

(1980) 09 PAT CK 0003

In the Patna High Court

Case No : Criminal Miscellaneous No. 705 of 1978

Kashi Prasad and Shyam Babu Prasad

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 18-09-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2, 4, 468
Dowry Prohibition Act, 1961 — Section 3, 4, 5, 7

Citation : (1980) PLJR 281

Hon'ble Judges : C.N. Tiwary, J

Bench : Single Bench

Advocate : Naseem Ahmad, Hazarilal and S.M. Niamtullah, for the Appellant;
B.P. Gupta, Vijay Nandan Sahay and Dharnidhar Mishra, for the Respondent

Final Decision : Allowed

Judgement

C.N. Tiwary, J.—This is an application for quashing the order of the Subdivisional Judicial Magistrate, Patna City, dated 17th December, 1977, by which he has taken cognizance of offence under Sections 3 and 4 of the Dowry Prohibition Act, 1961, (hereinafter referred to as "the Act"), against two petitioners. Petitioner no. 2, Shyam Babu Prasad, is son of petitioner no. 1, Kashi Prasad, opposite party no. 2, Sangaldip Prasad; filed a petition of complaint on 5.7.1977 against the petitioners with these allegations:

That, negotiation for the marriage of Meera Devi, daughter of complainant Sangaldip Prasad, with accused petitioner no. 2, Shyam Babu Prasad, took place between the complainant-opposite party no. 2 and the accused-petitioner no. 1 Kashi Prasad and it was agreed that the complainant would have to bear the expenses of the Barat going from Patna City to Revilganj and back and the Tilak would take place on 7.7.1975 and the marriage on 13.7.1975. The complainant paid Barat expenses and also made arrangement for light, band etc. But the accused persons did not take Barat to Revilganj on 13.7.75, with the result the marriage could not be solemnized on that date. On 14.7.1975 at about 4 P.M. the

complainant went to the house of the accused persons with certain relatives and asked them the reasons for not taking the Barat on 13.7.1975. The accused persons made a demand of Rs. 5,000/- as dowry from the complainant Sangaldip Pd. for the first time and refused to take the Barat to Revilganj. The complainant requested them not to demand dowry but they remained adamant. On 14.7.1975 some relatives of the accused persons came to the residence of the eldest son-in-law of the complainant at Chiraiyantand where the complainant was staying and told the complainant that the accused persons were ready to perform the marriage provided the marriage was performed at Chiraiyantand. The complainant brought the girl and his family members to Chiraiyantand and 17.7.1975 was fixed as the next date for marriage. Marriage was performed on the night of 17.7.1975 at Chiraiyantand. On 18.7.75 complainant's daughter was taken by accused Shyam Babu Prasad (petitioner no. 2) to his house at Chowk Patna city and there they remained as husband and wife for a week. Complainant's daughter was thereafter brought to Chiraiyantand at the residence of the complainant's eldest son-in-law. Accused Shyam Babu Prasad also came there twice and stayed with his wife and during his stay he informed his wife and her parents that unless Rs. 5,000/- was paid as dowry to accused Kashi Prasad, (petitioner no. 1), it would not be possible to maintain good relationship between the family of the accused persons and the family of the complainant and he too might feel some difficulty in coming to the house of the complainant to visit his wife Meera Devi After a short stay at Chiraiyantand, the complainant with his family members including Meera Devi returned to his home at Chapra. When 5 or 6 months passed and no letter from the accused-persons was received by the complainant for the Gauna (Rokshadi) ceremony of Meera Devi, the complainant grew suspicion and requested the accused persons through a letter in the second week of February, 1976 to let him know the date for Gauna of Meera Devi but they gave no reply. The complainant then came to Patna and met accused Kashi Prasad (petitioner no. 1) at his residence at Chowk Patnacity in the first week of March, 1976, and requested him to fix a date for the Gauna of Meera Devi. Accused Kashi Prasad flatly refused to perform the Gauna unless Rs. 5,000/- was paid as dowry to him. In the second week of December, 1976, the complainant requested Shri Raj Kishore Babu and Shri Abhay Babu of that place to persuade the accused persons for performing Gauna of Meera Devi but the accused remained adamant and refused to do so. Several Panchayaties took place but the accused persons totally refused to perform Gauna of Meera Devi unless the demand of Rs. 5,000/- as dowry was satisfied. Thereafter, Sangaldip Prasad (opp. party no. 2) filed a petition of complaint on 5-7-1977 under Sections 3 and 4 of the Act against both the accused persons.

2. The learned Magistrate took cognizance of the offence under Sections 3 and 4 of the Act by the impugned order dated 17-12-77. It is for quashing of this order that this application has been filed.

3. It is urged on behalf of the accused persons that the learned Magistrate took cognizance of offence u/s 3 and 4 of the Act after lapse of the period of limitation

and, therefore, the order of taking cognizance is liable to be quashed.

4. As pointed out above, the allegation in the complaint petition is that the accused persons made a demand of Rs. 5,000/- as dowry for the first time on 13-7-75 before the solemnization of the marriage, but subsequently this demand for dowry was given up provided the marriage was performed at Chiraiyantand at Patna.

