

(2016) 03 BOM CK 0164

In the Bombay High Court

Case No : Criminal Writ Petition No. 33 of 2016

State of Maharashtra

APPELLANT

Vs

Kishor Babarao Milmlile

RESPONDENT

Date of Decision : 30-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 216

Dowry Prohibition Act, 1961 — Section 2

Penal Code, 1860 (IPC) — Section 304B, Section 306, Section 34, Section 498A

Citation : (2016) ALLMRCri 4981 : (2016) 6 MhLJCrI 797

Hon'ble Judges : Z.A. Haq, J.

Bench : Single Bench

Advocate : Shri R.D. Bhuibhar, Advocate, for the Respondents; Shri N.B. Jawade, A.P.P, for the Petitioner

Final Decision : Allowed

Judgement

Z.A. Haq, J.(Oral) - Heard Shri N.B. Jawade, A.P.P. for the petitioner and Shri R.D. Bhuibhar, advocate for the respondents.

2. Rule. Rule made returnable forthwith.

3. The petitioner - State of Maharashtra has challenged the order passed by the Additional Sessions Judge rejecting the application (Exh. No.108) praying for framing of additional charge under Section 304-B of the Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act.

According to the prosecution, the marriage between respondent no.1 - Kishor and deceased Shubhangi was solemnized on 26th May, 2009 and the respondents had demanded Rs. 5,50,000/- for performing marriage. It is alleged that after the solemnization of marriage, the respondents (accused) continued their demand of dowry and treated deceased Shubhangi with cruelty. It is alleged that the complainant - father of deceased Shubhangi, had fulfilled the demand of respondents and had given Rs. 1,00,000/-, however, the respondents demanded

money from the father of deceased Shubhangi, repeatedly. It is alleged that due to constant demand of money by the respondents, physical harassment, mental torture and cruelty, deceased Shubhangi committed suicide on 19th September, 2010. On these accusations, the charge-sheet was filed against the respondents under Section 498-A, 306 and 34 of the Indian Penal Code read with Sections 3 and 4 of Dowry Prohibition Act. The charge-sheet was filed before the Judicial Magistrate First Class who committed the matter to Sessions Court. The Sessions Court framed the charge for the offence punishable under Section 498-A, 306 and 34 of the Indian Penal Code.

The trial proceeded and the prosecution examined ten witnesses. The statement of accused under Section 313 of Code of Criminal Procedure is recorded and at the stage of arguments, the petitioner filed the application (Exh. No.108) praying that additional charge for the offence punishable under Section 304-B of the Indian Penal Code and for the offence punishable under Sections 3 and 4 of Dowry Prohibition Act be framed. This application is rejected by the learned Additional Sessions Judge by the impugned order.

4. Shri Jawade, learned A.P.P. has attacked the impugned order urging that the learned Additional Sessions Judge has committed an error in giving restrictive meaning to the provisions of Section 304-B of the Indian Penal Code by misinterpreting the provisions of Section 2 of Dowry Prohibition Act. Learned A.P.P. has submitted that the point is settled by the Hon'ble Supreme Court in the judgment given in the case of *Rajinder Singh v. State of Punjab* reported in (2015) 6 SCC 477 in which it is laid down that for the purposes of Section 2 of Dowry Prohibition Act giving or agreeing to give any property or valuable security at the marriage, before the marriage or after the marriage will be covered and Section 2 of the Dowry Prohibition Act and it takes within its sweep the giving or receiving any property or valuable security many years after the solemnization of marriage. It is submitted that the impugned order passed on the wrong and restrictive interpretation of Section 304-B of the Indian Penal Code and Section 2 of Dowry Prohibition Act, 1961 is unsustainable and has to be set aside. It is prayed that the application (Exh. No.108) filed by the petitioner has to be allowed and it be directed that additional charge for the offence punishable under Section 304-B of the Indian Penal Code and Sections 3 and 4 of Dowry Prohibition Act, 1961 be framed.

5. Shri Bhuibhar, learned advocate for the respondents has submitted that the impugned order is proper and in consonance with the established principles of interpretation of penal Statutes which provide that the penal Statute should be interpreted directly and cannot be given wider meaning. However, the learned advocate for the respondents has not been able to counter the submissions made by the learned advocate for the petitioner relying on the judgment given in the case of *Rajinder Singh v. State of Punjab* (cited supra).

6. In the above referred judgment, the relevant point is dealt in paragraph nos.7, 8 and 9 of the judgment as follows:

"7. The primary ingredient to attract the offence under Section 304-B IPC is that the death of a woman must be a "dowry death".

"Dowry" is defined by Section 2 of the Dowry Prohibition Act, 1961, which reads as follows:

"2. Definition of "dowry".- In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation I.--

Explanation II. - The expression "valuable security" has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860)."

8. A perusal of Section 2 shows that this definition can be broken into six distinct parts.

1) Dowry must first consist of any property or valuable security - the word "any" is a word of width and would, therefore, include within it property and valuable security of any kind whatsoever.

2) Such property or security can be given or even agreed to be given. The actual giving of such property or security is, therefore, not necessary.

3) Such property or security can be given or agreed to be given either directly or indirectly.

4) Such giving or agreeing to give can again be not only by one party to a marriage to the other but also by the parents of either party or by any other person to either party to the marriage or to any other person. It will be noticed that this clause again widens the reach of the Act insofar as those guilty of committing the offence of giving or receiving dowry is concerned.

5) Such giving or agreeing to give can be at any time. It can be at, before, or at any time after the marriage. Thus, it can be many years after a marriage is solemnised.

6) Such giving or receiving must be in connection with the marriage of the parties. Obviously, the expression "in connection with" would in the context of the social evil sought to be tackled by the Dowry Prohibition Act mean "in relation with" or "relating to".

9. The ingredients of the offence under Section 304-B have been stated and

restated in many judgments. There are four such ingredients and they are said to be:

- (a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;
- (b) such death must have occurred within seven years of her marriage;
- (c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and
- (d) such cruelty or harassment must be in connection with the demand for dowry."

7. Considering the proposition laid down by the Hon"ble Supreme Court that the giving or agreeing to give any property or valuable security by one party to the marriage to the other party or by the parents of either party to the marriage has to be construed in wider sense and that the giving or agreeing to give property or valuable security after the solemnization of marriage and even after many years of solemnization of marriage will be covered under the definition of section 2 of Dowry Prohibition Act, the reasons given by the learned Additional Sessions Judge for rejecting the application (Exh. No.108) are unsustainable and consequently, the impugned order cannot withstand the scrutiny of law.

Hence, the following order:

- (i) The impugned order is set aside.
- (ii) The application (Exh. No.108) filed by the petitioner is allowed.
- (iii) The learned Additional Sessions Judge is directed to frame additional charge under Section 304-B of the Indian Penal Code and under Section 3 and 4 of Dowry Prohibition Act, 1961.
- (iv) Rule is made absolute in the above terms.
- (v) In the circumstances, the parties to bear their own costs.