
(1995) 08 BOM CK 0015
In the Bombay High Court
Case No : Criminal Appeal No. 146 of 1992

Hiramal Sundermal Kalantri

APPELLANT

Vs

Kesharimal Premasukhdas Bhutada and others

RESPONDENT

Date of Decision : 18-08-1995

Acts Referred:

Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (1995) 97 BOMLR 375 : (1996) CriLJ 1493 : (1996) 2 DMC 683 :
(1996) 2 MhLj 207 : (1996) 1 MhLj 207 : (1996) 3 RCR(Criminal) 249 : (1996)
2 RCR(Criminal) 414

Hon'ble Judges : A.A. Desai, J

Bench : Single Bench

Advocate : B.S. Deshpande, Mr. Jichkar, Assistant Public Prosecutor, for the Appellant; A.V. Bhide, for the Respondent

Judgement

1. Question involved in this appeal is intricate and also of public importance. The facts relevant for adjudication are thus : The respondent No. 1 Kesharimal on 22-6-1988 married Usha. On 4-9-1988 Usha committed suicide. During the course of investigation vide Exh. 27, ornaments and other articles of deceased were seized. Mother of the respondent No. 1 was prosecuted for the offence punishable under Sections 306 and 498-A of the Indian Penal Code. However, she was acquitted. The learned Sessions Judge by the impugned order, rejected application u/s 6 of the Dowry Prohibition Act, 1961 ("The Act") presented by the applicant (father of deceased Usha) for delivering him the property so seized.

2. According to Mr. Bhide, the learned Counsel for the respondent, the property in question was not given under any agreement or on demand, so as to constitute a Dowry. Section 6 of the Act on which reliance is placed has, therefore, no application.

Section 2 defines term "Dowry" thus :-

"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 parent 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 any time after the marriage) (in connection with 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) applies."

Explanation I to Section 2 of the Act, read thus :-

Explanation :

"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." This Explanation has been withdrawn by Act No. 63 of 1984. Now strictly according to definition "Dowry" means any property or valuable security given or agreed to be given either directly or indirectly Now even a voluntary gift or presentation at the time of marriage by the parent of either of the spouse falls squarely within the ambit of the term "Dowry". Such presentation of Gift need necessarily be a consideration of marriage.

3. It is not disputed before me that the articles converted by Exh. 27 were received by deceased from her parents at the time of marriage. In view of this, the ornaments or Articles so seized would be the items of Dowry.

4. Section 6 of the Act broadly recognises that such items of Dowry are meant for the benefit of the wife or her heirs. Undisputedly, after marriage husband is one of the heirs.

The person, as per the sub-section (1) who receives such Dowry at the time of marriage has to hand over same to the woman within a period of three months from the date of the marriage. As per sub-section (2) any failure or default renders him liable of penalty.

5. Sub-section (3) reads thus :

"Where the woman entitled to any property under sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being."

Mr. Bhide submitted that Section 6 has no application since, even before death Usha was in possession of the property in question. By the impugned order, the learned Judge has rightly delivered the property to the respondent No. 1 husband being a legal heir of deceased.

6. By Act No. 43 of 1986, a proviso has been incorporated to sub-section (3). Accordingly, where death of the woman takes place within a period of seven

years from her marriage which is otherwise than due to natural causes, then the property will not go to normal heir or heirs as envisaged by sub-section (3) but it will go only to her children and in case, she had no children, it will go to her parents.

7. Undisputedly, Usha died unnatural death within the stipulated period. And she died without children. The question is whether the proviso could be invoked when Usha herself was in possession of the property before her death.

8. The proviso in the eventuality of unnatural death of a wife disentitles the husband from receiving her property from a third person. It cannot rationally and logically be interpreted that such husband would be entitled to receive the property which is in possession of the woman at the time of her unnatural death. A woman whatever might be the reason thought it not worth to continue the life in the marital home. To allow the items of dowry to be received by her husband would highly be derogatory to the Legislative intention and the scheme of the Act. To make the scheme of Section 6 more purposeful, items of dowry must revert back to unfortunate parents of deceased. In view of my reasoning, I am unable to sustain the impugned order.

9. In the result, the appeal is allowed. The impugned order dated 19-2-1992 is set aside. The ornaments referred to in Exh. 27 be handed over to the appellant.

10. Appeal allowed.