

(2011) 03 AP CK 0056
In the Andhra Pradesh High Court
Case No : Criminal P. No. 2976 of 2009

Rajesh Gutta

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 162, 188
Dowry Prohibition Act, 1961 — Section 3, 4
Evidence Act, 1872 — Section 145, 27, 32
Penal Code, 1860 (IPC) — Section 494, 498A, 511

Citation : (2011) 3 Crimes 236 : (2011) 2 DMC 655 : (2011) 5 RCR(Criminal) 452

Hon'ble Judges : Raja Elango, J

Bench : Single Bench

Advocate : Raja Gopallavan Tayi, for the Appellant; Public Prosecutor for the Respondent No. 1 and C. Praveen Kumar, for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Raja Elango, J.—Since the de facto complainant in both the petitions is one and the same and the Petitioners are the husband and mother-in-law of the daughter of the complainant respectively, both the petitions heard together and are being disposed of by this common order.

2. Petitioners approach this Court with a prayer to quash the proceedings against them in C.C. No. 507 of 2006 on the file of the XIII Additional Chief Metropolitan Magistrate, Hyderabad, whereby they are facing charge for the offence punishable under Sections 498-A, 494 and 511 of IPC and 3 and 4 of the Dowry Prohibition Act.

3. Heard both sides.

4. The marriage of the de facto complainant's daughter with the Petitioner in Crl.P. No. 2976 of 2009 took place in the year 2004. The complaint is lodged on

31.07.2006. For the disposal of this petition, for better appreciation this Court is of the view that the entire complaint can be reproduced even though it is in length:

Date: 31st July 2006.

To The Station House Officer, Malakpet, Hyderabad.

Sub: Complaint regarding demand for dowry, accepting dowry, demand for additional dowry and subjecting my daughter Mrs. Pallavi to extreme cruelty on failure to meet the said demands.

Sir/Madam, 1. I, Ram Mohan Rao, V. Pasupuleti, a native of Hyderabad and residing in U.S.A. submit the following facts with regard to the offences committed by my Son-in-law Mr. Rajesh Gutta and his family members in subjecting my daughter Mrs. Pallavi to extreme cruelty during her matrimonial life in India especially in Hyderabad and later on in U.S.A., for demanding dowry before the marriage and for unlawful demands after the marriage and planning for bigamy.

2. I state that during the middle of the year 2004, I was looking for a marriage alliance for my daughter a graduate with Honours in Chemistry and working as a supervisor in a pharmaceutical company in Philadelphia, Pennsylvania, U.S.A. I got the reference of Mr. Rajesh Gutta residing in Birmingham, Alabama State, U.S.A. in July 2004 through Bharat matrimony website. I contacted him over phone and found out details of his family members, given as Smt. Swarajya Lakshmi (mother), Satish Gutta (Younger brother) Sakhamuri Rama Chandra Rao (adopted father), S. Parvathi Devi (adopted mother). On my invitation Mr. Rajesh visited my house on 29.08.2004 and then I contacted his elders in India for the alliance. I was shocked at the terms and pre-conditions put forth for finalizing the alliance, which included payment of Rs. 15 lakhs dowry before marriage (document enclosed), a diamond ring for the bridegroom and expensive clothes for their relatives numbering 13 families. Though I was opposed to the practice of dowry demand, I was forced to accept the same.

3. I state that on account of the above "dowry" demands by the said persons and insistence for payment of dowry before marriage, I transferred 30,000/- U.S. dollars to bank account No. 001-1-427374/602601508969 of Mrs. Gutta Swarajya Lakshmi maintained in ICICI bank in India on 12th October 2004 as per their demand (document enclosed).

4. On 4th Nov-2004 the above said persons visited our house at Plot No. 166, Sri Puram Colony, Malakpet, Hyderabad - 500 016 and insisted that an additional amount of Rs. 2,50,000/- must be paid to Smt. G. Swarajya Lakshmi, Rs. 1,50,000/- being to complete the agreed sum of Rs. 15.00 lakhs towards dowry and Rs. 1,00,000/- for jewellery for the bridegroom, I obtained a Demand Draft for Rs. 2,50,000/- bearing No. 0717843372 drawn on SBI, Main Branch, Hyderabad on 16th November 2004 favoring Mrs.G. Swarajya Lakshmi i.e. two

days before the marriage scheduled on 18th November 2004.

5. I state that the marriage of my daughter with Mr. Rajesh Gutta was performed as per Hindu rights and traditions on 18th November, 2004 at Jaya Gardens, Somajiguda, Hyderabad (documents & photographs enclosed) in the most befitting manner and registered in Court on 20th November, 2004 (document enclosed).

