

2009 MLJ CRI 3 728 .

Ajita David v. State By

Madras High Court (29 Jun, 2009)

JUDGES

Mr. Justice M. Jeyapaul

Summary

1. The exemption contemplated under section 7(3) of the Dowry Prohibition Act, 1961 does not apply to the father of the de_facto complainant, who purportedly gave dowry.
2. It is his submission that when the giver of the dowry is also punishable under section 3 of the Dowry Prohibition Act, he cannot claim any exemption under section 7(3) of the said Act.
3. The learned Judicial Magistrate need not wait till the evidence is recorded to invoke the provisions under section 190 of the Code of Criminal Procedure to arraign a person against whom also an offence is made out.
4. 12. Section 190 of the Code of Criminal Procedure is subject to section 7 of the Dowry Prohibition Act, 1961 on account of the non-obstante clause found under the above Act.
5. When the provision under section 7(3) of the Special Act prohibits taking cognizance as against a person aggrieved by the offence for the incriminating statement made by him, the Judicial Magistrate cannot invoke the provision under section 190 of the Code of Criminal Procedure and include a person exempted under the Special Act as one of the accused.
6. I respectfully differ from the observation made by the Delhi High Court without special reference to section 7(3) of the Dowry Prohibition Act.
7. No prosecution under the Dowry Prohibition Act can be launched in view of the exemption provided under section 7(3) of the Act as against the parents and relatives of the victim girl.

JUDGMENT

The revision is directed against the order passed by the learned Chief Metropolitan Magistrate, Egmore, Chennai in CrI.M.P.No.131 of 2008 in C.C.No.8649 of 2007 dated 31.3.2008 dismissing the petition filed under section 319 read with section 190 of the Code of Criminal Procedure seeking to implead the father of the de facto complainant as accused in a case under Dowry Prohibition Act.

2. The de facto complainant Judy Manoj filed a complaint as against her husband Manoj David, her sister-in-law Ajita David and her brother-in-law Ujwal David alleging harassment demanding dowry. The investigating officer laid final report as against the aforesaid three accused for the offences punishable under sections 498A and 406 of the Indian Penal Code and sections 4 and 6 of the Dowry Prohibition Act. The father of the de facto complainant has stated during the course of investigation that there was a demand of dowry of 100 sovereigns of gold ornaments by the accused even prior to the marriage. The father of the de facto complainant, having not acceded to such a demand, provided 50 sovereigns of gold ornaments to her daughter, the de facto complainant and 5 sovereigns of gold chain, 3 sovereigns of bracelet and 1-1/2 sovereigns of diamond ring to the first accused as dowry. The said statement of the father of the de facto complainant is also found incorporated in the description of the offence detailed in the final report submitted by the investigating official.

3. At the first instance, the sister of the first accused/ the sister-in-law of the de facto complainant viz., Ajita David filed a petition under section 319 of the Code of Criminal Procedure on 10.1.2008 praying to array the father of the de facto complainant Xavier Muthappa as fourth accused and thereafter amended petition was filed under section 319 read with 190 of the Code of Criminal Procedure.

4. The learned Chief Metropolitan Magistrate, having come to the conclusion that no petition under section 319 of the Code of Criminal Procedure could be filed prior to the commencement of trial dismissed the petition seeking to array the father of the de facto complainant.

5. The learned Senior Counsel appearing for the revision petitioner would vehemently contend that the Trial Court failed to appreciate the ambit of section 3 of the Dowry Prohibition Act, 1961 which proposed to punish not only the receiver of dowry but also the giver of dowry. Referring to Section 7(1)(b)(ii) of the Act, the learned Senior Counsel appearing for the revision petitioner would submit that though protection is provided from charging a person who is aggrieved by the offence under Section 7(1)(b)(ii), the parents of the aggrieved wife do not fall under the category of person aggrieved by the offence. Therefore, the

exemption contemplated under Section 7(3) of the Dowry Prohibition Act, 1961 does not apply to the father of the de facto complainant, who purportedly gave dowry. It is his further submission that even before the case reaches the stage of trial, the learned Chief Metropolitan Magistrate, while taking cognizance of the case as per section 190 of the Code of Criminal Procedure, is duty bound to array all the persons against whom offences have been made out. Therefore, it is his submission that when the giver of the dowry is also punishable under section 3 of the Dowry Prohibition Act, he cannot claim any exemption under section 7(3) of the said Act. The learned Chief Metropolitan Magistrate is bound to act under section 190 and take cognizance as against the father of the de facto complainant also, it is contended.

