

(1992) 04 PAT CK 0038

In the Patna High Court

Case No : Criminal Miscellaneous No. 5033 of 1986

Deo Narayan Lall Das and 5 Ors.

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 17-04-1992

Acts Referred:

Citation : (1992) 04 PAT CK 0038

Judgement

A.N. Chaturvedi, J.—This is an application u/s 482 of the Code of Criminal Procedure by Petitioners for quashing their criminal prosecution including the order dated 8.5.1986 (contained in annexure-4) in C.R. No. 6 of 1986, T.R. No. 1116 of 1986 whereby cognizance of offences under Sections 3, 4 and 5 of the Dowry Prohibition Act has been taken by the Subdivisional Judicial Magistrate, Jhan-jharpur at Madhubani against the Petitioners.

2. It has been alleged by the Petitioners that in order to pressurise Petitioner No. 4, Rajendra Kumar Lall Das and his family members, Opposite Party No. 2, Sundar Lall Das, filed a petition of complaint (annexure-2) in the Court of Subdivisional Judicial Magistrate, Jhanjharpur at Madhubani on 9.1.1986 against the Petitioners alleging commission of offences under Sections 3, 4 and 5 of Dowry Prohibition Act by them on 6.5.1984 and the same was registered as C.R. No. 6 of 1986. After enquiry, the Subdivisional Judicial Magistrate vide his order dated 8.5.1986 is said to have taken cognizance of the offences under Sections 3, 4 and 5 of the Dowry Prohibition Act against the Petitioners without obtaining sanction of the State Government or the Collector and hence this application for quashing the criminal prosecution of the Petitioners including the order dated 3.5.86 of the Subdivisional Judicial Magistrate.

3. This application was heard by a Bench consisting Mr. Justice Nagendra Rai who as per order dated 8.4.1991 found that the question to be considered in this case is as to whether in view of the provision of Article 254 of the Constitution of India and the subsequent amendment of Section 4 of the Dowry Prohibition Act by the Parliament by Act 63 of 1984, the provisions of Section 4 amended by Bihar Act

4 of 1976 stood repealed or modified. In other words, the question to be considered, according to Rai Judge, is as to whether the provision of Section 4 of the Bihar Amendment will apply or the amended provision of the Central Act will apply in the State of Bihar. Mr. Justice Nagendra Rai was of the opinion that the question to be decided is an important question of law and hence referred the matter to a Division Bench for deciding the said question and other points involved in the case. Accordingly, the matter came up before this Division Bench.

4. The Petitioners want their criminal prosecution including the order dated 8.5.1986 (contained in annexure-4) in C.R. No. 6 of 1986, T.R. No. 1116 of 1986 passed by Subdivisional Judicial Magistrate, Jhanjharpur at Madhubani to be quashed on the ground that the complaint petition (annexure-2) and the statement on solemn affirmation (annexure-3) did not make out any offence under the Dowry Prohibition Act, 1961 as no property or Valuable security has been given or agreed to be given either directly or indirectly as provided in Section 2 of the Dowry Prohibition Act, 1961; that the witnesses examined u/s 202 of the Code of Criminal Procedure were not present at the time of occurrence on 6.5.1984 and hence their testimony regarding occurrence is not reliable; that in view of the provision of Section 4 of the Bihar Act 4 of 1976, previous sanction of the State Government for prosecution u/s 4 of the Dowry Prohibition Act is mandatory and hence cognizance taken without sanction of prosecution is illegal, arbitrary and amounts to abuse of the process of the Court; that the Bihar Amendment of 1976 (Bihar Act 4 of 1976) which made the provision for sanction of prosecution has not been repealed by Act 63 of 1984 enacted by Parliament and that the complaint case having been filed on 9.1.1986 with regard to the occurrence alleged to have taken place on 6.5.1984, the prosecution was barred by limitation u/s 468 of the Code of Criminal Procedure.

