

2004 DMC 2 49 . 2003 ALD 2 91 . 2003 ALT CRI 2 253 .

Malreddy Ramachandra Reddy v. C. Vanaja Reddy And Ors.

Andhra Pradesh High Court (16 Apr, 2003)

CASE NO.

3686 of 2001

ADVOCATES

M.N.Narasimha Reddy

C.Praveen Kumar

JUDGES

K Bhanu

Important Paras

1. 2. Petitioner is an accused in C.C. No. 224/1995. Chinna Chowk Police laid a charge-sheet against him, his parents and three sisters for an offence punishable under Section 498-A of the Indian Penal Code and for offences punishable under Sections 3 and 4 of the Dowry Prohibition Act, for short, hereinafter to be referred to as "the Act". A single charge under Sections 3 and 4 of the Act was framed against petitioner and A-2. After conclusion of trial and before judgment, the learned Magistrate framed separate charges under Sections 3 and 4 of the Act against petitioner and A-2 and recalled P.Ws. 1 to 3 and cross-examination them. During their cross-examination, P.Ws. 1 to 3 admitted that they had given Rs. 1 lakh as dowry and presented gold jewels worth Rs. 50,000/- to the petitioner and his father. At that stage, petitioner filed CrI. M.P. No. 4073/1998 before the Trial Court under Section 319, Cr.P.C, to implead P.Ws. 1 to 4 as accused for the offence under Sections 3 and 4 of the Act, to be tried along with the other accused in the case, since both the giver and taker of dowry are equally liable for punishment under the Act. The learned Magistrate dismissed that application against which petitioner filed CrI. R.P. No. 15/1999 before the Sessions Court. The learned Sessions Judge has dismissed the revision holding that P.Ws. 1

to 4 cannot be tried as accused in the same trial as they are protected under Section 7(3) of the Act. It is as against the order of dismissal of the revision, A-1 filed the present petitioner to quash the said order.

2. 12. Both the Courts have, after discussing the facts and law involved in the case, come to the correct conclusion. There are absolutely no grounds to quash the impugned order.

Summary

1. M.P. No. 4073/1998 before the Trial Court under Section 319, Cr.P.C, to implead P.Ws.
2. PC., if it appears to the Court from the evidence that any person not being an accused has committed an offence, such person can be tried together with the accused and on the voluntary evidence given by the witnesses, the Court can issue process against them and the bar under Section 7(3) of the Act will apply only to statements made by the person aggrieved by the offence and will not apply to the evidence given by the witnesses, as the words "statements" and "evidence" are not synonyms and the petition may be allowed.
3. The learned Additional Public Prosecutor contended that concurrent findings of the Courts below cannot be interfered with, that under Section 7(3) of the Act, the "statement" includes the evidence given by the witnesses and if they are arrayed as accused, they have to give evidence against themselves which is not permissible under law and the petition should be dismissed.
4. On the basis of their evidence, petitioner filed the petition in the Trial Court to try P.Ws.
5. The section contemplates existence of some evidence appearing in the same trial wherefrom the Court can prima facie conclude that the person not arraigned before it is also involved in the commission of the crime for which he can be tried with those already named by the police.
6. If a person gives statement before the Court, necessarily oath or affirmation has to be administered under Section 4 of the Oaths Act.
7. As a corollary, the word "statement" includes evidence of a witness in a Court of law.
8. In my considered view, a "statement" becomes "evidence" when a witness gave the statement in a Court of law on oath or affirmation.

9. The statement of a person aggrieved by the offence or the statement made by a witness in a Court of law about giving of dowry shall not subject such person to a prosecution under, the Act.

JUDGMENT

ORDER K.C. Bhanu, J.