6. There was no representation for the intervenor. Learned Government Advocate (Criminal Side) appearing for the State would submit that the object of the amendment introduced by Act 43/1986 to exclude the person aggrieved from prosecution under Dowry Prohibition Act will have to be considered by this court before approaching the ambit of section 3 of the Dowry Prohibition Act. Referring to Section 7(3) of the Dowry Prohibition Act, 1961, he would further submit that a clear exemption is contemplated from prosecuting a person aggrieved by any offence under the Dowry Prohibition Act. Further, he would submit that the petition seeking to array the father of the de facto complainant is totally misconceived, inappropriate and premature.

7. The statement of objects and reasons for the enactment of the Dowry Prohibition Act, 1961 would reflect that the Act is enacted to prohibit the evil practice of giving and taking dowry. But, while dealing with the salient features of the Act 43/1986 which introduced the amendment, it has been stated that the statement made by the person aggrieved by the offence shall not subject him to prosecution under the Act.

8. In terms of the statement of objects and reasons of the Dowry Prohibition Act, 1961, provision under section 3 of the Dowry Prohibition Act was enacted to punish not only the receiver but also the giver of the dowry. Section 7(1)(b)(ii) would read that notwithstanding anything contained in the Code of Criminal Procedure, no court shall take cognizance of the offence under this Act except upon a complaint by the person aggrieved by the offence or a parent or other relative of such person or by any recognised welfare institution or organisation. Section 7(3) of the Dowry Prohibition Act would provide 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 him to prosecution under the Act.

9. In order to provide more clarity to the provision under Section 7(1)(b)(ii), the legislature has thought it fit to clarify that a parent or other relative of such a person also is entitled to lodge a complaint apart from the person aggrieved by the offence. Firstly, it is found that Dowry Prohibition Act, 1961 does not define the person aggrieved by the offence. The aforesaid provision made to provide more clarity cannot be interpreted that the word 'parent' does not fall within the category of an aggrieved person by the offence provided under the Dowry Prohibition Act, 1961. The parent of the victim girl is definitely a person aggrieved by the offence. By no stretch of imagination, the legislature would have thought of excluding the parent from the purview of the person aggrieved by the offence while drafting section 7(3) of the Act to exempt from prosecution the person aggrieved by the offence for the statement made by him. At any rate, the phrase "person aggrieved by the offence" employed in sub-section 3 of section 7 of the Dowry Prohibition Act, 1961 cannot be construed that it only refers to the victim girl who was deprived of the marital bliss on account of the harassment meted out to her demanding dowry. In the considered opinion of this court, parents and other relatives of the victim girl can safely be classified as person aggrieved by the offence as contemplated under Section 7(3) of the Dowry Prohibition Act.

10. The Supreme Court in *SWILL LIMITED v. STATE OF DELHI AND ANOTHER* ((2001) 6 SCC (Cri) 670) has observed as follows:-

"In our view, from the facts stated above, it is clear that at the stage of taking cognizance of the offence, provisions of section 190 of the Code of Criminal Procedure would be applicable. Section 190 inter alia provides that "the Magistrate may take cognizance of any offence upon a police report of such facts which constitute an offence". As per this provision, the Magistrate takes cognizance of an offence and not the offender. After taking cognizance of the offence, the Magistrate under Section 204 of the Code of Criminal Procedure is empowered to issue process to the accused. At the stage of issuing process, it is for the Magistrate to decide whether process should be issued against particular person/persons named in the charge-sheet and also not named therein. For that purpose, he is required to consider the FIR and the statements recorded by the police officer and other documents tendered along with charge-sheet. Further, upon receipt of police report under Section 173(2) of the Code of Criminal Procedure, the Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) even if the police report is to the effect that no case is made out against the accused by ignoring the conclusion arrived at by the investigating

officer and independently applying his mind to the facts emerging from the investigation by taking into account the statement of the witnesses examined by the police. At this stage, there is no question of application of section 319 of the Code of Criminal Procedure. Similar contention was negated by this Court in Raghubans Dubey v. State Of Bihar by holding thus:(AIR p.1169, para 9) "In our opinion, once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence."