6. Immediately after the marriage Mrs.G. Swarjya Lakshmi demanded that I should pay an additional sum of Rs. 1,50,000/- towards Adapaduchu Katnam at the marriage venue for his cousin sisters, two of whom were living abroad while the third sister Mrs. Sashikala residing in India. This amount was paid in cash to Mrs. Sashikala who attended the wedding.

7. I state that after the marriage of my daughter she was in India till 27th November, 2004 and immediately after the marriage, my son-in-law, his mother and his younger brother started humiliating my daughter with nasty comments for trivial issues. On the day of their marriage my son-in-law informed my daughter that he was offered Rs. 50.00 Lakhs as dowry for an Australian alliance but married my daughter, as she was a U.S. Citizen.

8. I state that before the marriage Mr. Rajesh was staying at Alabama and my daughter was employed in Philadelphia, Pennsylvania and both of them had mutually decided that after the marriage my daughter will continue her job and commute to Alabama. In February/March 2005, Mr. Rajesh my son-in-law forced my daughter to resign her job threatening that he would abandon her and the marriage if she did not leave the job and move to Alabama.

9. I submit that after my daughter joined him at Alabama, my son-in-law started demanding for more money on some pretext of the other including purchase of a flat in Chennai, India.

10. In June 2005 my son-in-law forced my daughter to increase the credit limit of her credit card and made her transfer 8,000/- US dollars for clearing his pre-marital debts. On resistance my daughter was frequently subjected to physical assault and cruelty.

11. In Sep. 2005 when my daughter and my son-in-law came to India for 15 days my daughter's mother-in-law humiliated, abused and insulted her and most of the times she was put under house-arrest.

12. When my daughter returned to U.S. on 25th Sep. 2005 along with her husband she was in nervous wreck condition on account of the continuous harassment by her husband and mother-in-law. My daughter came to our house on 30th Sep. 2005 in order to regain normally and requested her husband to come over to Philadelphia to sort out the issues but he refused. The conduct of my son-in-law and his close relatives namely. Mrs. G. Swarajya Lakshmi, Mr. Rama Chandra Rao and Mrs. Parvathi resulted in my daughter going into a state of depression, which drove her to a suicidal mood on several occasions.

13. On 14th Oct.05 my son-in-law came to my house, apologized for his cruel behavior and actions and made a firm commitment that he would change his behavior towards my daughter. It was a great news for all of us and my daughter showed her willingness to join her husband in the 1st week of Nov. 2005 .

14. All of us went to Alabama on 4th Nov. 2005 but my son-in-law was not present at the house. To my daughter's surprise she found an envelope containing a credit card in her name, which she had never applied. On enquiry she came to know that her husband had obtained a credit card in her name using her social security number and 5,000/- U.S. dollars had already been withdrawn through the said card. This act of my son-in-law was nothing but an identity-theft and fraud. Anticipating further fraudulent transactions by her husband my daughter alerted the Credit Card Bureau.

15. Immediately after we returned from Alabama my son-in-law rang to my daughter and requested her to join him. Smelling a foul-play of being killed she did not go.

16. We came to know through reliable sources that my son-in-law has been planning to get married again though his marriage with my daughter was still subsisting. This was confirmed when we checked his profile on websites of two reputed marriage bureaus (Bharat Matrimonial & Kaakateeya Matrimonial) (documents enclosed) wherein he had renewed his profile for marriage on 22nd Oct.2005, claiming himself to be a 27 year old eligible bachelor, which is nothing but clear case of attempting to commit bigamy.

17. Simultaneously my son-in-law started making false accusations assassinating my daughter's character and filed for divorce in December 2005. The above acts had a severe effect on my daughter's physical and emotional condition due to which she went into a state of acute depression.

18. The present miserable state of my daughter is because of the greed of my son-in-law and his parents in demanding additional dowry for monetary gains and continued harassment and mental & physical torture by the above said persons.

19. We have recently come to know through reliable sources that my Son-in-law Mr. Rajesh Gutta is getting married again, scheduled to be held in USA in the first week of August"2006.

20. I also bring to your kind notice that my daughter's mother-in-law Smt. Swarajya Lakshmi Gutta, presently staying in Chennai, will leave for USA in the early hours of Tuesday the 1st August 2006 to attend her elder son's marriage. We are also informed that the younger brother of my son-in-law will also reach USA from London by the time of the marriage.

I state that I have come to Hyderabad only to register this complaint as the marriage was performed as per Hindu rights and traditions at Hyderabad and also registered at Hyderabad and therefore I request you to register this FIR and

initiate appropriate actions. Additional documents / details will be submitted in due course of time.

Once again I request you to kindly initiate immediate action in preventing Mrs. Swarajya Lakshmi Gutta, one of the accused, from leaving India from Chennai to USA.

As the accused are residing in Chennai and in U.S.A for which a specialized investigating agency is necessary to bring the culprits to book, therefore, I request you to take necessary action against the following persons....