1. This petition is directed against the order, dated 2.8.2001, in CrI. R.P. No. 15/1999 on the file of the learned II Additional Sessions Judge, Cuddapah, confirming the order passed by the learned II Additional Judicial I Class Magistrate, Cuddapah, in CrI. M.P. No. 4073/1998 in C.C. No. 224/1995, dated 18.2.1999.
2. Petitioner is an accused in C.C. No. 224/1995. Chinna Chowk Police laid a charge-sheet against him, his parents and three sisters for an offence punishable under Section 498-A of the Indian Penal Code and for offences punishable under Sections 3 and 4 of the Dowry Prohibition Act, for short, hereinafter to be referred to as "the Act". A single charge under Sections 3 and 4 of the Act was framed against petitioner and A-2. After conclusion of trial and before judgment, the learned Magistrate framed separate charges under Sections 3 and 4 of the Act against petitioner and A-2 and recalled P.Ws. 1 to 3 and cross-examination them. During their cross-examination, P.Ws. 1 to 3 admitted that they had given Rs. 1 lakh as dowry and presented gold jewels worth Rs. 50,000/- to the petitioner and his father. At that stage, petitioner filed CrI. M.P. No. 4073/1998 before the Trial Court under Section 319, Cr.P.C, to implead P.Ws. 1 to 4 as accused for the offence under Sections 3 and 4 of the Act, to be tried along with the other accused in the case, since both the giver and taker of dowry are equally liable for punishment under the Act. The learned Magistrate dismissed that application against which petitioner filed CrI. R.P. No. 15/1999 before the Sessions Court. The learned Sessions Judge has dismissed the revision holding that P.Ws. 1 to 4 cannot be tried as accused in the same trial as they are protected under Section 7(3) of the Act. It is as against the order of dismissal of the revision, A-1 filed the present petitioner to quash the said order.
3. Learned Counsel for the petitioner contended that under Section 319, Cr. PC., if it appears to the Court from the evidence that any person not being an accused has committed an offence, such person can be tried together with the accused and, therefore, on the voluntary evidence given by the witnesses, the Court can issue process against them and the bar under Section 7(3) of the Act will apply only to statements made by the person aggrieved by the offence and will not apply to the evidence given by the

witnesses, as the words "statements" and "evidence" are not synonyms and hence the petition may be allowed. On the other hand, the learned Additional Public Prosecutor contended that concurrent findings of the Courts below cannot be interfered with, that under Section 7(3) of the Act, the "statement" includes the evidence given by the witnesses and if they are arrayed as accused, they have to give evidence against themselves which is not permissible under law and hence the petition should be dismissed.

4. The factual matrix of the case is not in dispute, The short point for consideration is whether P.Ws. 1 to 4 can be tried as accused in the same trial herein petitioner, his parents and sisters are charge-sheeted for offences under Section 498-A, IPC and Sections 3 and 4 of the Act.

5. P.Ws. 1 to 3 admitted in the cross-examination that they had given Rs. 1 lakh towards dowry and presented gold jewels worth about Rs. 50,000/- to the petitioner and his father. On the basis of their evidence, petitioner filed the petition in the Trial Court to try P.Ws. 1 to 4 as accused since giving dowry is an offence punishable under Section 3 of the Act.

6. Section 3(1) of the Act reads as under:

(i) 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."

7. A plain reading of the above provision would go to show that giving or taking of dowry as well as abetment of giving or taking of dowry is an offence punishable under the Act. On the basis of the statements made before the Court by P.Ws. 1 to 3 admitting that they gave dowry, can they be tried as accused in the same trial, is the question.

8. Section 318, Cr.P.C. deals with the adding of a person not being an accused as an accused to be tried together with the accused. For invoking that section, it must appear from the evidence tendered in the course of any inquiry or trial that any person not being an accused has committed any offence for which he could be tried together with the accused. Thus, this section contemplates existence of some evidence

appearing in the same trial wherefrom the Court can prima facie conclude that the person not arraigned before it is also involved in the commission of the crime for which he can be tried with those already named by the police.

