
(1989) 11 OHC CK 0023

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 686 of 1989

Baikunthanath Jena

APPELLANT

Vs

The State of Orissa and Another

RESPONDENT

Date of Decision : 23-11-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 473
Dowry Prohibition Act, 1961 — Section 7

Citation : (1990) 2 DMC 271 : (1989) 2 OCR 615

Hon'ble Judges : K.P. Mohapatra, J

Bench : Single Bench

Advocate : N.C. Panigrahi and K.P. Nanda, for the Appellant; S.K. Das for the Opposite Party No. 1, for the Respondent

Final Decision : Allowed

Judgement

K.P. Mohapatra, J.—The petitioner and pro forma opposite party No. 2 are accused in a case under Sections 3 and 4 of the Dowry Prohibition Act (for short the "Act") and have challenged the order of cognizance dated 6-2-1985 passed by the learned Sub-Divisional Judicial Magistrate, Bhubaneswar.

2. Prosecution case, which is a very unfortunate one, is narrated below. The marriage negotiation between Sunjukta, an educated young girl, with the petitioner who was serving as Judicial Magistrate at Bhubaneswar, was started by some negotiators in January, 1982. During negotiation, on behalf of the petitioner and pro forma opposite party No. 2, demand of dowry of cash of Rs. 35,000/- and costly articles, such as, television, H.M.T. watch, refrigerator, 15 Tolas of gold ornaments and a piece of land at Bhubaneswar, was made. The parents Sanjukta willy-nilly agreed for giving the dowry and as a matter of fact, on 10-2-1982 at the time of Nirbandha ceremony, a sum of Rs. 15,000/- was paid by her parents to the petitioner and pro forma opposite party No. 2. Again on 26-4-1982 a sum of Rs. 5000/- and on 28-4-1982 a sum of Rs. 11,500/- in cash and Rs. 3500/- in cheque was paid to them. The marriage was performed

on 1-5-1982 during which costly presents as per the demand were given. After the marriage, Sanjukta lived in the village of the petitioner and far from leading a happy married life was constantly tortured because the present of gold ornaments given to Sanjukta was less than 15 Tolas. In the meantime, the petitioner was transferred as Judicial Magistrate "to Sambalpur and was living in a rented house. Sanjukta went to live with him and on 30-9-1982 she was found dead hanging from the ceiling of room of the house. The records of the case do not disclose as to the proceeding that followed and whether any case was initiated to find out whether death was suicidal or was a result of homicide. It is further not known, on whom the responsibility for death of Sanjukta was fixed, but in U.I. Case No. 652 of 1983 the Chief Judicial Magistrate, Sambalpur, passed an order on 18-8-1983 saying that the prosecution report should be sent to the Prosecutory by registered post with A.D. for presentation in the proper Court. On 6-2-1985 the prosecution report which was returned to the Prosecutor was presented before the learned Sub-Divisional Judicial Magistrate, Bhubaneswar, and it is not known where it was lying for about two and half years in between. Even thereafter the case did not make any headway till 27-4-1987 when the elder sister of Sanjukta was examined in part as P.W. 1: On 7-7-1987, however, a petition was filed challenging the order of cognizance on the ground that Section 468 of the Code of Criminal Procedure (for short "Code") was a bar and cognizance was taken long after expiry of the limitation prescribed under it. The petition was heard and by order dated 30-7-1988 the learned Additional Chief Judicial Magistrate, Bhubaneswar, to whose Court the case was transferred, rejected the petition on the ground that he had no power of review of the earlier order, and so could not quash the order of cognizance taken earlier.

3. Section 7 of the Act, as it originally stood prior to amendment, is quoted below :--

"7. Cognizance of offences--Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898) :---

(a) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act;

(b) No Court shall take cognizance of any such offence except on a complaint made within one year from the date of the offence ;

(c) It shall be lawful for a Presidency Magistrate or a Magistrate of the first class to pass any sentence authorized by this Act on any person convicted of an offence under this Act."

