
(1999) 09 AHC CK 0160
In the Allahabad High Court
Case No : Criminal Revision No. 1739 of 1999

Veena and Anr.

APPELLANT

Vs

State of U.P.& Anr.

RESPONDENT

Date of Decision : 06-09-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 244
Penal Code, 1860 (IPC) — Section 420

Citation : (1999) 09 AHC CK 0160

Hon'ble Judges : Bhagwan Din, J

Final Decision : Disposed Of

Judgement

Bhagwan Din, J.—By means of this criminal revision, the revisionists have assailed the legality and propriety of the order dated 361999 passed by the Chief Judicial Magistrate, Etah in a complaint Case No. 2432 of 1998 (Prabhu Dayal v. Anand Kumar and others).

2. The opposite party No. 2, Prabhu Dayal settled the marriage of his daughter, Km. Sunita with Anand Kumar, son of the revisionist No. 2 Kishan Lal Kanaujia. After some time, when the opposite party No. 2 asked the revisionist No. 2 to fix a date of marriage, the latter refused to fix a date of marriage and ultimately he sent a message to the opposite party No. 2 that the marriage of his son shall not be solemnised with the daughter of the opposite party No. 2.

3. The opposite party No. 2, therefore, filed a complaint under Sections 498A and 420, IPC and 3/4 Dowry Prohibition Act with the allegations that the present revisionists No. 1 and 2 extracted a handsome dowry in cash together with a ring and a gold chain from them at the time of Gond Bharai ceremony" and for no reason the present revisionists refused to solemnise the marriage of their son with his daughter and also refused to return the money and jewellery obtained from him.

4. The learned Magistrate after recording the statement of the complainant under Section 200, Cr PC and the witnesses under Section 202, Cr PC summoned the

revisionists under Sections 498 Aand 420, IPC and Section 3/4 Dowry Prohibition Act. Against the order of summoning the present revisionists filed an objection before the Magistrate. The revisionists have admitted in their objection that the marriage of the daughter of the opposite party No. 2 was settled with their son, but they refused to have obtained the cash and the jewellery at the time of Gond Bharai ceremony" from the opposite party No. 2. The learned Magistrate rejected the objection and maintained the summoning order dated 17121998. Hence, the revision.

5. Sri Mayank Bhushan, learned counsel appearing for the revisionists urged that no custom of payment of cash and giving the gift at the time of "Gond Bharai" by the father of the daughter is prevalent in the community to which the parties belong. However, he failed to refer any oral or documentary evidence to prove the custom prevailing in the community of the parties. It may be proved only by the evidence to be adduced by the parties as to what custom is prevailing in their community and society. The contention is, therefore, immature. The revisionists may, however, raise such objection after the evidence under Section 244, Cr PC is recorded.

6. The plain reading of the assertions made in the complaint would show that the at the time of the settlement of the marriage and thereafter at the time of "Gond Bharai Celebration", the wife of the revisionist No. 2 Kishan Lal Kanaujia was not present. To my mind, it appears that this fact has lost the sight of the C.J.M. Etah. There is no specific allegation that she also refused to solemnise the marriage of her son with the daughter of the opposite party No. 2. So also there is no allegation in the complaint to indicate that she was present at the time the cash and the jewellery was obtained from the opposite party No. 2. Therefore, the learned C.J.M. will reconsider her case again before recording the evidence under Section 244, Cr. P.C. Till the consideration of the case of Smt. Veena, the revisionist No. 1, the Magistrate shall not insist upon her personal attendance in the Court.

7. With the above observations, the revision is finally disposed of.

Revision disposed of.