5. The answer of opposite party State of Bihar to the above pleas of the Petitioners was that the allegations in the complaint petition (annexure-2) and statement on solemn affirmation (annexure-3) prima facie, make out offence under the Dowry Prohibition Act, 1961 as demand of dowry is alleged to have" been made by the Petitioners; that the question of reliability of witnesses will be considered at the time of trial; that the provision of Section 4 of Bihar Act 4 of 1976 which made a provision for sanction of prosecution, stood repealed by Act 63 of 1984 enacted by Parliament and hence previous sanction of prosecution by the State Government was no longer required, and that in view of the provision of Section 7(2) of the Dowry Prohibition Act which was introduced by Act 63 of 1984 and which came in force on 2.10.85, Chapter XXXVI of Criminal Procedure Code, which provides for limitation for taking cognizance for certain offences, is not applicable to offences under the Dowry Prohibition Act and hence the cognizance which is said to have been taken as per order dated 8.5.1986 cannot be assailed on ,the ground of limitation. It was also contended on behalf of the Opposite Party State of Bihar that the offence concerning demand of dowry continues till the demand is met and hence there is no question of limitation.

6. The three primarily significant issues which have come to the fore in this reference to the Division Bench may be formulated in the terms following:

(i) Whether the complaint petition (annexure-2) and the statement on solemn affirmation (annexure-3) make out any offence under the Dowry Prohibition Act with reference to the occurrence which is alleged to have taken place on 6.5.1984.

(ii) Whether in view of Article 254 of the Constitution of India and the subsequent Amendment of Section 4 of the, Dowry Prohibition Act by the Parliament by Act 63 of 1984, the provision of Section 4 amended by Bihar Act 4 of 1976 stood repealed? In other words, whether the provision of Section 4 of Bihar amendment which inter alia, provides for sanction of prosecution prior to taking of cognizance of the offence u/s 4 of Dowry Prohibition Act will apply in the State of Bihar or amended provision of Central Act will apply?

(iii) Whether the complaint case having been filed on 9.1.86 with regard to the occurrence alleged to have taken place on 6.5.1984 was barred by limitation and whether the issue of limitation can be raised directly in the High Court for quashing the proceeding u/s 482 of the Code of Criminal Procedure?

7. Prior to amendment of Section 2 of the Dowry Prohibition Act by Act 63 of 1984 which came in force with effect from 2.10.85, and Act 43 of 1986 which came in force with effect from 19th November, 1986, the definition of "Dowry" as given in Section 2 of the Dowry Prohibition Act was as follows:

Definition of "dowry".-In this Act, "dowry" 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 a 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) applied.

Explanation I.-For the removal of doubts, it is hereby declared that any presents made at the time of a marriage to either party to the marriage in the form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this section, unless they are made as consideration for the marriage of the said parties.

Explanation II.-The expression "valuable security" has the same meaning as in Section 30 of the Indian Penal Code.

8 In the complaint petition (annexure-2) the allegation is that the marriage took place on 16.4.1984 and the Petitioners demanded Rs. 50,000/- (fifty thousand) as dowry on 6.5.1984 there after the marriage. There is nothing in the complaint

petition to show that the said amount had been agreed or promised to be given at or before or after the marriage as consideration of marriage. Rather in his statement on solemn affirmation (annexure-3) the complainant (opposite party No. 2) has specifically stated that the said amount was demanded as dowry after the marriage. Demand of dowry is an offence u/s 4 of the Dowry Prohibition Act but in view of the definition of "dowry" in Section 2 as quoted above, and the provisions of Section 4 as they stood at the time of the alleged occurrence (on 6.5.84), the provision of Section 4 would be applicable to a case in which any property or valuable security was agreed to be given as consideration for marriage but the same was not actually given and thereafter demand was made for the same. This view finds support from a Bench decision of this Court reported in 1980 B.B.C.J. 612: 1980 PLJR 231 Kasi Prasad and Anr. v. The State of Bihar and Anr. Since the said amount had not been agreed or promised to be given as consideration for the marriage, the same cannot amount to "dowry" in accordance with the definition of "Dowry" as quoted above. In view of this, no offence under Dowry Prohibition Act, as the same was on the alleged date of occurrence is made out.

9. Dowry Prohibition Act, 1961 is a Central Act. For the purpose of deciding the second issue it is necessary to refer to Section 4 of the Dowry Prohibition Act, 1961 in chronological sequence. Section 4 of the Act which provides penalty for demanding dowry and originally run as follows:

4. Penalty for demanding dowry.-If any person, after the commencement of this Act, demands, directly or indirectly, from the parents or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both:

Provided that no Court shall take cognizance of an 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.

10. The State of Bihar thought it necessary to amend Section 4 and some other sections of the Act and hence enacted Act 4 of 1976 substituting new section for Section 4. The new Section 4 substituted by the said Bihar Act of 1976 is as follows:

4. Penalty for demanding dowry.-If any person, after the commencement of this Act, demands directly or indirectly from the parents or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment which may extend to six months and with fine which may extend to five thousand rupees:

Provided that no Court shall take cognizance of any offence under the 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.

