

Khuman Chand Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-08-1998

Reported in : 1998CriLJ1670; 1998(2)WLC233

Judge : Amaresh Ku. Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 149, 307, 323, 342, 406, 420 and 427 ; [Dowry Prohibition Act, 1961](#) - Sections 3 and 4; Schedule Castes and Schedule Tribes Cases (Prevention of Atrocities) Act; Code of Criminal Procedure (CrPC) - Sections 156(3), 173(2) and 482

Appeal No. : S.B. Crl. Misc. Petn. No. 741/94

Appellant : Khuman Chand

Respondent : State of Rajasthan

Advocate for Def. : D.S. Rathore, Public Prosecutor and; Vinod Sharma, Adv. for Non-petitioner No. 2

Advocate for Pet/Ap. : M.L. Garg, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Amaresh Ku. Singh, J.

1. Heard the learned counsel for the petitioner, the learned Public Prosecutor and the learned counsel for non-petitioner No. 2.

2. The facts which are relevant for the disposal of this petition may be summarised as below:-

The petitioner Khuman Chand filed a complaint in the court of learned Judicial Magistrate, No. 1, Bikaner on 3rd Feb. 1988 against 15 persons alleging the commission of the offences punishable under Sections 307, 406, 420, 342, 323, 427, 147, 148 read with 149, I.P.C. and under Section 3 read with 4 of the [Dowry Prohibition Act, 1961](#). In his complaint Khuman Chand alleged that he settled the marriage of his daughter with Narendra Kumar (non-petitioner No. 3). The engagement took place on 17th Jan. 1988. At the time of engagement following sums were paid to persons mentioned below :-

1. Rs. 1101/- to Shri Punam Chand, the grand father of Narendra Kumar.

2. Rs. 401/- to Shri Singi Ji, maternal uncle of Narendra Kumar.

3. Rs. 201/- to Narendra Kumar.

4. Rs. 251/- Punam Chand by Jatan Lal.

5. Rs. 101/- to Narendra Kumar by Jatan Lal.

6. Amounts of Rs. 21/-, 51/- and Rs. 11/- were also paid by Shanti Lal, Sagar Mal and Hanuman Mal at the time of engagement.

3. Besides giving above mentioned amounts to persons named above, Rs. 400/- were spent on purchasing sweets and Rs. 490/- was spent for purchase of fruits. Rs. 925/- were paid for arranging the band and one golden ring bearing the inscription 'Narendra ' was also given to Narendra Kumar. It was also alleged in the complaint filed by Khuman Chand that it was agreed at the time of settlement of marriage that complainant would spend as much amount as his purse would allow. The date of marriage was fixed on 6th Feb. 1988. According to allegations

made in the complaint on 20th January, 1988 Punam Chand, went to the house of the complainant and demanded a sum of Rs. 50,000/- as a consideration for marriage. The complainant refused to meet the demand and as a consequence the proposal for the marriage of his sister was withdrawn.

4. On 26th January, 1988 at about 8 a.m. Gauri Shanker was sent by the complainant to the house of Vijay Singh Chajer with the direction that whatever was given at the time of engagement be taken back. Gauri Shanker returned after sometime and he told that Punam Chand, Vijay Singh and Narendra Kumar had asked to send Khuman Chand. The complainant, thereafter, went to the house of Vijay Singh with a view to take back whatever he had given at the time of engagement. It is alleged that when the complainant attempted to enter the house, the accused-persons accompanied by 10 to 15 other persons went there and tried to catch the complainant, but the complainant escaped in his jeep. He was attacked and in consequence Kiran Chand (one of the accused) was received injuries. Thereafter, the complainant was taken by the accused persons to their house. When the information about the incident reached the sons of the complainant, they also reached the spot. They were also caught by the accused-persons. After some time, the police officer reached the spot and the complainant and accused-persons were taken to the Police Station.

5. It was alleged in the complaint that Vimal Chand lodged the F.I.R. No. 11/88 at Police Station, Ganga Sahar against the complainant alleging the commission of offence under Section 307, I.P.C.