The Dowry Prohibition (Amendment) Act, 1984 (Amendment Act No. 63 of 1984) substituted and replaced Section 7 which is also quoted below :--

"7. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 :--

(a) No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate

of the first class shall try any offence under this Act ;

(b) No Court shall take cognizance of an offence under this Act except upon :--

(i) its own knowledge or a police report of the facts which constitute such offence ; or

(ii) a complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognised welfare institution or organisation ;

(c) It shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass any sentence authorised by this Act on any person convicted of any offence under this Act.

Explanation--For the purpose of this sub-section, "recognised welfare institution or organisation" means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

(2) Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973, shall apply to any offence punishable under this Act.

(3) Notwithstanding anything contained in any law for the time being in force, a statement made by the person aggrieved by the offence shall not subject such person to a prosecution under this Act."

It is to be noted that Sub-section (3) was added to the new section by Amendment Act 43 of 1986. Section 7, after amendment, came into effect from 2-10-1985. Noticeably, in view of the gravity of the offences under the Act in the context of the dowry deaths, bar of limitation was removed. The offence alleged against the petitioner and pro forma opposite party No. 2 was complete in the year 1982 prior to the amendment referred to above and so ex facie no Court could take cognizance of any offence under the Act except on a complaint made within one year from the date of the offence. Sanjukta died on 30-9-1982 and so it can reasonably be said that if at all there was any demand of dowry, it ended with her death, for there was no further scope for such demand. So, according to Section 7(1)(b), cognizance of an offence under the Act could not be taken after 30-9-1983, Section after the amendment, however, has done away with the limitation for taking cognizance of an offence under the Act by specifically introducing Sub-section (2), according to which Chapter XXXVI, prescribing limitation for taking cognizance of certain offences, shall not apply to any offence punishable under the Act. So, if Section 7 prior to amendment is applicable to this case, then the order of cognizance dated 6-2-1985 would be barred. If, on the other hand, the new section shall apply, the question of bar of limitation for taking cognizance shall not arise.

4. According to Mr. N.C. Panigrahi who appeared for the petitioner, Section 7 of the Act as amended is prospective and not retrospective in operation. Therefore, all offences under the Act after Section 7 became effective on 2-10-1985 shall be governed by the provisions thereof having no bar of limitation for taking

cognizance. But for offences prior to the amendment, the limitation for taking cognizance was one year from the date of the offence according to the old Section 7(1)(b) of the Act, This is a crucial question which needs examination. Section 6 of the amendment Act No. 63 of 1984 reads :

"For Section 7 of the principal Act, the following section shall be substituted, namely."

There is no indication in the section nor anywhere in the Amendment Act to show that the new section is retrospective in operation. It was held in *Arjan Singh and Another Vs. The State of Punjab and Others*, , that it is a well settled rule of construction that no provision in a statute should be given retrospective effect unless the legislature by express terms or by necessary implication has made it retrospective and that where a provision is made retrospective, care should be taken not to extend its effect beyond what was intended. In view of the aforesaid principle and in the absence of indication of intention of the legislature to give retrospective operation to the amended Section 7 of the Act, manifestly, cognizance of offence under the Act which took place in 1982 could not be taken on 6-2-1985 according to Section 7(1)(b) as it stood prior to the amendment. This view finds support from a decision reported in 1989 Cri. L.J. 65 (Mad.), *K. Ramalingam v. The State*.

5. In the premises of the above discussion, I am of the view that Section 7, as amended by Amendment Act 63 of 1984, which came into operation on 2-10-1985, was not retrospective, but prospective in its effect. So, in view of the provisions contained in repealed Section 7(1)(b) of the Act, cognizance of the offences there under was barred after expiry of one year.