11. Later on by Act 63 of 1984 the Parliament substituted Section 4 by new section whereby punishment for demanding dowry was enhanced and the requirement of prior sanction for prosecution for the offence u/s 4 was done away with. Section 4, after amendment by Parliament runs as follows:

Penalty for demanding dowry.-If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment impose sentence of imprisonment for a term of less than six months.

Article 254 of the Constitution of India is as follows:

254. Inconsistency between laws made by Parliament and laws made by the Legislature of States.-(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

12. By proviso to Article 254 (2) the Constitution has empowered the Parliament to enact a law adding to, amending, varying or repealing a law of the State when it relates to a matter mentioned in the concurrent list. The position then is that under the proviso to Article 254(2), the Parliament can repeal a State Law. But where it does not expressly do so even then, the State Law will be void under that provision if it conflicts with a later law with respect to the same matter that may be enacted by Parliament. In this regard referen-may be made to *Zaverbhai Amaldas Vs. The State of Bombay*, and AIR 1983 SC 177 (vol. I) (*T. Barai v. Henry Ah Hoe and Anr.*)

13. In the present case there was no express repeal by Act 63 of 1984 enacted

by Parliament of the provision of Section 4 of the Dowry Prohibition Act amended by Bihar Act 4 of 1976 but the legislation being in respect of the same matter i.e. "penalty for demanding dowry", the State law will be void. As mentioned earlier, the Parliament by Act 63 of 1984 substituted Section 4 enhancing the punishment for demanding dowry and has done away the provision for prior sanction of prosecution for taking cognizance of the offence u/s 4 of the said Act. Act 63 of 1984 enacted by Parliament being a later law with respect to the same matter would prevail over that of the State law.

14. It has been noticed that Act 63 of 1984 enacted by Parliament came into force with effect from 2.10.1985. Thus, Section 4 as substituted by the said Central Act, become applicable with effect from 2.10.1985. The act of taking cognizance is a matter of procedure and it is well settled that and litigant has no vested right in any matter of procedure. Alterations in procedural law are generally held to be retrospective in the sense that they apply to future as well as to pending actions. In the present case although the occurrence is said to have taken place on 6.5.1984 but on the date on which cognizance was taken the amendment had already come into force and the said amendment which is procedural was applicable to the pending case. Hence the cognizance of the offence u/s 4 cannot be said to be bad in law on the ground that there was no sanction of the prosecution.

15. Prior to its amendment by Act 63 of 1984 which, as pointed out above, came into force with effect from 2.10.1985, Section 7 of the Dowry Prohibition Act, 1961 provided that no Court shall take cognizance of any offence under the Act except on a complaint made within one year from the date of the offence. It may be mentioned that by Bihar Act 4 of 1976 Section 7 was amended and new Section 7 was substituted which did not provide for limitation for filing complaint. Under the circumstances and by operation of Section 4(2) of the Code of Criminal Procedure, the provision of Section 468 Cr. P. C. would apply to a proceeding under Dowry Prohibition Act. On 6.5.1984, the date of alleged occurrence, the maximum sentence for the offences under the Dowry Prohibition Act was six months and fine to the extent of five thousand rupees. In view of this, the period of limitation for filing complaint would be one year as provided in Section 468(2) (b) of the Code of Criminal Procedure. In the instant case, the complaint was filed on 9.1.1986, i.e. after the expiry of more than one year from the date of alleged occurrence and hence the complaint was barred by limitation and no cognizance of the offence alleged could have been taken without condoning the delay in accordance with the provision of Section 373 of the Code of Criminal Procedure. In 1990 Criminal Law Journal Page 2626 (Baikunthanath Jena v. The State of Orissa and Anr.) referred to by the learned Counsel for the petitioners, Mahapatra J. of the Orissa High Court has taken the same view that cognizance is barred after expiry of the period of limitation. A perusal of the order dated 8.3.1986 contained in annexure 4 would show that the learned Magistrate took cognizance of the offences under the said Act after the expiry of more than one year from the date of alleged occurrence without condoning the delay. So the

taking of cognizance was bad in law.