6. The complaint filed by Khuman Chand was sent to the police for investigation under Section 156(3), Cr.P.C. on the basis of that complaint, the police registered the F.I.R. No. 17/88 in respect of offences under Sections 307, 406, 420, 342, 323, 427, 147, 148, 149 and 3/4 of the [Dowry Prohibition Act, 1961](#).

7. After completing investigation the police submitted a final report under Section 173(2), Cr.P.C. The complainant submitted a protest petition. After hearing the arguments, the learned Judicial Magistrate, No. 1, Bikaner took cognizance of the offence under Sections 406, I.P.C. and 3/4 of the Dowry Prohibition Act, 1961 against three persons, namely, Punam Chand, Vijay Singh and Narendra Kumar

and directed to issue boilable warrants to enforce their appearance.

8. Feeling aggrieved by the order dated 1st Feb. 1989 passed by the learned Judicial Magistrate No. 1, Bikaner, the accused filed a revision petition in the Court of Sessions Judge, Bikaner. The revision petition No. 20/92 was disposed of by the learned Special Judge, S.C. and S.T. (Prevention of Atrocities Act) Cases-cum Additional Sessions Judge, Bikaner vide order dated 16th March, 1994. The learned Additional Sessions Judge held that the offence under Section 3/4 of the [Dowry Prohibition Act, 1961](#) appeared to have been committed by only one accused, namely Punam Chand, who had already expired. The learned Additional Sessions Judge did not find sufficient ground to proceed against the accused Narendra Kumar and Vijay Singh for the offence under Section 3/4 of the Dowry Prohibition Act. Regarding the offence under Section 406, I.P.C. the learned Additional Sessions Judge came to the conclusion that whenever was given by the complainant party at the time of engagement was by way of gifts and therefore, there was no entrustment of any property and the offence under Section 406, I.P.C. was also not made out. As a consequence of the findings arrived by the learned Additional Sessions Judge, the revision petition was allowed and the order dated 1st Feb. 1989 passed by the learned Judicial Magistrate No. 1, Bikaner was quashed and set aside.

9. Feeling aggrieved by the above mentioned order dated 16th March, 1994 by the learned Additional Sessions Judge, the complainant has filed this petition under Section 482, Cr.P.C. with a view to revive his complaint and initiate the proceedings against the non-petitioners No. 2 and 3 against whom process had been issued by the learned Judicial Magistrate No. 1, Bikaner for the offences mentioned above.

10. I have heard the learned counsel for the petitioner, the learned Public Prosecutor and the learned counsel for the non-petitioner No. 2. As regards the offence under Section 3/4 of the Dowry Prohibition Act, complaint itself shows that when the marriage was settled, no demand of any dowry was made by Narendra Kumar or his relatives and it was agreed between the parties that the complainant would spent as much amount as his pocket would allow. The demand of dowry is

alleged to have been made by Punam Chand on 20th January, 1988 when he alone went to the house of the complainant and asked him to give Rs. 50,000/- as a consideration for marriage. At that time Punam Chand was not accompanied by any other person. There is no allegation that any other accused made any demand of dowry at any time. In these circumstances the conclusion drawn by the learned Additional Sessions Judge that demand of dowry was made by Punam Chand alone appears to be just and proper. So far as the accused Vijay Singh and Narendra Kumar are concerned, there is no evidence to show that at any time the demand of any dowry, expressly or by implication was made by them. The observations made by the learned Additional Sessions Judge in this behalf do not appear to be unreasonable or perverse. Punam Chand is dead, and therefore, he cannot be prosecuted for the offence under Section 3/4 of the Dowry Prohibition Act and accused Vijay Singh and Narendra Kumar do not appear to have committed any offence under Section 3/4 of the Dowry Prohibition Act.

