
(2015) 03 MP CK 0093

In the Madhya Pradesh High Court

Case No : Misc. Cri. Case No. 332/2013

Suresh Chand Sharma and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Dowry Prohibition Act, 1961 — Section 2, 3, 4

Penal Code, 1860 (IPC) — Section 30

Citation : (2015) 2 JLJ 20 : (2015) 2 MPJR 202

Hon'ble Judges : B.D. Rathi, J.

Bench : Single Bench

Advocate : Rajmani Bansal, for the Appellant; Lalan Mishra, Panel Lawyer, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B.D. Rathi, J.—The present petition has been preferred by the petitioners/accused under Section 482 of the Code of Criminal Procedure, 1973, in short the "Code" for quashing the impugned FIR registered at Crime No. 96/2012 by P.S. Mahila Thana Padav, district Gwalior for the offence punishable under section 3/4 of the Dowry Prohibition Act, 1961.

2. It is not in dispute between the parties that after completion of the investigation, charge-sheet has been filed before the court competent and the case is pending for trial before the trial court.

3. The case emerges out of the record of the case is that one written complaint was filed by complainant/respondent No.-2-Dr. (Smt) Subra Bhatta, addressing to the Station House Officer of the Mahalia Thana Padav, district Gwalior on dated 1/12/2012 with allegations that her engagement was performed on 28/3/2012 with accused/petitioner No. 3- Romesh Dubey. The marriage was to be solemnized on 29/11/2012. In view of aforesaid schedule of marriage programme, certain bookings were done by the parental side of the complainant

after payment of cash in advance to the concerning proprietors of catering, photography, sound and light decorations including to the place of venue owner. On 1/10/2012, accused/petitioner No. 1-Suresh Chand Sharma and Smt. Nirmala Sharma (petitioners No. 1 and 2), who are father and mother of respondent No. 3-Romesh came to the residence of the complainant and made demand of Rs. 20 lacs and one car in dowry. On 2/10/2012 at around 12 in noon, the petitioner No. 1-Suresh Chand informed to father of the complainant that contract of proposed marriage had broken. Thereafter, some conversations were made between the parties and after that again both the parties agreed to marry of their children. On 8/10/2012, again one phone call was allegedly made by the petitioner No. 1-Suresh Chand to the father of complainant that during Faldan ceremony, if car was not provided to the family of bridegroom then it would not be good for the family of the complainant. Demand was also made by petitioner No. 1-Suresh Chand that at least pay cash amount of Rs. Eleven lacs in addition to the car worth of Rs. Five Lacs, during the "Faldan" ceremony. The father of the complainant was also threatened by the petitioners/accused to fulfill their demands. Ultimately on failing to fulfill the aforesaid illegal demands, the contract of marriage has been broken by the petitioners. In the aforesaid background, the written complaint was lodged by the complainant/respondent No. 2 with Mahila Police Station, Padav on 24/11/12 which was registered at Crime No. 96/12 for commission of the offence under section 3/4 of the Dowry Prohibition Act against the present petitioners/accused. After investigation into crime, the charge-sheet has been filed and the matter is pending for trial before the trial court.

4. The quashment of the FIR and the entire proceedings pending have been sought inter-alia on the ground that the complaint has been lodged with mala fide intentions to harass the petitioners and that no case is made out against the accused. It is submitted by the counsel that as per the definition given under the Act in this case there was nothing to indicate that any demand for dowry was ever made by the petitioners. In continuation, he argued that demand of dowry to become an offence under section 4 of the Act, it must be made at the time of marriage and not during the negotiations of marriage. Reliance in this behalf is placed on the words of expression "bride" and "bridegroom" in section 4 to emphasis that at the stage of pre-marriage negotiations, the boy and the girl are not "bride" and "bridegroom" and therefore the demand made at that stage cannot be construed as a demand of dowry punishable under section 4 of the Act. It is also submitted that in absence of actual given or agreed to -be given it cannot be said that there was a contract of dowry as defined in section 2 of the Act. To support his arguments, reliance is placed by the counsel on the decision of Calcutta High Court in the case of Shankar Prasad Shaw and Others Vs. State and Another, .

5. That apart, according to the learned counsel, even if the complaint is to be read as a whole, and accepted in its entirety as true, no case has been made out against the petitioners herein of their having committed the offences of which

they were charged. On the contrary it appears that the petitioners have been falsely implicated because as per the enquiry report of the SHO of police station Padav addressing to the City Supdt. of Police dated 29/11/2012 (Annexure-P/2) the complainant herself was not agreed to marry and after repeated notice she remained absent before the Enquiry Officer whereas as per the statements of the witnesses on record who were cited by the petitioners, the petitioner No. 3 was ready and willing to marry with the complainant. Hence, taking the aforesaid scenario of the case, it is prayed that the petition may be allowed and the FIR and entire proceedings basing thereupon may be quashed. In support his submission, learned counsel for the petitioners has placed reliance on judicial pronouncement of Apex Court in the case of Bhushan Kumar Meen Vs. State of Punjab and Others, .