16. It was contended on behalf of the State that the offences alleged to have been committed are continuing offences as in the complaint petition it has been alleged that the bridegroom would not bring the bride till the demanded amount was paid. In support of this contention reliance was placed on Ram Kripal Prasad and Others Vs. The State of Bihar and Others, . In this connection it was pointed out by the learned Counsel for the Petitioners that the aforesaid case relied on by the learned Counsel for the State was regarding failure of the employees to deposit the empl- oyers" contribution to the Provident Fund in contravention of paragraphs 38 and 76 of the Employees Provident Fund Scheme, 1952 read with Section 14 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 which was held to be continuing offence whereas the case before this Division Bench is concerning Dowry Prohibition. Act and hence the said case is distinguishable. There appears substance in this contention of the learned Counsel for the Petitioners.

17. Bhagirath Kanoria and Others Vs. State of M. P., it was held by the Supreme Court that the question whether a particular offence is continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and, above all, the purpose which is intended to be achieved by constituting the particular act as an offence. Prior to its amendment by Act 63 of 1984 which, as pointed out earlier, came in force with effect from 2.10. 1985, Section 7 of the Dowry Prohibition Act provided that no Court shall take cognizance, of any offence under the said Act except on a complaint made within one year from the date of the offence. Thus the statute contemplated a particular date of the offence from which the limitation for filing the complaint had to commence and it goes to show that the legislature did not intend that an offence under the Dowry Prohibition Act should be treated as a continuing offence. Had this been the intention of the legislature, it would not have prescribed the period of limitation for filing of complaint. So the offences under Dowry Prohibition Act are not continuing offences. Similar view was taken by P. K. Bahri J, of Delhi High Court in Gursharan Singh Vs. Smt. Gursharan Kaur, and page 1591 (Harbans Singh and Ors. v. Smt. Gurcharan Eaur). In view of this the offences under Sections 3, 4, and 5 of the Dowry Prohibition Act and for which the learned Magistrate has taken cognizance cannot be said to be continuing offences and the contention of the State Counsel in this regard appears to have no merit therein. In fact, Section 8 of the Act does not create any offence nor is a punishing section.

18. It was further contended on behalf of the State that in view of the provision of section 7 (2) of the Dowry Prohibition Act, Chapter XXXVI of the Code of Criminal Procedure, which provides for limitation for taking cognizance of certain offences, is not applicable to the offences under Dowry Prohibition Act. It may be pointed out that the occurrence is said to have taken place 6-5-1984 whereas the provision of Section 7(2) of the Dowry Prohibition Act was introduced by Act

53 of 1984 which came in force with effect from 2-10-1985. That being so, the provision of Section 7(2) of the Act cannot have retrospective effect. Under the circumstances the taking of cognizance regarding the offences alleged to have been committed on 6-5-1984 will be subject to the period of limitation as provided in Section 468(2)(b) of Criminal Procedure Code.

19. It was lastly contended on behalf of the State that although prosecution may be prima facie barred by limitation, Section 473 of the Code of Criminal Procedure expressly gives power to the Court to over ride the power of limitation, if the interests of justice necessitate the same and hence the point of limitation cannot be appropriately raised directly in the High Court for quashing of proceeding u/s 482 of Code of Criminal Procedure. In support of this contention also reliance was placed on Ram Kripal Prasad and Others Vs. The State of Bihar and Others, in which a Full Bench of this very High Court held that issue of limitation is a question which needs to be raised and determined at the earlier stage before the trial Court, since the question of limitation is a matter for consideration, computation and adjudication by it alone and cannot be appropriately raised directly in the High Court for quashing of proceeding u/s 482 of Code of Criminal Procedure. It has also been held by their lordships that although a prosecution may be prima facie barred by limitation, section 473 of the Code of Criminal Procedure expressly gives power to the Court to override the period of limitation if the interests of justice necessitate the same. In view of this the prosecution of the Petitioners cannot be quashed on the ground of limitation.

20. But it has already been pointed out earlier that prima facie no offence under Dowry Prohibition Act is made out and hence the cognizance of the offences, under the said Act is bad in law.

21. In the facts and circumstances of the case and in view of the above discussions, the Criminal Miscellaneous case is allowed. The criminal prosecution of the Petitioners including the order dated 8.5.1986 in C.R. No. 6 of 1986 . T.R. No. 1116 of 1986 whereby cognizance of offences under the Dowry Prohibition Act has been taken by Subdivisional Judicial Magistrate, Jhanjharpur at Madhubani against the Petitioners are hereby quashed.

Hoda, J.

22. I agree.