5. The marriage was performed on 17-7-1975 at Chiraiyantand and shortly thereafter the accused Shyam Babu Prasad (petitioner no. 2) told his wife Meera Devi and her parents that unless Rs. 5,000/- was paid as dowry it would not be possible to maintain a good relationship between the two families. In the first week of March, 1976, accused-petitioner no. 1 flatly refused to perform Gauna unless Rs. 5,000/- was paid as dowry. In the second week of December, 76, also the accused persons told the two persons sent by the complainant that unless the dowry of Rs. 5,000/- was paid Gauna would not be performed. Thus, we find that the first demand of Rs. 5,000/- as dowry was made on 13-7-75 before the solemnization of the marriage but this demand was given up later on. It is clearly stated in Paragraph 8 of the complaint petition that the complainant was assured that there was no demand for dowry. The demand of Rs. 5,000/- as dowry was, however, again made by accused Shyam Babu Prasad (petitioner no. 2) some days after the solemnization of the marriage. The exact date of this demand is not given in the complaint petition but this demand was made during the stay of the complainant and his family members at Chiraiyantand after the marriage. This demand was never given up and in the first week of March, 1976, accused Kashi Prasad flatly refused to perform Gauna unless Rs. 5,000/- as dowry was paid to him. In second week of December, 1976, the accused persons simply reiterated the demand made in the first week of March, 1976. In the circumstance, the period of limitation if any, will run from a date not later than the first week of March, 1976.

6. Learned counsel appearing on behalf of the complainant opposite party no. 2 contends that there is no period of limitation for filing a complaint under the provisions of the Act. Section 7 of the Act which is a Central Act lays down as under:--

7. Cognizance of offence--Notwithstanding anything contained in the Code of Criminal Procedure, 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 authorised by this Act on any person convicted of an offence under this Act.

By Bihar Amendment Act no. 4 of 1976, Section 7 of the Central Act was amended and the amended Section 7 runs thus:--

7. Trial of offences--Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act 11 of 1974) no Court inferior to that of Metropolitan Magistrate or a judicial Magistrate of the first class shall try any offence under this Act.

The argument of the learned counsel for the complainant--opposite party no. 2 is that the amended Section 7 does not prescribe any period of limitation and this impliedly mean that now there is no period of limitation for filing a complaint or for taking cognizance of offence under the Act. There is no substance in this argument. The maximum sentence of imprisonment prescribed u/s 3 and 5 of the Act is six months. A new Section 468 prescribing the period of limitation for taking cognizance in certain categories of offences has been inserted in the Code of Criminal Procedure 1973, which came into force in the year 1974 i.e. before the passing of Bihar Amendment Act no. 4 of 1976. The period of limitation prescribed u/s 468 of the Code of Criminal Procedure for taking cognizance of offence punishable with imprisonment for a period not exceeding one year is one year only. It seems that in view of the new provision contained in Section 468 which came into force in the year 1974, Section 7 of the Act was amended by Bihar Amendment Act no. 4 of 1976, deleting the period of limitation prescribed thereunder. Be that as it may, even if, there is no period of limitation prescribed in the Act for filing a complaint or for taking cognizance in respect of offence under Sections 3 and 4 of the Act, the provisions contained in Section 468 of the Code of Criminal Procedure in this regard will apply and the period of limitation for taking cognizance in the instant case would be one year as provided u/s 468. Cognizance in this case was taken on 7.7.1977 i.e. more than one year after the first week of March, 1976, when the accused flatly refused to perform Gauna unless Rs. 5,000/- was paid to them as dowry. Thus the order taking cognizance against the petitioners--accused is barred by limitation and is liable to be quashed on this ground alone.

7. It is next urged on behalf of the accused persons that the allegations made in the complaint petition do not constitute any offence u/s 3 and 4 of the Act. Dowry has been defined in Section 2 of the Act as followed:--

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 the 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 dowry mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Section 4 of the Act lays down, inter alia:--

4. Penalty for demanding dowry: If any person, at the commencement of this Act, demands, directly or indirectly from 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.

The definition of dowry as given in Section 2 when read with Section 4 of the Act makes it clear that the demand of dowry as envisaged u/s 4 has reference to the property or valuable security agreed to be given directly or indirectly before or after the marriage as consideration of the marriage. In other words, provision of Section 4 would be applicable in 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. In the instant case, there is no allegation that Rs. 5,000/- was even agreed to be given as consideration of the marriage. No where in the complaint petition it is said that the demand of Rs. 5,000/- was made as a consideration for the marriage. The demand of Rs. 5,000/- is alleged to have been made after the solemnization and consummation of the marriage. There is no allegation that the demand of Rs. 5,000/- was made as consideration for the marriage. In my view, therefore, the allegation made in the complaint petition do not constitute any offence u/s 3 and 4 of the Act.

In the result, the application is allowed and the order of the learned Sub-divisional Judicial Magistrate, Patnacity, dated 17-12-1977 taking cognizance of offence u/s 3 and 4 against the accused persons (petitioners) is hereby quashed.