

(2007) 08 DEL CK 0250

In the Delhi High Court

Case No : Bail Application No. 1711 of 2007

Smt. Surjit Kaur Chopra

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 21-08-2007

Acts Referred:

Dowry Prohibition (Maintenance of Lists of presents to the Bride and Bridegroom)
Rules, 1985 — Rule 2, 2(2)
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 34, 406, 498A

Citation : (2007) 98 DRJ 646

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : K.T.S. Tulsi, Karan Singh, Santosh Chaurihar, Miraj Kain and Ravinder Singh, for the Appellant; Anil Soni, K.K. Manan, Tarun Goomber, Rishikesh Choudhary and Gaurav Goswami, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.

FIR No.6/2007 dated 3.1.2007

under Section 498A/406 IPC

PS Hazrat Nizamuddin.

1. Vide Bail Application No. 1711/2007, Smt. Surjit Kaur Chopra seeks anticipatory bail. Vide Bail Application No. 1716/2007, Sh. Harbhajan Singh Chopra seeks anticipatory bail. The 2 applicants are the mother-in-law and father-in-law respectively of the complainant, Arti.

2. At the outset, I must refer my displeasure at the manner in which Bail Application No. 1711/2007 has been drafted by learned Counsel for the petitioner.

3. The same is a verbatim copy of Bail Application No. 1716/2007.

4. Use of computers does not mean that learned members of the Bar would not apply their mind. Human beings cannot become computers and start operating themselves by clicking a mouse.

5. Little realizing that in Bail Application No. 1716/2007 reference to the applicant was made as father of the husband of the complainant i.e. as father-in-law of the complainant, even Smt. Surjit Kaur Chopra has been referred to as father of the husband of the complainant i.e. father-in-law of the complainant.

6. In the instant case, the misdescription may be trivial. But in large number of cases I notice that the misdescription is not trivial, more so, when disputes relate to complaints u/s 138 of the Negotiable Instruments Act 1881. In said cases description of the accused with reference to the role assigned becomes relevant. Precious judicial time is wasted in identifying who is being referred to and in what context reference is being made pertaining to persons accused of offence and who have filed quashing petitions challenging the summoning order.

7. It is hoped and expected that learned members of the Bar would justify them being referred to as "learned Counsel". Their being learned must be reflected in their pleadings.

8. Referring to the facts, why else would a father-in-law and mother-in-law be seeking bail? Of course, when their daughter-in-law has filed a complaint resulting in registration of FIR u/s 498A/406/34 IPC. This has happened in the instant case.

9. Since issue of anticipatory bail has to be decided, reference to the FIR becomes necessary.

10. Touching upon the salient features of the FIR, complainant Arti, stated that she met Jitender Singh Chopra, son of the applicants in London in July 2004 through common friends. She states that the two met a number of times and around 3rd week of September 2004 decided to get married in Dubai on 30.9.2004. She stated that she and Jitender Singh Chopra came to Delhi and got engaged. That at the time of engagement presents worth Rs. 15 lakhs were gifted by her parents to the in-laws and relatives of Jitender. That her in-laws gave her jewellery worth Rs. 40 lakhs. That at the asking of her prospective mother-in-law, for relatives who were not present at the engagement, her mother sent additional gifts worth Rs. 5 lakhs. That marriage between the complainant and Jitender was solemnized at Dubai on 27.10.2004 as per Hindu rites and customs. At the time of marriage her mother, relatives and friends gave gifts worth Rs. 70 lakhs. Her in-laws gifted her jewellery worth Rs. 90 lakhs. Next day her mother-in-law took away the jewellery for safe keeping. She and her husband came to Delhi on 3.11.2004 and stayed at the farm house of the in-laws. The couple celebrated their first Deepawali. On said function her relatives gave gifts worth Rs. 40 lakhs to her husband. That her mother and her relatives gave her ancestral jewellery worth Rs. 1.75 lakhs at said function. That her in-laws gave her expensive gifts and jewellery worth Rs. 80 lakhs. That when they

were at Delhi her brother-in-law tried to force himself upon her. That she was disgraced by the family of her in-laws who stated that they expected that she would bring a Mercedes car in her dowry. That when the couple left for their honeymoon her husband compelled her to drink excessively as also to indulge in vulgar sexual acts. That since it was her second marriage she did not speak to anyone. That on 18.1.2005 she and her husband went back to Dubai. For said trip her husband demanded Rs. 25 lakhs from her mother. Her mother arranged Rs. 5 lakhs and gave the same to her husband. That her husband demanded more money. Her mother paid Rs. 15 lakhs. That she came back to Delhi on 29.12.2005 and in spite of requests to hand over her jewellery, none was being returned to her. That her father-in-law wanted her parents to transfer ownership rights of 2 floors of their house in name of her husband. That her mother-in-law had retained her jewellery.