6. Per contra, the contention put forth by the learned counsel for respondent No. 2 is that the allegations made in the complaint prima facie constitutes commission of the alleged offence against the petitioners/accused. The attention of this court is drawn by the counsel on the aspect that under section 4 of the Dowry Prohibition Act, mere demand of dowry is sufficient to bring home to the offence to an accused. Thus, any "demand" of money, property or valuable security made from the bride or her parents or other relatives by the bridegroom or his parents or other relatives according to the counsel for the respondent No. 2 would fall within the mischief of "dowry" under the Act. It is submitted by the counsel that specific allegations were made in the complaint that amount of Rs. Twenty Lacs and four wheeler were demanded by the petitioners/accused and owing to failing to fulfill their demands, the contract of marriage was broken by the petitioners. To bolster his submission, reliance is placed on the principles of law laid down by the Apex court in the case of Reema Aggarwal Vs. Anupam and Others, . Hence, it is prayed that the petition sans substance and is liable to be dismissed.

7. Having regard to the arguments advanced by the learned counsel for the parties, the entire case has been examined. In the factual background of the case, two following questions appear to be just and proper for adjudication of this case :-

(i) Whether there was any demand of dowry made by the accused-petitioners as defined in section 2 of the Act and in view of penal provision provided in section 4 of the Act ?.

(ii) In view of police enquiry report dated 29/11/12, entire proceedings should be dropped ?.

Question No.(i)

The issue covering question No.(i) is no more res integra and stands answered long back somewhat in the year 1983 by the Apex Court in the case of L.V. Jadhav Vs. Shankarrao Abasaheb Pawar and Others, . The aforesaid view has been repeatedly taken subsequently in the cases of S. Gopal Reddy Vs. State of

Andhra Pradesh, and Baldev Singh Vs. State of Punjab, .

8. Before considering the rival submissions of the parties it would be useful to reproduce relevant provisions of the Sections under the Dowry Prohibition Act:

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

3. Penalty for giving or taking dowry.-1[(1)] 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 for a term which shall not be less than [five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more]: Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than [five years]. (2) Nothing in sub-section (1) shall apply to, or in relation to,-

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act; (b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act: Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.]

4. Penalty for demanding dowry.-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 term of less than six months.]

9. The definition of the term "dowry" under section 2 of the Act shows that any property or valuable security given or "agreed to be given" either directly or indirectly by one party to the marriage to the other party to the marriage "at or before or after the marriage" as a "consideration for the marriage of the said parties" would become "dowry" punishable under the Dowry Act. Property or valuable security so as to constitute "dowry" within the meaning of the Dowry Act must, therefore, be given or demanded "as consideration for the marriage." Section 4 of the Act aims at discouraging the very "demand" of "dowry" as a "consideration for the marriage". Section 4 makes punishable the very demand of property or valuable security as a consideration for marriage, which demand, if satisfied, would constitute the graver offence under section 3 of the Act punishable with imprisonment. Meaning of the expression "dowry" as commonly used and understood is different than the peculiar definition thereof under the Act. Under section 4 of the Act mere demand of dowry is sufficient to bring home the offence to an accused. The word agreement referred to in section 2 has to be inferred on the facts and circumstances of each case. So, only in the absence of agreement for dowry, the accused persons cannot get rid of because word agreement is misconceived. This would be contrary to the mandate and object of the Act. Dowry definition has to be interpreted with other provisions of the Act including sections 3 and 4 which prescribe the penalty for giving or taking dowry under the Act.

10. In the case in hand, admittedly, the contract of marriage was broken owing to non-fulfillment of illegal demand of dowry but it does not mean that accused persons cannot be called as bridal family because bridegroom means a man who has just been married or is about to be married and vice versa. In view of this definition of bridegroom, petitioner No. 3-Romesh Dubey can also be recognized as bridegroom and so also other petitioners No. 1, 2 and 4 can be said as belonging to bridal family. In view of this settled position of law, the question No. (i) is answered against the petitioners and in favour of respondent No. 2.

11. Now coming to the next which is question No.(ii), on perusal of the police report dated 29/11/2012, it is clear that the issue was not inquired into in regard to demand of dowry by the police authority. It is strange to note that nowhere it was mentioned in such a report by the Enquiry Officer that the allegations of demand of dowry were falsely levied by the complainant. The only anxiety expressed by the Enquiry Officer was that the petitioner No. 1-Suresh Chand was ready to perform marriage of his son (petitioner No. 3) with complainant/respondent No. 2-Dr. Subra Bhatt, therefore, at the cost of the said enquiry report, the petitioners/accused cannot seek advantage.

12. Having thus taken into consideration the law enunciated above by the Hon. Apex Court, it can be safely held that even in a case where the marriage has not been performed and only engagement was performed, in that case also, if an

illegal demand has been made in regard to dowry even without entering into an agreement, for consideration of marriage, then also the bride or bridegroom and his/her family and relatives can be charged with the offence punishable under section 3/4 of the Dowry Prohibition Act, as the case may be. Suffice it to observe that the Act is piece of social legislation which aims to check the growing menace of the social evil of dowry and it makes punishable not only the actual receiving of dowry but also the very demand of dowry made before or at the time or after the marriage where such demand is referable to the consideration of marriage.

13. In view of the above discussions made above, this court does not find any ground to quash the criminal proceedings initiated against the petitioners on the basis of impugned FIR.

14. Resultantly, the petition fails and is dismissed with no order as to costs.

15. A copy of this order be sent to the trial court for necessary compliance of the directions and proceeding further with the matter as per provisions of law.