanction and later on after an application had been moved on December 19, 1981 the necessary sanction was obtained and the complaint was filed and thus, the delay, if any, in filing the complaint may be condoned,

(5) The first thing to be seen is whether the provisions of the Code of Criminal Procedure, particularly Section 470 of the Code could be invoked by the court for condoning the delay. Counsel for the petitioners has referred of Section 7 of the Dowry Prohibition Act which pertains to taking of cognizance of offence and opens with the words 'Not with standing anything: contained in the Code of Criminal Procedure' and then it prescribes the limitation of one year from the dale of commission, of the offence for taking cognizance of the offence by the Magistrate. Counsel for the petitioners has vehemently argued that in view of the aforesaid wordings of the Section it is quite clear that the provisions of the Code of Criminal Procedure cannot be invoked. There is no merit in this contention, rather on this very point in the case of Lajpat Rai Sehgal & Others v. State, : 23(1983)DLT314 , a single Hon'ble Judge of this Court has already laid down that in view of Section 4(2) of the Code of Criminal Procedure, the provisions of the Code are applicable to the special Act like the Dowry Prohibition Act when the latter Act is silent on certain matters. The learned Single Judge had placed reliance on Union of India v .I.C LaLa etc. 1973 Cri.L.J. 1190, where similar words appearing in Section 5A of the Dowry Prohibition Act to the effect 'Notwith- standing anything contained in the Code of Criminal Procedure' were considered and it was he'd that such words only carved out a limited exemption from the provisions of the Code of Criminal Procedure and it did not warrant the inference that the whole of the Code of Criminal Procedure is inapplicable. It is obvious that notwithstanding anything contained in the Code of Criminal Procedure with regard to the period of limitation, the limitation so prescribed in Section 7 would govern the cases under the Dowry Prohibition Act but it does not mean that the provisions of Section 4 which make the Code of Criminal Procedure applicable to offences under the special Acts as well with regard to the matters not dealt with in the special law would not be invoked, learned counsel for the petitioners drew my attention to Section 467 of

the Code which gives the definition by laying down that for the purpose of Chapter xxxvi, unless the context otherwise requires, 'period of limitation' means the period specified in Section 468 for taking cognizance of an offence. In the present case, we are not concerned with the period of limitation prescribed in Section 468 of the Code. What we are concerned is with respect to the provisions of Section 470 which enable the court to condone the delay if the cognizance is to be taken beyond the period of limitation prescribed. So, I agree with the reasons given in the judgment of Lajpat Rai Sehgal (supra) and hold that the provisions of Section 470 of the Code can be invoked.

(6) The learned counsel for the petitioners has then contended that as in view of Section 258 of the Code the petitioners stood discharged as the previous complaint filed was held to be defective inasmuch as no proper sanction had been obtained, and thus, in view of Section 300(5) of the Code the Magistrate could not have taken cognizance unless his consent had been obtained. In the present case, the Magistrate had not approached by the police for investigating the case again under Section 155(2) and the Magistrate had granted the sanction. There is no period of limitation prescribed in Section 300(5) for giving the necessary consent by the court. So, once the court has applied its mind and taken the cognizance after giving the permission to investigate it would be deemed that necessary consent had been given by the court for trying the petitioners for the same offence for which they were discharged by virtue of Section 258 of the Code earlier for want of proper sanction. So, I negative this plea of the petitioners as well.

(7) Now coming to the last point urged before me that the Magistrate was not right in condoning the delay. I find that no Explanation had been given in the application given by the police seeking condensation of delay for the period September 1, 1981 to December 19, 1981. After the petitioners stood discharged vide order dated September 1, 1981, for want of proper sanction, the police as well as the complainant remained inactive for a period of more than three months. No Explanation has been given in the application seeking condensation of delay in respect of this period. The learned Magistrate has also not noticed this particular aspect and thus wrongly condoned the delay when there appeared no

Explanationn for the said period. So the Magistrate had not exercised his discretion properly in allowing the application seeking condensation of delay when on the face of it no Explanationn had been furnished for the aforesaid period. As already mentioned, the offence was committed on March 12, 1979 and the complaint could be filed up to March 12, 1980. Originally the complaint was filed within time but for want of proper sanction the petitioners were discharged and fresh complaint came to be filed on February 11, 1982. So, it was incumbent upon the prosecution to have given some Explanationn for total inactivity by the police and the complainant for the period September 1, 1981 to December 19, 1981. Hence, I hold that as no proper Explanationn had been given the Magistrate was not justified in condoning the delay.

(8) I, hence, allow the revision petition and quash the impugned order and dismiss the complaint as barred by limitation and discharge the petitioners.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com