11. According to the petitioners the marriage at Dubai was financed by the petitioners. Entire stay of the family of the bride was paid for by the petitioners. That after the wedding, the newly wed came to Delhi to celebrate their first Deepawali and went back to Dubai in February 2005. They took on rent a villa and resided separately from the petitioners. That the couple separated due to temperamental differences. That their son sought divorce in London due to irreconcilable differences. That the FIR was a counter blast to the divorce petition filed by their son.

12. Before dealing with the rival submissions on the issue whether petitioners should be granted anticipatory bail or not, it has to be noted that petitioners as also their second son i.e. the brother-in-law of the complainant sought anticipatory bail before the learned Additional Sessions Judge. Attempts were made to compromise the matter and in full and final satisfaction of all claims of the complainant not only the FIR be withdrawn but the couple could agree for an amicable settlement. Order dated 29.3.2007 passed by the learned Additional Sessions Judge records that a settlement was arrived at pursuant whereunto complainant would be paid Rs. 4 crores in cash and a flat at DLF Gurgaon worth Rs. 60 lacs would be transferred in her name. Thereafter, the talks broke down inasmuch as offer was reduced to Rs. 2 crores.

13. Petitioners when charged with attempting to wriggle out of an agreed settlement explained that their younger son was briefing the counsel and he was receiving instructions from the husband of the complainant for the reason any payment under the settlement had to be financed by the husband of the complainant. That unfortunately, their son i.e. husband of the complainant could not firm up his mind and for said reason settlement failed.

14. Shri K.T.S. Tulsi, learned senior Counsel for the applicants urged that proceedings for grant of anticipatory bail cannot be converted into a recovery proceedings. Learned senior Counsel urged that the anxiety of the Court to try and effect a settlement between the warring couple may be a laudable act but is alien to the exercise of jurisdiction while deciding an application seeking grant of

anticipatory bail. Learned senior Counsel urged that the well known parameters viz. gravity of the offence, seriousness of the allegations Constituting the offence, possibility of the accused absconding or threatening witnesses of the prosecution, inherent probabilities, for and against the accused are some of the factors which have to be considered by the Court while deciding an application for grant of anticipatory bail.

15. Expanding the argument, learned senior Counsel submitted that documents annexed as Annexure-C to the petitions conclusively establish that the petitioners paid the entire bill at Dubai when marriage took place. Drawing attention to Annexure-D, learned senior Counsel urged that the same evidences that the newly married couple set up separate residence in Dubai. As regards the petitioners, learned senior Counsel urged that they were residents of Delhi. Their son was settled abroad. Except for participating in the joyous occasion of the marriage of their son and showering their blessings and gifts upon the newly wed as also to finance the marriage, the two had no role to play in the matrimonial life of the couple. Learned senior Counsel further urged that allegations in the FIR are alien to the social norms of the society from which complainant, her family and the petitioners come from. Learned senior Counsel explained that main items are gifted to the couple at the time of their marriage. Thereafter, as and when festive occasions occur, small gifts are exchanged. Learned senior Counsel urged that it was unbelievable that at the time of Deepawali celebrations after the couple got married, complainant's family members would gift to their daughter and her in-laws, gifts worth Rs. 1.75 crores. Learned senior Counsel further submitted that the allegations of dowry demand are against the husband i.e. the son of the petitioners. Allegations of mental and physical cruelty are against the husband save and except a vague allegation that on one occasion father-in-law threw a plate at the complainant and abused her as a bitch. Learned senior Counsel stated that the two allegations pertaining to dowry demand against the father-in-law viz. that he expected his daughter-in-law to bring a Mercedes car and a demand for ownership rights of 2 floors in her parent's house at Sunder Nagar are false. Learned senior Counsel submitted that the agreement of the allegation against the mother-in-law is that she retained the jewellery of the complainant.

16. Learned senior Counsel urged that in view of the fact that the complainant and her husband had set up their matrimonial house at Dubai, a residence separate from that of the petitioners, considering the social background of the family of the complainant as also the petitioners it was unbelievable that the complainant would have handed over her jewellery to her mother-in-law.

17. Fulcrum of opposition by learned Counsel for the complainant centered around the orders passed by the learned Additional Sessions Judge regarding a settlement between the parties from which petitioners back tracked. Learned Counsel submitted that the said settlement evidenced the acknowledgment by the petitioners that the complainant had to be recompensed. Learned Counsel

submitted that the jewellery articles of the complainant have yet to be recovered. Counsel submitted that the complainants have started dissipating their assets. Thus, counsel urged that no case is made out to grant anticipatory bail to the petitioners.