5. On the basis of the said complaint, the Investigating Officer registered FIR and examined the witnesses. The statement of L.W.1 who is the complainant herein is reproduction of the complaint. The aggrieved party, wife of the complainant, is not examined by the Investigating Officer as envisaged under the provisions of the Code of Criminal Procedure. It is stated in the charge sheet that he has contacted the said witness and she confirmed the contents of the complaint, but he has not recorded any statement by examining her personally and also the Investigating Agency relied on the statement forwarded by the said witness attested by a notarized public. This Court is of the view that the said procedure and reliance on the statement is not legally acceptable. The reading of Section 162 Code of Criminal Procedure runs as follows:

Section 162. Statements to police not to be signed: Use of statements in evidence:

1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for an purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made;

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of Clause (1) of Section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of Section 27 of that Act.

6. It is the admitted case of the Respondent that she has forwarded a statement attested by a notarized public signed by her. The section specifically prevent the officer from obtaining signature in the statements recorded u/s 162 Code of

Criminal Procedure and also the Section 161 clearly speaks about the manner with which the investigation be conducted and the statements to be recorded.

Section 161 Code of Criminal Procedure also runs as follows:

Examination of witnesses by police - 1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

7. In which it is clearly stated that the police Officer has to question the victim girl, witnesses and contradict the witnesses and record the same. In the present case, the statement of the victim girl is concerned, the investigation officer stated in the charge sheet that he has contacted her and she confirmed the contents of the complaint given by the complainant. This Court is of the view that the Investigating Officer has to confirm the allegations mentioned in the complaint with the aggrieved person. This Court is of the view that the Officer, who is investigating the case, should record the statement as per the above said provisions. The first duty of the Investigating Officer is to find out the probability and truthfulness of her complaint unless otherwise the complainant's version appraised by the Investigating Officer with the facts and circumstances of the case. Merely recording the statement as stated by the witnesses cannot be called as investigation. Investigation includes examination of the witnesses, confronting the witnesses on the basis of materials collected by the Investigating Officer and also the version of the person who is aggrieved because of the said complaint. Mere reproduction of the complaint without proper examination cannot be called as statement recorded during investigation.

8. The entire reading of the complaint and charge sheet, it is evident that the entire occurrence took place in the United States of America. The allegations contained in the complaint also regarding the occurrences in the United States of America. Of course, the offence committed by a person, which is punishable under the law in India, he can be prosecuted for the offence committed abroad. But, at the same time Section 188 of Code of Criminal Procedure mandates that no court shall take cognizance except the previous sanction by the Central Government when an offence is committed outside the jurisdiction of India.

Section 188 of Code of Criminal Procedure reads as follows:

Offence committed outside India:

When an offence is committed outside India-a) by a citizen of India, whether on the high seas or elsewhere; or b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

In such a case, the cognizance taken by the learned Magistrate also bad in law. Further, on perusal of the complaint and charge sheet, the main allegations are as follows:

1. The complainant's daughter was humiliated in front of others in U.S.A.;
2. To the surprise of the complainant's daughter, she saw a credit card which is in the house of the accused for which she has not applied;
3. The husband insisted her to enhance the credit limit for the credit card which was in her possession;
4. The Petitioner in CrI.P. No. 2976 of 2009 informed as he is unmarried one and tried to have another marriage and also he is subscribing in the matrimonial web site even after the marriage; and In the last portion of the complaint, it is stated that the Petitioner in CrI.P. No. 2976 of 2009 tried to marry another lady and to celebrate the said marriage, he tried to go to abroad.
9. And in the said complaint, here and there some references were made regarding the demand of dowry. It is well settled that mere demand of dowry will not attract an offence u/s 498-A IPC.

Section 498-A IPC runs as follows:

Husband or relative of husband of a woman subjecting her to cruelty: Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty, shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation: For the purposes of this section, "cruelty"

means-(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

10. There are two elements in the above said section which includes the explanation, which clearly indicates "cruelty" means by way of harassment driving a woman to commit suicide or to suffer with injury, second element of the said section indicates that the harassment should be in connection with demand of dowry.

11. On the entire reading of the complaint, the above said ingredients are totally not attracted, more particularly, the Petitioner in CrI.P. No. 4921 of 2010 against the mother-in-law of the victim girl.

12. Further the learned Counsel for the Respondent is not in a position to inform why the wife of the Petitioner has not lodged the complaint and what prevented her from lodging a complaint. Even based on the present complaint, which is in the nature of hearsay, this Court is of the view that no offence made out as alleged in the charge sheet.

13. Hence, the proceedings against the Petitioners in C.C. No. 507 of 2006 on the file of the XIII Additional Chief Metropolitan Magistrate, Hyderabad, are hereby quashed.

14. With the above observation, both the Criminal Petitions are allowed. The miscellaneous petitions, if any, filed along with the criminal petitions shall stand closed.