11. The power of the Judicial Magistrate is to proceed as against any person not originally cited as an accused in case offence is made out as against him also. Taking cognizance as against all the persons who are involved in the offence as provided under section 190 of the Code of Criminal Procedure is a duty cast upon the Magistrate. The learned Judicial Magistrate need not wait till the evidence is recorded to invoke the provisions under section 190 of the Code of Criminal Procedure to arraign a person against whom also an offence is made out.

12. section 190 of the Code of Criminal Procedure is subject to section 7 of the Dowry Prohibition Act, 1961 on account of the non-obstante clause found under the above Act. When the provision under section 7(3) of the Special Act prohibits taking cognizance as against a person aggrieved by the offence for the incriminating statement made by him, the Judicial Magistrate cannot invoke the provision under section 190 of the Code of Criminal Procedure and include a person exempted under the Special Act as one of the accused. On account of the introduction of the provision to the Special Act to exclude certain persons from prosecution, the powers of the Judicial Magistrate under section 190 of the Code of Criminal Procedure referred to in the above ratio cannot be exercised.

13. The Delhi High Court in Smt.NEERA SINGH v. THE STATE (GOVERNMENT OF NCT OF DELHI) AND OTHERS in CrI.M.C.No.7262 of 2006 dated 23.2.2007 observed as follows:-

"A perusal of the complaint would show that as per allegations dowry demand was made even before marriage i.e., at the time of engagement and an AC was demanded from her father by her in-laws and her father had assured that AC would be given at the time of marriage. However, she told her father "You have given car and AC at the demand of in laws, what will happen if they demand a flat tomorrow"

Despite her this conversation with her father and despite her knowing that dowry demand had already been made, she married in the same family irrespective of the fact that she was well-educated lady and was an engineer and her brother was in police. In fact, these kinds of allegations made after breakdown of the marriage show the mentality of the complainant. I consider where these kinds of allegations are made, the police should simultaneously register a case under Dowry prohibition act (in short "the act") against the parents of the complainant as well, who married their daughter despite demand of dowry. Section 3 of the Act prohibits giving and taking of dowry. If a woman of grown up age and well educated gets married to a person despite dowry demand, she and her family becomes accomplice in the crime under Dowry Prohibition Act."

14. With due respect, I find that the exemption of the persons aggrieved from prosecution provided under Section 7(3) of the Dowry Prohibition Act, 1961 was not brought to the notice of the Delhi High Court while passing such an observation. The penal provision under section 3 of the Act alone was adverted to by the Delhi High Court. Therefore, I respectfully differ from the observation made by the Delhi High Court without special reference to Section 7(3) of the Dowry Prohibition Act.

15. This is an atrocious case where the accused, who allegedly committed an offence under sections 498A and 406 of the Indian Penal Code and sections 4 and 6 of the Dowry Prohibition Act comes out with a petition invoking the provision under sections 319 and 190 of the Code of Criminal Procedure to harass the parent of the victim inspite of the fact that there is a clear exemption found under the Dowry Prohibition Act. Further, the invocation of section 319 of the Code of Criminal Procedure is premature inasmuch as evidence was not yet recorded in this case. Therefore, no prosecution under the Dowry Prohibition Act can be launched in view of the exemption provided under section 7(3) of the Act as against the parents and relatives of the victim girl.

16. In view of the above facts and circumstances, the revision fails and it stands dismissed. The connected miscellaneous petition also stands dismissed.

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