

(1985) 08 PAT CK 0034

In the Patna High Court

Case No : Criminal Reference No. 1 of 1983

State

APPELLANT

Vs

Champalal Sah and Others

RESPONDENT

Date of Decision : 01-08-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 395
Dowry Prohibition (Bihar Amendment) Act, 1975 — Section 7(b)

Citation : (1985) PLJR 816

Hon'ble Judges : S.S. Sandhawalia, C.J.; S. Ali Ahmad, J

Bench : Division Bench

Advocate : Biresh Chakravarty, for the Appellant; Lala Kailash Behari Pd., Public Prosecutor, for the Respondent

Judgement

S.S. Sandhawalia, C.J.—Whether the single Judge judgment in Jhapsi Choudhary and another Vs. The State of Bihar and another, has been rendered per incuriam-- is the solitary, though significant, question in this criminal reference u/s 395 of the Code of Criminal Procedure. In view of the pristinely legal nature of the question involved, it is unnecessary to recount the facts in any great detail. It suffices to mention that the reference arises from a proceeding under the Dowry Prohibition Act of 1961. When the accused persons put in appearance in compliance with the issue of process against them, a preliminary objection was sought to be raised u/s 7(b) of the said Act. It was argued that cognizance could be taken only on the basis of a complaint within one year and therefore, the cognizance taken on the basis of the police report, as was the case, stood vitiated. Firm reliance for this position was placed on Jhapsi Choudhary and another Vs. The State of Bihar and another, . On the other hand, the prosecution pointed out the changes wrought in the Act by the Dowry Prohibition (Bihar Amendment) Act, 1975 which had made the offence under the Act both cognizable and non-bailable. The learned Magistrate took notice of the fact that apparently the provisions of the subsequent amending Act had not been brought to the notice of the Bench in Jhapsi Choudhary's case and, therefore, took the

view that substantial question of law had arisen necessitating the reference of the matter to the High Court.

2. It would appear that the present reference is indeed well merited. It suffices to recall that the Dowry Prohibition Act, which is a Central statute, was enacted a quarter century ago in 1961. However, its actual application within the State did not seem to have come at par with the expectations of curbing the evil of dowry therein. The State Government, therefore, brought certain amendments in the Central Act with a view to making it more stringent and expressly made the offences thereunder cognizable, non-bailable and non-compoundable. To meaningfully notice the "changes brought by the amending Act, it would be apt to juxtapose the provisions of law before and after amendment.--

Before amendment.

7. Cognizance of offences.--Notwithstanding anything contained in the Code of Criminal Procedure (5 of 1898):

(a) no court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence under this Act;

(b) no court shall take cognizance of any such offence except on a complaint made within one year from the date of the offence;

(c) it shall be lawful for a presidency magistrate or a magistrate of the first class to pass any sentence authorised by this Act on any person convicted of an offence under this Act.

8. Offences to be non cognizable, bailable and non-compoundable.--Every offence under this Act shall be non-cognizable, bailable and non-compoundable.

After amendment.

7. Trial of offence, Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act II of 1974) no court inferior to that of a metropolitan magistrate or a judicial magistrate of the first class shall try any offence under this Act.

8. Offence to be cognizable, non-bailable and non-compoundable.--Every offence under this Act shall be cognizable, non-bailable and non-compoundable.

3. It would be manifest from the above that the amending Act has expressly deleted clause (b) of the principal Act which laid down the twin conditions that no court shall take cognizance of any such offence except on a complaint and further spelt out the period of limitation of one year from the date of offence therefor. Equally significant it is that section 8 completely reverses the position by making the offences cognizable by the police and also non-bailable and non-compoundable.

4. Now, a perusal of the judgment in Jhansi Choudhary's case would indicate that the counsel for the parties were solely remiss in not bringing to the notice of

the learned single judge at all the subsequent Dowry Prohibition (Bihar Amendment) Act, 1975 and the consequential change in the law within this jurisdiction. Indeed, all reference to this amending Act is conspicuous by its total absence in the judgment. It was in such a situation that the Bench erroneously relied on the provisions of section 7(b) of the re-amended Act and held that the cognizance could be taken only on a complaint and was totally prohibited on the basis of a charge sheet submitted by the police. Equally it was held that the cognizance taken by the learned chief Judicial Magistrate was barred by limitation.

5. Learned counsel for the parties had no option but to concede that the crucial provisions of the subsequent amending Act had altogether missed notice in the said case. The decision was thus rendered on the basis of the Central Act without regard to the amendment brought about within the State of Bihar.

6. In view of the above, it must be held that the judgment in Jhansi Choudhary's case has been rendered per incuriam without noticing the material and applicable provisions of the Dowry Prohibition (Bihar Amendment) Act, 1975 within this jurisdiction. With the greatest respect, the same has therefore, to be overruled. Consequently, the cognizance taken by the Magistrate below on the basis of a police report suffers from no legal infirmity whatsoever. The answer to the reference is, therefore, made in the terms above. The case would now go back for decision in accordance therewith. The reference is thus accepted.