9. Under Sub-section (4) of Section 319, Cr.P.C., where the Court proceeds against any person under Sub-section (1), then, the proceedings in respect of such person shall be commenced afresh and the witnesses reheard, subject to which the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

10. If P.Ws. 1 to 4, who were examined as witnesses, are added as accused and arrayed in the list, of the accused persons, the proceedings in respect of them shall have to be commenced afresh and the witnesses reheard. It means they have to give evidence against themselves, which is not permissible under law. Clause (3) of Article 20 of the Constitution provides that no person accused of any offence shall be compelled to be a witness against himself. This protection is available to the person accused of an offence not merely with respect to the evidence to be given in the Court-room in the course of trial but is also available to him at the previous stages, if an accusation has been made against him which might, in the normal course, result in his prosecution. It follows that the protection is available to a person against whom the formal accusation has been made though the actual trial may not have commenced as yet and if such an accusation relates to the commission of an offence which in the normal course may result in prosecution. In view of the above provisions, the witnesses cannot be compelled to give evidence against themselves. Therefore, P.Ws. 1 to 4, cannot be arrayed as accused along with petitioner and others in the same proceedings. If the Court wants to proceed against the persons of giving dowry, then it has to resort to the provision under Section 7 of the Act. Section 7(1)(b) of the Act provides that no Court shall take cognizance of an offence under this Act except upon its own knowledge, or a police report of the facts which constitute such offence, or a complaint by the person aggrieved by the offence or other relative of such person or by any recognized welfare institution or organization. In the present case petitioner is not an aggrieved person so as to seek impleadment of P.Ws. 1 to 4 as accused persons inasmuch as he is the beneficiary as he received the amount and other articles towards dowry. Therefore, the Courts below have correctly held that P.Ws. 1 to 4 cannot be arrayed as accused under Section 319, Cr.P.C., to be tried along with the other accused in the case.

Further Section 7(3) of the Act provides that notwithstanding anything contained in any law for the time

being in force, a statement made by the person aggrieved by the offence shall not subject such person to a prosecution under this Act. Learned Counsel for the petitioner contends that the word "statement" used in the above section will not apply to the evidence given by a witness in a Court, as "statement" and "evidence" are not synonyms. The primary meaning of the word "statement" to be found in Shorter Oxford English Dictionary and Webster's New Word Dictionary is "something that is stated". Though the word "statement" has been employed in Section 7 of the Act, in my opinion, it has been used in its primary meaning of "something that is stated". The word "evidence" is defined under Section 3 of the Indian Evidence Act that "evidence" means and includes all the statements which the Court permits or requires to be made before it by witnesses. If a person gives statement before the Court, necessarily oath or affirmation has to be administered under Section 4 of the Oaths Act. Of course, it has got its own exceptions, namely in the case of a child witness below 12 years oath or affirmation need not be administered.

11. "Statements" may be given to a lawful authority. Such statements do not become "evidence". If such "statements" are to be read as evidence, they must be made before the Court under oath or affirmation. Only then, the "statements" become "evidence". When such is the position, the word "statement" as referred to in Section 7 of the Act means and includes statement of a witness given in a Court of law under oath or affirmation. As a corollary, the word "statement" includes evidence of a witness in a Court of law. Section 7(3) of the Act protects a witness from being prosecuted in the same trial for a statement made by him. No doubt, the words "statement" and "evidence" are not synonymous. But, in my considered view, a "statement" becomes "evidence" when a witness gave the statement made by him. No doubt, the words "statement" and "evidence" are not synonymous. But, in my considered view, a "statement" becomes "evidence" when a witness gave the statement in a Court of law on oath or affirmation. Therefore, the statement of a person aggrieved by the offence or the statement made by a witness in a Court of law about giving of dowry shall not subject such person to a prosecution under, the Act.

12. Both the Courts have, after discussing the facts and law involved in the case, come to the correct conclusion. There are absolutely no grounds to quash the impugned order.

13. In the result, the petition is dismissed.