

(2005) 11 JH CK 0010

In the Jharkhand High Court

Case No : Criminal Revision No. 210 of 1998 (R)

Saranan Chattopadhyaya

APPELLANT

Vs

State of Bihar (Now Jharkhand) and Another

RESPONDENT

Date of Decision : 22-11-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245(1)

Dowry Prohibition Act, 1961 — Section 4

Penal Code, 1860 (IPC) — Section 420

Citation : (2006) CriLJ 921 : (2006) 1 JLJR 141 : (2006) 1 JCR 101 : (2006) 1 EastCriC 345 : (2006) 1 DMC 663 : (2006) 38 AllIndCaS 913 : (2006) 1 AIRJharR 162

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : S.K. Laik, for the Appellant; Benani Verma, APP and Kalyan Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.

1 .In this application the petitioner has challenged the order dated 27.4.1998 passed by the trial Court rejecting the petition u/s 245(1) of the Code of Criminal Procedure filed by the petitioner for his discharge.

2. The facts in short are that a complaint petition was filed by the opposite party No. 2 before the Chief Judicial Magistrate, Dhanbad, against the petitioner and one Budha Dev Banerjee for commission of the offence u/s 420 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, which was registered as C.P. Case No. 268 of 1995.

3. In the complaint petition, it was alleged that the complainant-opposite party No. 2, had a marriageable daughter, namely, Meena Chakraborty and he was in search of matching groom for his daughter. A common relative, namely, Budhdev Banerjee (the other co-accused) assured the complainant that the marriage

between her daughter and Asish Chattopadhyaya, son of petitioner can be settled provided some cost and expenses are paid to him for approaching the petitioner, who at that time at Vishakapattannm. Accordingly, the complainant paid Rs. 10,000/- to the other co-accused Budhadev Banerjee. It was further alleged that the petitioner being the father of the boy gave his consent for the marriage of his son and the date of marriage was also fixed, but later on, the accused stated demanding dowry which could not be fulfilled and therefore, the accused petitioner cancelled the marriage by sending telegram.

4. Cognizance was taken u/s 4 of the Dowry Prohibition Act and u/s 420 of the Indian Penal Code.

5. Subsequently two witnesses were examined by the complainant before charge. At that stage a petition u/s 245(1) of the Code of Criminal Procedure was filed on behalf of the petitioner stating therein that there was no material at all on the record to frame charge against the petitioner and therefore, he may be discharged.

6. The learned Magistrate by the impugned order rejected the said petition for discharge holding that there was prima facie evidence on record to frame charge u/s 420 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.

7. On behalf of the petitioner a specific point was raised that in view of Bihar Amendment which came into force in 1976, no cognizance could have been taken against the petitioner for the offence u/s 4 of the Dowry Prohibition Act, unless a sanction was obtained from the competent authority as envisaged under proviso to Section 4 of the Act by way of Bihar Amendment. From the impugned order, I find that the learned Magistrate has not even touched the said point and only in one line has stated that he has found prima Jade evidence to frame charge u/s 4 of the Dowry Prohibition Act. Therefore, it appears that the impugned order suffers from non-application of mind.

8. Mr. S.K. Laik, learned Counsel appearing for the petitioner relying on a decision in the case of Rajesh Kumar Kejriwal and Ors. vs. The State of Bihar and Anr., (1997) 10 SCC 524 , submitted that the cognizance taken u/s 4 of the Dowry Prohibition Act was absolutely bad-in-law in view of the Bihar Amendment of 1976, whereby obtaining of sanction was a condition precedent for taking cognizance for the offence u/s 4 of the Dowry Prohibition Act.

9. Mr. Kalyan Banerjee, learned Counsel for the opposite party No. 2, rather conceded on this point.

10. So far as the offence u/s 420 of the Indian Penal Code is concerned, admittedly, according to the complainant, no money was paid directly to the petitioner by the complainant nor there was any material on record to show that the petitioner in any way induced the complainant to deliver any property or money and, therefore, in my view, there was no material at all to frame charge u/s 420 of the Indian Penal Code.

11. In view of the discussions and findings above, I hold that the learned Court below has wrongly refused to discharge the petitioner. Accordingly, this application is allowed. The impugned order of the learned Court below is hereby set aside and the petitioner is discharged.