18. It is not in dispute that the instant marriage was the second marriage of both parties. Thus, both would be presumed to be aware of not only their matrimonial obligations but even the matrimonial laws. Judicial authorities are replete with a caution by the Courts that the unfortunate tendency to rope in all family members of the in-laws is a growing trend which has two side effects. Firstly, innocent persons suffer the trauma of a criminal prosecution and secondly, even the accused get acquitted for the reason, false implication of innocent persons is followed by presentation of fabricated evidence before the Court. So inextricably interwoven is truth with lies that truth cannot be segregated from lies resulting in benefit of doubt being given even to the accused persons.

19. More often than not, pertaining to dowry, Courts are faced with a dilemma inasmuch as tax avoidance is the norm in India. Huge volume of black money in circulation finds expression in ostentatious marriages. But when called upon to prove that the family had enough assets to justify the stated gifts gifted at the time of marriage, family members of the girl side have no answers. They cannot establish the means to justify their capacity to shower gifts worth crores.

20. In the instant case, before the in-laws of the complainant can be called upon to account for the gifts given by the parents of the girl, the parents of the girl would have to establish their means and their capacity to gift items worth Rs. 3 crores to their daughter and her in-laws.

21. As noted above, agreement of the allegations are directed principally against the husband. No doubt, there is reference against the petitioners pertaining to dowry demand and retention of jewellery, but, as noted above, allegations of dowry demand are against the father-in-law and not against the mother-in-law. Vice versa, allegations pertaining to retention of the jewellery of the complainant is against the mother-in-law and not the father-in-law. Thus, if at all, father-in-law may be answerable to a charge u/s 498A IPC. If at all, mother-in-law may be answerable for a charge u/s 406 IPC.

22. Qua the mother-in-law a circumstance which stands out is that her son and her daughter-in-law had a separate residence at Dubai. The couple was married at Dubai. Whatever may be the jewellery gifted to the complainant at the time of marriage, there is no material on record that when she along with her husband came to India they made a declaration to the Customs Authority that personal jewellery worth crores was being brought by her i.e. the complainant to India. Greater probability would be that either jewellery of the value alleged to be gifted to her by the complainant was not gifted to her, or if gifted, the same was in her custody at Dubai.

23. Pertaining to the father-in-law I find that the allegations are general. It is not

stated in the complaint that because father-in-law desired that the complainant should bring a Mercedes car he i.e. the father-in-law took vengeance against the complainant. What is stated in the FIR is that the father-in-law commented that he expected that the complainant would bring as part of dowry a Mercedes car.

24. Prima facie, it is one thing to have a desire and express the same. It is altogether another thing to raise a demand as per the desire.

25. Allegation of mental cruelty against the father-in-law pertains to an alleged incident when according to the complainant she served cold food to her father-in-law. Prima facie, said allegation of cruelty does not relate to a dowry demand.

26. The only other allegation pertaining to transfer of 2 floors in the house of the complainant's parents at Sunder Nagar is without any particulars i.e. the day or the month when said demand was raised.

27. In the report published as Indian Oil Corporation Vs. NEPC India Ltd. and Others, the Hon''ble Supreme Court lamented as under:

13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

28. In para 19 of the report published as Sushil Kumar Sharma Vs. Union of India (UOI) and Others, the Supreme Court observed as under:

19. The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to the trial. Sometimes adverse media coverage adds to the misery. The question, Therefore, is what remedial measures can be taken to prevent abuse of the well-intentional provision. Merely because the provision is constitutional and intra vires, does not give a license to unscrupulous persons to wreak personal vendetta or unleash harassment. It may, Therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the courts have to take care of the situation within the existing framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used as a shield and not as an assassin's weapon. If the cry of

"wolf" is made too often as a prank, assistance and protection may not be available when the actual "wolf" appears. There is no question of the investigating agency and courts casually dealing with the allegations. They cannot follow any straitjacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that the ultimate objective of every legal system is to arrive at the truth, punish the guilty and protect the innocent. There is no scope for any preconceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumptions that the investigating agencies and the courts start with the presumptions that the accused persons are guilty and that the complainant is speaking the truth. This is too wide and generalized a statement. Certain statutory presumptions are drawn which again are rebuttable. It is to be noted that the role of the investigating agencies and the courts is that of a watchdog and not of a bloodhound. It should be their effort to see that an innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally undisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.

