

(2006) 05 JH CK 0084
In the Jharkhand High Court
Case No : Cr.M.P. No. 632 of 2005

Azij Ansari and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 18-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 420

Citation : (2006) 05 JH CK 0084

Hon'ble Judges : D.K. Sinha, J

Bench : Single Bench

Advocate : Jai Prakash, for the Appellant; Y.N. Mishra, for the Opposite Party
No. 2 and A.P.P, for the Respondent

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The petitioners herein filed the present petition u/s 482 of the Code of Criminal Procedure for setting aside the order impugned dated 5.10.2004 passed by Sub-divisional Judicial Magistrate, Bokaro in C.P. Case No. 143 of 2004 whereby and whereunder cognizance of the offence has been taken u/s 420 of the Indian Penal Code against the petitioner No. 1 and u/s 3/4 of the Dowry Prohibition Act against remaining four petitioners.

2. There is allegation and counter allegation in the present petition against the parties. The case of the complainant/ opposite party No. 2 Eshaque Ansari is that he had negotiated the marriage of his daughter with the petitioner No. 5, Manjoor Alam Ansari, who is son of the petitioner No. 1, Azij Ansari and in this connection he had presented gifts as well as cash. It is alleged that he had supplied 30 trucks of bricks from his kiln worth Rs. 96,000/- to the petitioner No. 1, Azij Ansari and against that, petitioner No. 1 had paid Rs. 25,000/- with an assurance that the remaining amount shall be adjusted on the expenditure incurred during the marriage. As per assurance, when the complainant/opposite

party No. 2 with the witnesses visited the house of the petitioner No. 1 on 12.3.2004, Rs. 1,00,000/- as well as Hero Honda Motor Cycle, gold worth Rs. 30,000, Fridge and a colour Television was demanded by petitioners No. 2 to 5 respectively and it was assured by the opposite party No. 2 that he would pay Rs. 60,000/- in cash after 15 20 days and the remaining items shall be delivered at the time of marriage. In first instalment, complainant paid Rs. 40,000/- with the assurance that the remaining amount of Rs. 20,000/- shall be given within a couple of days. Pursuant to that, when he visited the house of petitioner No. 1 on 9.4.2004 with the witnesses for payment of the balance amount of Rs. 20,000/-, the marriage was refused by the petitioner No. 1 on the pretext that another party had offered him dowry at the higher rate including Rs. 2,00,000/- in cash, Maruti Car, Television, Fridge, Jewellaries and the cost of the movement of Barat. The complainant expressed his inability to fulfil such demand and when the offer was flatly refused, the complainant demanded his balance amount of Rs. 71,000/- being the cost of his bricks as well as Rs. 40,000/- which was paid in cash on the last occasion, it is alleged that petitioner No. 1 refused to pay any amount to him, hence the case. 3. The petitioners herein have given altogether different case that, as a matter of fact, opposite party No. 2 had cheated him and he solemnized the marriage of his daughter with another person, though he had assured to marry his daughter with the petitioner No. 5. Petitioner No. 5 was employed in the brick kiln of opposite party No. 2 since he was unemployed and in this connection petitioner No. 1 after obtaining loan of Rs. 50,000/- on 10.11.2002 from the Co-operative Bank, paid the said amount to the opposite party No. 2 in cash for the investment of capital in the brick kiln business as the share of his son against the profit to be incurred in future from the said brick kiln business. He further paid Rs. 50,000/- by two cheques of the denomination of Rs. 25,000/- each to the opposite party No. 2 which were encashed. The said amount was invested in the said business. As a matter of fact, assurance was given by the opposite party No. 2 for the marriage of her daughter with the petitioner No. 5 and when the petitioner No. 1 approached the complainant for the marriage, it was subterfused on one pretext or the other and lastly complainant married his daughter to one Warish Ansari, who was working as Munshi in the brick kiln.

4. Petitioners have given the logic that the entire complaint case is concocted with the absurd allegation made therein having no face value at all and, therefore, cognizance of the offence taken therein is bad in law. The witnesses have not substantiated the allegation u/s 202 of the Code of Criminal Procedure of the complaint and the prosecution against the petitioners is abuse of the process of the court and hence, the entire criminal prosecution in relation to C.P. Case No. 143 of 2004 including the cognizance order dated 5.10.2004 be quashed.

5. Before appreciating the rival contentions of the parties, it is imperative to mention herein that the cognizance of the offence has been taken u/s 420 of the Indian Penal Code against the petitioner No. 1, Azij Ansari and u/s 3/4 of the

Dowry Prohibition Act, 1961 against the remaining petitioners, viz Gendgol Bibi, Allauddin Ansari, Mantu Ansari and Manjoor Alam Ansari.

6. A Bench of this Court in Saranan Chattopadhyaya Vs. State of Bihar (Now Jharkhand) and Another, held as under:

On behalf of the petitioner a specific joint was raised that in view of Bihar Amendment which came into force in 1976, no cognizance could have been taken against the petitioner for the offence u/s 4 of the Dowry Prohibition Act, unless a sanction was obtained from the competent authority as envisaged under proviso to Section 4 of the Act by way of Bihar Amendment. From the impugned order, I find that the learned Magistrate has not even touched the said point and only in one line has stated that he has found prima facie evidence to frame charge u/s 4 of the Dowry Prohibition Act. Therefore, it appears that the impugned order suffers from non-application of mind.

7. However, on the perusal of the facts and circumstances of the complaint case as brought about by the complainant/opposite party No. 2 and the order impugned dated 5.10.2004 I find that the court has rightly taken cognizance of the offence u/s 420 of the Indian Penal Code after finding prima facie case against the petitioner No. 1 subject to an independent finding at the time of framing of charge after opportunity of audience to the petitioner Azij Ansari.

8. The allegation of demand of dowry or abetment attached to such demand by the other petitioners and, accordingly, cognizance of the offence u/s 3/4 of the Dowry Prohibition Act, 1961 does not inspire confidence in view of also the Bihar Amendment referred hereinabove. Hence the cognizance u/s 3/4 of the Dowry Prohibition Act by the order impugned dated 5.10.2004 is set aside with consequential effect thereby quashing the criminal prosecution against the remaining four petitioners herein.

9. This petition is allowed in the manner indicated above.