

(2004) 04 JH CK 0038

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1321 of 2002

Nasim Parvez and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 16-04-2004

Acts Referred:

Dowry Prohibition Act, 1961 — Section 4

Citation : (2004) 1 JCJR 334 : (2004) CriLJ 3433 : (2004) AIR Jhar HCR 1793 : (2004) 2 BLJR 1303 : (2005) 4 JLJR 577 : (2005) 2 JCR 535 : (2005) 2 DMC 428 : (2005) 31 AllIndCas 74

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : R.S. Mazumdar, J. Mazumdar and A. Banerjee, for the Appellant; APP, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—Petitioner has prayed for quashing the entire criminal proceeding initiated against the petitioner including the order dated 9.9.2002 passed by Sub-Divisional Judicial Magistrate, Giridih whereby he has taken cognizance for the offence u/s 4 of the Dowry Prohibition Act against the petitioners in connection with T.R. Case No. 2184 of 20902, Giridih P.S. Case No. 128 of 1985.

2. Mr. R.S. Mazumdar, learned counsel for the petitioners assailed the impugned order of cognizance mainly on the ground that as per the Bihar Amendment in Section 4 of the said Act no prosecution can be launched without the sanction of the competent authority notified by the Government. In this connection learned counsel relied upon the decision of the Supreme Court in the case of Rajesh Kumar Kejriwal and Ors. vs. The State of Bihar and Anr., (1997) 10 SCC 524 . Section 4 of the Dowry Prohibition Act reads as under:

"Penalty for demanding dowry.--If any person demands, directly or indirectly, from the parents or other relatives or guardian or 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 a sentence of imprisonment for a term of less than six months."

3. The aforesaid provision has been substituted by the State of Bihar by amendment Act 4 of 1976 with effect from 20.1.1976. The amended provision reads as under:

"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 ten thousand rupees : .

Provided that no Court shall take cognizance of any 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." (Bihar Act 4 of 1976 w.e.f. 20.1.1976).

4. Taking into consideration the Bihar. Amendment, the Supreme Court quashed the cognizance for want of sanction u/s 4 of the amended provision of the Act. The Apex Court observed:

"The limited question on which the notice was issued is to the effect whether previous sanction is required to be taken from the appropriate authority before , taking cognizance for offences under Sections 3 and 4 of the Dowry Prohibition Act of 1961. It appears that under amendment in the Bihar Act IV of 1976 a proviso has been added under which it is necessary that previous sanction of the State Government or of such officer as the State Government may, by general or special order, specify in that behalf, should be obtained before initiating any prosecution u/s 4 of the Dowry Prohibition Act, 1961. Such amendment was given effect to from 20.1.1976. The prosecution having been launched u/s 4 of the Dowry Prohibition Act alongwith other offences on 2.3.1994, such prosecution under the Dowry Prohibition Act without sanction is not permissible. Cognizance of. offences u/s 4 of the Dowry Prohibition Act is, therefore, quashed. It will, however, be open to the respondents to initiate proceedings under the said provision after taking appropriate sanction. So far as cognizance of other offences is concerned, namely, Sections 323, 34, 387, 498A and 506 of the Indian Penal Code, there is nothing on record to hold that cognizance was without, jurisdiction. This appeal is accordingly disposed of."

5. Learned counsel for the opposite parties is not in a position to rebut the submission made by the learned counsel for the petitioners. Taking into consideration the amended provision of Dowry Prohibition Act and the ratio decided by the Supreme Court quoted herein above, I have no option but to

quash the impugned order of cognizance passed by the Court below.

6. This application is, therefore, allowed and the impugned order of cognizance as taken against the petitioners is quashed.