6. Yet the problem is not over. It is further to consider if Chapter XXXVI, particularly Section 473 of the new Code shall be applicable to a case instituted on a complaint for an occurrence which took place prior to coming into force of Amendment Act 63 of 1984 completely doing away with limitation with regard to taking of cognizance of cases under the Act. The relevant part of Section 7 of the Act, as it stood prior to the amendment, is again quoted below to facilitate discussion :--

"7. Cognizance of offences :--Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898),--

x x x x x (b) no Court shall take cognizance of any such offence except on a complaint made within one year from the date of the offence ;

It is to note that the old Code of Criminal Procedure was repealed after the new Code came into operation on 1-4-1974. Despite such repeal, amendment to Section 7 of the Act was not made by the legislature so as to introduce the new Code in place of the old Code in the first part of Section 7. It is not known whether it was on account of oversight or the amendment was not done deliberately. Therefore, after 1-4-1974 it must be deemed that the beginning of

Section 7 which read, "Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898)" was non-existent. If that be so, by operation of Section 3(2), the provisions of Chapter XXXVI of the new Code shall apply to proceedings under the Act. Section 4(2) was examined in *Vishwa Mitter of Vijay Bharat Cigarette Stores, Dalhousie Road, Pathankot Vs. O.P. Poddar and Others*, , and it was observed as follows :--

".....This is specifically indicated by the provision of Sub-section (2) of Section 4 which provides that all offences under any other law-meaning thereby law other than the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions in the Code of Criminal Procedure, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. It would follow as a necessary corollary that unless in any statute other than the Code of Criminal Procedure which prescribes an offence and simultaneously specifies the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences, the provisions of the Code of Criminal Procedure shall apply in respect of such offences and they shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code of Criminal Procedure."

In other words, even if there was a bar to take cognizance of any offence under the Act except on a complaint made within one year from the date of the offence, Section 473 of the new Code shall be applicable and even after lapse of one year from the date of the offence the Court can take cognizance of an offence under the Act either on the motion by the aggrieved party or on its own motion. Section 473 reads as follows :--

"473. Extension of period of limitation in certain cases :--Notwithstanding anything contained in the foregoing provisions of this Chapter any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice."

On plain interpretation of this provision, it will appear that although there may be specific period of limitation prescribed in law, a Court may take cognizance of an offence after its expiry if it is satisfied that the delay has been properly explained or that it is necessary to do so in the interests of justice. It is thus open to the aggrieved party to make an application for condonation of limitation and place materials for satisfaction of the Court to the effect that it is a fit case for condonation of limitation. The Court may also suo motu condone limitation if it finds that it is necessary to do so in the interests of justice. Both the alternatives have to be read disjunctively because of the use of the word "or". In either case, however, the Court has to follow the principle of natural justice, issue notice to party concerned and after hearing, pass order recording reasons. In view of the above discussion, I am of the opinion that even to a case u/s 7 of the Act before its amendment, provisions of Section 473 of the new Code are applicable and in

a suitable case on being satisfied, the Court may condone limitation for the purpose of taking cognizance. Mr. Panigrahi very fairly conceded the correctness of the above proposition.

7. In this case, neither the Chief Judicial Magistrate, Sambalpur, nor the Sub-Divisional Judicial Magistrate, Bhubaneswar, noticed the law with regard to limitation for taking cognizance. I would go so far as to say and in fact I was surprised that the learned Chief Judicial Magistrate, Sambalpur, dealt with the case in a very- cavalier fashion as if nothing important had happened and loss of life of a young educated girl before she could know that happiness was seemed to be of little consequence to him. I had a feeling that an unseen hand was working to suppress the aftermath of a grave incident. The Sub-Divisional Judicial Magistrate, Bhubaneswar, had of course no occasion to go into the details of the matter, because at the earliest opportunity the petitioner did not raise objection to the order of cognizance, but took the plea at a very late stage. It further appears that no anxiety was shown either by the parties or even by the Court for early disposal of this old case. No application was filed by the prosecution for condonation of limitation, nor did the Court apply its judicial mind so as to consider whether it was a fit case to take cognizance in the interests of justice after expiry of the period of limitation. In order to consider these aspects, it is necessary to quash the impugned order of cognizance and remit the case to the Court of the learned Additional Chief Judicial Magistrate, Bhubaneswar.

8. For the foregoing reasons, the Criminal Misc. Case is allowed and the impugned order of cognizance dated 6-2-1986 is set aside. The case is remitted for expeditious disposal in accordance with law in the light of observations made above. The lower Court records be sent back forthwith. The parties are directed to appear in the said Court on 30-11-1989.