
High Court Of Jharkhand

Cri. Misc. No. 261 of 2005

Judgment Date:

03-12-2008

Ram Gopal Sah

..Petitioner

State Of Jharkhand

..Respondent

Bench :

{ HON'BLE MR. JUSTICE N.N. TIWARI }

Citation :

LQ 2008 HC 18830

Judgment

N.N. Tiwari, J.

1. In this petition, the petitioner has prayed for quashing the part of the order dated 7th January, 2005 passed in G.R. No. 75 of 2000 by the Sub-Divisional Judicial Magistrate, Parahat at Chaibasa, whereby he has rejected the petitioner's prayer to make Hiralal Dodrajka as an accused for giving dowry under Section 3 of the Dowry Prohibition Act (hereinafter to be referred as 'the Act').

2. It has been stated that the said case was initiated at the instance of the daughter of Hiralal Dodrajka, wherein she has alleged demand of dowry by the petitioner, who happened to be the father-in-law. According to the complainant, her father had given several articles and cash at the time of marriage and he is also liable for prosecution under Section 3 of the Act.

3. The petitioner, who is father-in-law thus, filed a petition under Section 319, Cr.P.C. before the learned Sub-Divisional Judicial Magistrate, praying therein for making the complainant's father also as an accused in the case. By the impugned order dated 7th January, 2005, learned Court below after hearing and considering the facts and provisions of law rejected the petitioner's petition. Aggrieved by the said order, the petitioner has preferred this petition.

4. I have heard learned Counsel for the parties.

5. Learned Counsel appearing on behalf of the petitioner submitted that the dowry was given by the complainant's father. Under Section 3 of the Act, giving or taking dowry is an offence. The complainant's father is, thus, also equally liable for prosecution for contravening law, as prescribed by Section 3 of the Act. Learned Court below without appreciating that giving and taking dowry are both punishable under Section 3 of the Act has erroneously refused to summon the father of the opposite party No. 2. The impugned order is, thus, erroneous and liable to be set aside.

6. Learned Counsel for the complainant, on the other hand, submitted that the ground for assailing the impugned order by the petitioner is wholly misconceived and baseless. From the allegations made in the complaint, it is evident that the accused persons were demanding dowry and torturing the complainant for not

bringing the dowry as desired by them. The petitioner is wrongly interpreting the presents given by the parents of the complainant, as dowry, which does not come within the ambit of Section 3(1) of the Act. It has been submitted that nothing new has come in course of the inquiry or trial or there is nothing in the evidence on record to suggest that any such offence has been committed by the father of the complainant and learned Court below considering the provisions of law including the provisions of Section 7(3) of the Act has rightly rejected the petitioner's petition.

7. In order to appreciate the rival contentions, it is necessary to see some of the legal provisions, which are relevant in the context.

8. Section 2 of the Act defines 'dowry' as under:

"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 Mahrin the case of persons to whom the Muslim Personal Law (Shariat) applies."

9. Section 3 of the Act provides penalty for giving or taking dowry, but specific provision has been given in Sub-section (2) of Section 3 excluding the presents which are given at the time of marriage to the bride without any demand having been made in that behalf. Section 3 of the Act reads as under:

"3. Penalty for giving or taking dowry.—(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."

Section 7 of the Act prescribes provisions for cognizance of offences. Sub-section (3) of Section 7 provides for protection of the aggrieved person, which reacts as under:

“7(3) 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.”

10. The petitioner has sought prosecution on the basis of the statement of giving dowry by the father of the complainant. From perusal of the statement made in the complaint, I find no such incriminating statement of voluntarily giving dowry for marriage. The statement regarding giving presents ‘UPHAR’ does not come within the ambit of definition of dowry. Moreover, the father of the complainant is an aggrieved person from whom dowry was being demanded. Such aggrieved person is protected under Section 7(3) from prosecution under the Act.

11. Section 319, Cr.P.C. provides for proceeding against the person other than the accused appear to be guilty of offences on the basis of evidence recorded in course of an inquiry or trial.

12. Learned Court below after examining the materials on record and considering the provisions of law has rightly held that the father of the bride does not appear to be guilty of any offence, as the cognizance under any of the provisions of the said Act cannot be taken on any statement made by the person aggrieved, in view of the provision of Sub-section (3) of Section 7 of the Act. There is no such evidence on record, warranting any proceeding against the complainant’s father under Section 319, Cr.P.C.

13. I do not find any illegality or error in the order of the learned Court below. This petition is accordingly, dismissed.

Petition dismissed.