29. In the decision dated 23.2.2007 in CrI.M.C. No. 7262/2006 Neera Singh v. State and Ors. a learned Single Judge of this Court had pains to note as under:

4. Now-a-days, exorbitant claims are made about the amount spent on marriage and other ceremonies and on dowry and gifts. In some cases claim is made of spending crores of rupees on dowry without disclosing the source of income and how funds flowed. I consider time has come that courts should insist upon disclosing source of such funds and verification of income from tax returns and police should insist upon the compliance of the Rules under Dowry Prohibition Act and should not entertain any complaint, if the rules have not been complied with. Rule 2 of the Dowry Prohibition (Maintenance of List of Presents to the Bride and Bridegroom) Rules, 1985 reads as under:

2. Rules in Accordance With Which Lists of Presents Are to Be Maintained. - (1) The list of presents which are given at the time of the marriage to the bride shall be maintained by the bride.

(2) The list of presents which are given at the time of the marriage to the bridegroom shall be maintained by the bridegroom.

(3) Every list of presents referred to in Sub-rule (2)-

(a) shall be prepared at the time of the marriage or as soon as possible after the marriage;

(b) shall be in writing;

(c) shall contain:

- (i) a brief description of each present;
 - (ii) the approximate value of the present;
 - (iii) the name of the person who has given the present; and
 - (iv) where the person giving the present is related to the bride or bridegroom, a description of such relationship.
- (d) shall be signed by both the brides and the bridegroom.

5. The Metropolitan Magistrate should take cognizance of the offence under the Act in respect of the offence of giving dowry whenever allegations are made that dowry was given as a consideration of marriage, after demand. Courts should also insist upon compliance with the rules framed under the Act and if rules are not complied with, an adverse inference should be drawn. If huge cash amounts are alleged to be given at the time of marriage which are not accounted anywhere, such cash transactions should be brought to the notice of the Income Tax Department by the Court so that source of income is verified and the person is brought to law. It is only because the Courts are not insisting upon compliance with the relevant provisions of law while entertaining such complaints and action is taken merely on the statements of the complainant, without any verification that a large number of false complaints are pouring in.

30. Admittedly, neither complainant nor her family members have complied with Rule 2 of the Dowry Prohibition (Maintenance of List of Presents to the Bride and Bridegroom) Rules 1985.

31. Since allegations in the complaint are to the effect that jewellery and gifts worth crores were given by the parents and relatives of the complainant, instant case would require a prior investigation by the investigating officer before petitioners are made to account for the gifts, whether at all the family of the complainant had the means to shower gifts of such magnitude.

32. I note that the husband of the complainant is paying to her a monthly maintenance of Rs. 1 lakh.

33. Learned Counsel for the State did not urge that the petitioners are not cooperating with the IO.

34. The special circumstances of the case may be summarized:

(a) Marriage is a love marriage and took place at Dubai. There is prima facie evidence that marriage expenses were borne by the in-laws of the complainant.

(b) The young couple took up separate residence at Dubai and stayed there after the marriage till they came to India to celebrate their first Deepawali festival. The complainant stayed with her in-laws for about 10 days. The couple departed for their honeymoon.

(c) Allegations in the FIR are primarily directed against the husband. Prima facie

it appears to be a case of temperamental difference between the husband and the wife.

(d) There are no allegations of dowry demand against the mother-in-law. Allegation against her is of retaining the jewellery gifted by her parents as stated by the complainant to be in the value of over Rs. 2 crores. There is no evidence that jewellery of such magnitude was gifted.

(e) Allegations of dowry demand against the father-in-law only relate to transfer of ownership rights of 2 floors in a property at Sunder Nagar in the name of the husband of the complainant. The allegation is of a general nature. The time, date and month of demand has not been specified.

(f) The couple separated at Dubai. The petitioners did not have a joint residence with the complainant and thus could not be in possession of her jewellery.

35. Case is thus made to admit petitioners to anticipatory bail. While so directing, I am conscious of the failed compromise talks before the learned Additional Sessions Judge but I cannot ignore the fact that proceedings for bail cannot be converted into recovery proceedings. I find prima facie justification of the petitioners that their younger son was briefing the counsel and was informing the counsel what was being consented to by the son of the petitioners. If the son of the petitioners back tracks from his commitment, petitioners cannot be faulted with.

36. I additionally note that the complainant is being paid a monthly maintenance of Rs. 1 lakh by her husband.

37. Petition stands disposed of directing that on the petitioners surrendering their passport to the Investigating Officer and cooperating at the inquiry to be conducted by the Investigating Officer, in the event of the petitioners being arrested by the IO, the petitioners would be released on bail by the IO on the petitioners furnishing a personal bond of Rs. 1,00,000/- each with one surety each in the like amount to the satisfaction of the IO in the above captioned FIR.

38. Needless to state, the petitioners would join the investigation as and when required by the IO.

39. Copy of the order be supplied dusty to learned Counsel for the petitioners.