

Court No. - 31 Reserved "A.F.R"

Case :- U/S 482/378/407 No. - 8523 of 2017

Applicant :- Ram Charitra Tiwari & Ors. Opposite Party :- State Of U.P. & Anr.

Counsel for Applicant :- Rajendra Pratap Singh Counsel for Opposite Party :- Govt. Advocate, Mohd. Naeem, Puttu Lal Misra

Hon'ble Mrs. Saroj Yadav, J.

1. On account of prevailing Covid-19 Pandemic, the case was heard through video conferencing.
2. Heard Sri Rajendra Pratap Singh, learned counsel for the petitioners, Sri Anurag Singh Chauhan, learned Additional Government Advocate appearing on behalf of the State- respondent and perused the record.
3. This petition under Section 482 Cr.P.C. has been filed by the petitioners to quash the impugned charge sheet no. 27 of 2017 dated 25.03.2017 as well as the summoning order dated 19.05.2017 passed by the Additional Chief Judicial Magistrate, Court No. 14, Pratapgarh in Case No. 160 of 2017.
4. The charge sheet as well as summoning order have been challenged mainly on the ground that learned Court below failed to apply its legal mind on the evidence collected by the

Investigating Officer as the same was not sufficient for taking cognizance and summoning the petitioners. According to Section 3 of the Dowry Prohibition Act 1961 (hereinafter referred to as "the Act"), taking or giving of dowry both are punishable offences, then under what circumstances the Investigating Officer did not register a case against the complainant, who alleged that he gave dowry in the form of "Cash" to the petitioners.

5. In this matter, the first information report was lodged by the complainant-opposite party no. 2-Krishna Prasad Mishra against the petitioners alleging that marriage of the complainant's daughter was settled to be solemnized with Vipin Chandra Tiwari (petitioner no. 3). Thereafter, the petitioners started demanding dowry in different forms for different reasons and kept pending solemnization of marriage. After repeated requests the date of marriage was fixed and the necessary arrangements as booking of Marriage Hall, arrangements of catering etc. were made. Thereafter on 16.06.2016, Vipin Chandra Tiwari (petitioner no. 3) and his father (petitioner no. 1) went to complainant's house and demanded additional dowry and threatened that if the money is not given, they will not marry the daughter of the

complainant. Facing such difficult situation, the complainant gave additional three lacs rupees to Vipin Chandra Tiwari (petitioner no. 3) but they again started demanding more. The complainant was unable to pay more and he realized that the petitioners have taken the money on the pretext of marriage and they did not want to marry his daughter.

6. Upon a complaint so moved by the complainant, an

F.I.R. was registered, investigation made and Investigating Officer submitted charge sheet before the Court concerned. The Court finding sufficient ground took cognizance against the petitioners. Being aggrieved with the order of taking cognizance and summoning the petitioners, this petition has been filed before this Court.

7. Learned counsel for the petitioners argued mainly on two counts. Firstly, according to Section 3 of the Act, the giving of dowry is also a punishable offence, then why a case was not registered against the complainant. Secondly, the marriage was not solemnized so the offence could not be said to have been committed.

8. Learned A.G.A. while opposing the above submissions has submitted that the Dowry Prohibition Act is a legislation

to protect the women and their family from the menace of demand of dowry, therefore to punish the complainant will cause injustice to the complainant and will be against the intention of legislature. Learned A.G.A. further submitted that under the definition of dowry, any property or valuable security given or agreed to be given before or after marriage comes under the definition of dowry. He further submitted that in the first information report cognizable offence was disclosed and after investigation, Investigating Officer submitted charge sheet against the petitioners. Thereafter, learned Court below after applying its legal mind took cognizance of the offence and passed the summoning order, which is perfectly legal, hence, this petition lacks any merit.

9. Considered the rival submissions and perused the material available on record.

10. As far as the first argument put forth by the learned counsel for the petitioners is concerned, it has no force in the light of the observation made by Delhi High Court in the case of Pooja Saxena Versus State & Another, 2010 (4) JCC 2780. The extract of relevant paragraph is quoted herein below:-

"No doubt, as per Section 3 of the Dowry Prohibition Act, giving or abetting to give dowry is a punishable offence, but the petitioner does have protection of Section 7(3) of the Act. Section 7(3) provides that notwithstanding anything contained in any law for the time being in force, a statement made by the person aggrieved by the offence under the Act shall not subject him to prosecution under this Act."

