
(2004) 08 PAT CK 0108

In the Patna High Court

Case No : Criminal Miscellaneous No. 5311 of 2003

Shital Prasad and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 09-08-2004

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4

Citation : (2004) 4 PLJR 846

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Judgement

Mridula Mishra, J.—These two applications have been filed for quashing the order dated 7.1.2003 passed in complaint case No. 1140 (C) of 1999 by which the S.D.J.M., Patna, has dismissed the petition for discharge filed by the petitioners. The petitioners have raised the point that the prosecution under sections 3/4 of the Dowry Prohibition Act is bad as no sanction was obtained for prosecution under sections 3/4 of the Dowry Prohibition Act as provided u/s 4 of the Dowry Prohibition Act, 1976.

2. Point in issue is whether sanction is necessary for prosecution under sections 3/4 of the Dowry Prohibition Act, 1976 subsequent to amendment of section 4 of the Central Act vide Act 63 of 1984 which replaced section 4 of Dowry Prohibition Act 1961 and removed the sanction portion from the Central Act.

3. Dowry Prohibition Act 1961 was enacted on 20th May 1961 as No. XXVIII.

The initial section 3 and 4 was as below:

Section 3:-

If any person, after the commencement of this Act, gives or takes or abets the giving or taking of 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.

Section 4:-

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, or with fine which may extend to five thousand rupees, or with both.

Provided that no Court shall take cognizance of an 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.

4. Since the Central Act contained the provisions of previous sanction, by State amendment, section 4 of the Dowry Prohibition Act was amended by Bihar Act IV of 1976.

Section 4. 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 five 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."

5. In view of the Central Act the State amendment was in order and not repugnant. Later on the legislature felt the practical difficulty in obtaining sanctions by the victims and thus the Central Act by its amendment of 1984 vide Act 63 of 1984 replaced section 4 and removed the sanction portion from the Central Act.

6. The substituted Section 4 by Act 63 of 1984 is as below :-

"If any person demands, directly or indirectly, from the parents or other relatives or guardian of 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 terms or less than six months."

7. Thus section 4 of the Parent Act of 1961 was given a go by and was substituted by a new Act of 1984. The Bihar amendment brought in 1976 remained unamendment. The issue that what will be the fate of the prosecution, in which no sanction was obtained subsequent to the amendment in the Central Act and there being no amendment in the State Act, arose for consideration on several occasions before this Court. This issue was finally set at rest by a Division

Bench of this Court reported in 1992 PLJR 560 (Deonarain Lai's case). Their Lordships in the Division Bench while dealing with the question of sanction as provided by 76 Act held that when the Central Law not specifically repeal the State Law, the State Law in such a case will be void if it conflicts with Central Law. Relying on the decisions of 1954 (SC) 752 (Zaverbhai Amaldas vs. State of Bombay) and T. Barai Vs. Henry Ah Hoe and Another, their Lordships came to the conclusion that State amendment of 1976 was void in view of the fact that Central Act of 1984 did not provide for previous sanction.

8. Subsequent to the Division Bench of this court, a case from Bihar was decided by the Supreme Court reported in Rajesh Kumar Kejriwal and Ors. vs. The State of Bihar and Anr., (1997) 10 SCC 524 . In this decision it has been held that "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 along with 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." In view of two conflicting decisions i.e. 1992 Vol. II PLJR 560 and Rajesh Kumar Kejriwal and Ors. vs. The State of Bihar and Anr., (1997) 10 SCC 524 on the point of sanction for prosecution u/s 4 of the Dowry Prohibition Act, these two cases are referred for being placed before a larger Bench for deciding this issue whether sanction of prosecution is necessary u/s 4 of the Dowry Prohibition Act, 1961, considering the amendment in the Central Act as well as amendment in the Bihar Act IV of 1976.