11. Regarding the offence under Section 406, I.P.C. the learned Additional Sessions Judge has observed that whatever was given at the time of engagement was by way of gifts and did not amount to entrustment for the purpose of Section 406, I.P.C. During the hearing, the learned counsel for the petitioner has conceded that at the time of engagement, Tilak and marriage some items (including money) are customarily given by way of gifts to the bridegroom and his relatives and they do not fall in the category of goods entrusted to the bridegroom and his party.

12. I have carefully considered the reasons given by the learned Additional Sessions Judge. It is an admitted fact that ours is a civilised society and in our society human relationship play a very important part. These human relations are important for various kinds of interactions among the human beings and but for these human relations, it will be impossible for the society to exist and maintain its institutions, strength and stability. One of the basic characteristics of these human relationships is mutually which involves appropriate interaction by both the parties to a relation-ship. These relation-ships necessarily involve mutual trust; regard for each other, trustworthiness, faith in each other, because without them the human relations cannot come into existence, nor they can be perpetuated with benefit to both the parties. These human relationships are necessarily limited in number and

in respect of the degree of interaction, and therefore, before entering into these relation-ships, people carefully consider whether the other person with whom relation-ship is to be developed is fit for the proposed relation-ship or not. In other words, before a human relation-ship can be consciously brought into existence by deliberate act on the part of parties, a conscious and deliberate process of selection takes place, in which the parties to the proposed relation-ship make a scrutiny of each other, with a view to find out whether the proposed _ relation-ship should or should not be established. This necessarily requires that the person intending to be a party to a proposed relationship must be eligible for such relation-ship. It is for the purpose of showing the eligibility for a proposed human relation-ship that certain customary norms of human conduct are to be voluntarily obeyed so that the proposed relation-ship may be consciously brought in to existence by the act of both the parties. In customary manner any forms of interactions are prevalent in various communities for the purpose of convincing the parties to the proposed relation-ship that they are fit for the proposed relation-ship. Capability to be courteous be respectful to the other party to the relation-ship is universally recognized as a necessary condition of eligibility and people in customary manner try to prove that they are eligible for the proposed relation-ship. Some gifts-in cash or in kind are therefore, customarily given in certain communities as well as in certain families, Gifts-which are customarily given at the time of engagement, Tilak or marriage must therefore, be regarded as gifts according to customs prevalent in the concerned communities or families for the purpose of creating human relation-ships with the members of that family. These gifts cannot be regarded as entrustment, not they can be regarded as dowries. These gifts are not intended to be consideration for marriage.

13. Viewed in the above light, the finding of the learned Additional Sessions Judge that various amounts, which were given by the complainant and his relatives to Narendara Kumar, his maternal uncle, and grand father and the amounts, which were spent on sweets and fruits and the amount which was spent for arranging the band, did not amount to entrustment for the purpose of Section 406, I.P.C. does not appear to be perverse or unreasonable.

14. I am conscious of the fact that the evil of dowry must be eradicated for the good of the society and that those who indulged in it, must be punished according to law. But, it cannot be ignored that marriage is one of those indispensable institutions of every civilised society, without which no society can hope to survive for long and that, marriage leads to creation of a human relationship which is a relation ship of the most sacred and durable nature and the object of the society should be to create and preserve this relation-ship, rather than dig its grave.

15. Our concept of justice is such that one who administers justice can neither be more liberal to any one than what the law permits, nor he can be more strict towards anyone than what the law allows. Being more liberal in favour of a party does amount to encroaching on the right of the other party. Being more strict than what the law permits also amounts to encroachment on the legal rights of the person, who is proceeded against. The preservation of the society, therefore, demands that justice should be done keeping in view the balance between the rival contentions so that the important institutions and values of the society may not be destroyed. I am afraid. If every voluntary gift whether of money or goods or of food of any kind, is regarded as a entrustment or as a dowry, the very customary human interaction which is essential for creating the human relation-ships will end and in place of entering into relation-ships people would avoid them arid grave injustice would be caused to the people.

16. For the reasons mentioned above, I do not find any infirmity in the findings arrived at by the learned Additional Sessions Judge. This petition has no force. It deserves to be dismissed and is hereby dismissed.