11. Against the aforesaid order, a Special Leave to Appeal (Crl) No(s) 1339-1340/2011 (Sameer Saxena Versus State of NCT of Delhi & Another) was filed by the petitioners before the Hon'ble Apex Court, which was dismissed vide order dated 07.03.2011.

12. As far as second argument is concerned, that too is not sustainable as Section 4 read with Sub-section (2) of the Act covers the demand of dowry even at the negotiation stage as a consideration in a proposed marriage which has not taken place. Hon'ble Apex Court in the case of S. Gopal Reddy Versus State of Andhra Pradesh, (1996) 4 SCC, in this regard has held as follows:-

"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 Act.

Property or valuable security so as to constitute 'dowry' within the meaning of the Act must therefore be given or demanded "as consideration for the marriage.

The definition of the expression 'dowry' contained in Section 2 of the Act cannot be confined merely to the 'demand' of money, property or valuable security 'made at or after the performance of marriage' as is urged by Mr. Rao. The legislature has in its wisdom while providing for the definition of 'dowry' emphasised that any money, property or valuable security given, as a consideration for marriage, 'before, at or after the marriage would be covered by the expression 'dowry' and this definition as contained in Section 2 has to be read wherever the expression 'dowry' occurs in the Act. 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. 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 or vice-versa would fall within the mischief of 'dowry' under the Act where such demand is not properly referable to any legally recognised claim and is consideration of marriage. Marriage in this context would include a proposed marriage also more particularly where the non-fulfilment of the "demand of dowry" leads to the ugly consequence of the marriage not taking place at all. The expression 'dowry' under the Act must be interpreted in the sense which the Statute wishes to attribute to it. Mr. P.P. Rao, learned senior counsel referred to various

dictionaries for the meaning of 'dowry', 'bride' and 'bridegroom' and on the basis of those meanings submitted that 'dowry' must be construed only as such property, goods or valuable security which is given to a husband by and on behalf of the wife at marriage and any demand made prior to marriage would not amount to dowry. We cannot agree. Where definition has been given in a statute itself, it is neither proper nor desirable to look to the dictionaries etc. to find out the meaning of the expression. The definition given in the statute is the determinative- factor. The Act is a 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. Dowry as a quid pro for marriage is prohibited and not the giving of traditional presents to the bride or the bride groom by friends and relatives. Thus, voluntary presents given at or before or after the marriage to the bride or the bridegroom, as the case may be, of a traditional nature, which are given not as a consideration for marriage but out of love, affection or regard, would not fall within the mischief of the expression 'dowry' made punishable under the Act. "

13. The Hon'ble Apex Court in the case of L.V. Jadhav Versus Shankarrao Abasaheb Pawar and Others, 1983 AIR 1219, has held as under:-

"We are of the opinion that having regard to the object of the Act a liberal construction has to be given to the word "dowry" used in s. 4 of the Act

to mean that any property or valuable security which if consented to be given on the demand being made would become dowry within the meaning of s. 2 of the Act. We are also of the opinion that the object of s. 4 of the Act is to discourage the very demand for property or valuable security as consideration for a marriage between the parties thereto. Section 4 prohibits the demand for 'giving' property or valuable security which demand, if satisfied, would constitute an offence under s. 3 read with

s. 2 of the Act. There is no warrant for taking the view that the initial demand for giving of property or valuable security would not constitute an offence and that an offence would take place only when the demand was made again after the party on whom the demand was made agreed to comply with it."

14. Hence, it is clear that demand of dowry even before the solemnization of marriage and even if marriage has not taken place will be an offence. It makes no difference whether marriage was solemnized or not to attract the provisions of Dowry Prohibition Act. Demand of dowry even at the negotiation stage of marriage will constitute offence. On the basis of FIR, matter was investigated and charge sheet was filed. Thereafter, the learned Court below after applying its legal mind took cognizance of the offence. While taking cognizance of the offence, Magistrate or Court concerned is not obliged to give detailed reasons for its satisfaction. Hon'ble Apex Court in the case of Bhushan Kumar Versus

State (NCT of Delhi), (2012) 5 SCC 424, in this regard has held as under:-

11. In Chief Enforcement Officer Vrs. Videocon International Ltd. (SCC p. 499, para 19) the expression "cognizance" was explained by this Court "as it merely means 'become aware of' and when used with reference to a court or a Judge, it connotes 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone. It is entirely a different thing

from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code."

15. In the light of the above discussions, there remains no valid ground for interference in the matter to quash the charge sheet as well as summoning order.

16. This petition under Section 482 Cr.P.C. deserves dismissal and is accordingly dismissed.

Order Date :- 13.7.2021

Arun (Saroj Yadav, J.)