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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 673 OF 2011**

Date of Decision: 29th July, 2013

JAMALUDDIN ANSARI AZAD

..... Petitioner

Through: Mr. S.C.Malhotra,, Advocate
with the petitioner in person.

versus

STATE & ANOTHER

..... Respondents

Through: Mr. Rajat Agnihotri, Adv for
Mr. Rajesh Mahajan, ASC for
State with SI Bal Singh, P.S.
Mandawali.
Mr. Himat Akhtar, Adv for R-
2.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. The petitioner, vide instant writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure is seeking direction for setting aside the order dated 29.10.2010 passed by learned Additional Sessions Judge in CrI.Rev.71/2010 and for quashing the FIR No.596/2010 P.S. Mandawali, Fazalpur u/s 3 of the Dowry Prohibition Act.

2. Briefly put, the facts relevant for the disposal of this petition are that daughter of the petitioner Noor Jahan filed a complaint of dowry demand and harassment against her husband (respondent no.2) and other in-laws with CAW Cell and on the basis of said complaint, after preliminary enquiry, FIR No.176/09 u/s 498A/406/34 IPC, P.S. Mandawali was registered against respondent no.2 and others.

3. Daughter of the petitioner, Noor Jahan in her above referred complaint alleged that at the time of marriage, her parents and near relatives had presented huge dowry articles consisting of gold and silver ornaments of about 3,50,000/- along with costly clothes and cash worth Rs. 5 lakhs in two instalments i.e 2 lakhs at the time of ring ceremony and 3 lakhs at the time of marriage as demanded by her father-in-law and mother-in-law for purchasing the remaining dowry articles as per their own choice. However, her husband and in-laws started passing sarcastic remarks regarding dowry as they were expecting a lot more and that they have been let down in the eyes of their relatives/friends. Besides that there were various other allegations regarding mal-nutrition and torture to her by her in-laws.

4. Respondent no.2 Mohd. Khalique, as a counter blast to the aforesaid FIR filed a petition u/s 156(3) Cr.P.C seeking direction for registration of FIR u/s 3 of The Dowry Prohibition Act, 1961 against the petitioner and other family members. Vide order dated 17.08.2010, the learned M.M directed registration of FIR against the petitioner and his family members as also against respondent no.2 and his family members.

5. Thereafter, respondent no.2 preferred CrI. Revision Petition and the order was modified by learned Additional Sessions Judge to the effect that the case be registered only against the petitioner and his family members u/s 3 of Dowry Prohibition Act, except Noor Jahan, the bride.

6. Respondent no.2 in his petition u/s 156(3) Cr.P.C contended that Noor Jahan in her complaint to CAW Cell which formed basis for registration of FIR No.176/09 u/s 498A/406/34 IPC, P.S. Mandawali as well as in her petition u/s 125 Cr.P.C and another petition u/s 12 of Protection of Women from Domestic Violence Act made categorical allegations that demand of dowry was a pre-condition to marriage by the husband and in-laws and pursuant to

that, the dowry was given, which, prima facie amounts to admission of commission of an offence u/s 3 of The Dowry Prohibition Act, 1961 by the petitioner and his family members.

7. It was submitted by learned counsel for the petitioner that registration of FIR No.596/2010 pursuant to the petition u/s 156(3) Cr.P.C moved by respondent no.2, which obviously is a counter blast to the FIR registered on the complaint of the daughter of the petitioner, is a gross abuse of process of law. Learned counsel for the petitioner referred to the objects and reasons of The Dowry Prohibition Act, 1961 wherein it was stated that *the ancient marriage rites in the Vedic period are associated with Kanyadan. It is laid down in Dharamshastara that the meritorious act of Kanyadan is not complete till the bridegroom was given a dakshina. So when a bride is given over to the bridegroom, he has to be given something in cash or kind which constitute varadakshina. Thus Kanyadan became associated with varadakshina i.e the cash or gifts in kind by the parents or guardian of the bride to the bridegroom. The varadakshina was offered out of affection and did not constitute any kind of compulsion or consideration for the marriage.* Some of the

articles were given out of love and affection and the petitioner has another daughter, therefore, under compulsion certain articles were given. Petitioner in fact is an aggrieved party who is entitled to protection of Section 7(3) of the Act. Moreover, offence is not complete unless giving and taking is proved but although the learned M.M had directed registration of FIR against both the parties, the order was modified for proceeding against the petitioner only. Moreover in the complaint u/s 156(3) Cr.P.C, respondent no.2 is not admitting to taking any dowry, as such, even otherwise offence is not complete. As such, it was submitted that the impugned order be set aside and the FIR No.596/2010 against the petitioner and his family members be quashed. Reliance was placed on *Pooja Saxena v. State & Anr*, 2010 (4) JCC 2780.

8. Learned counsel for respondent no.2, on the other hand, has argued in favour of the impugned order dated 29.10.2010 of learned Additional Sessions Judge, inasmuch, as per Section 3 of Dowry Prohibition Act, 1961 giving of dowry is also prohibited, and is a punishable offence. It was submitted that the order was passed not merely relying upon the judgment of this Court in the case titled as

Neera Singh & Ors. v. State, 138 (2007) DLT 152 but the entire facts and circumstances of the case were considered. The learned Additional Sessions Judge has already granted benefit of Section 7(3) to the complainant as such there is no infirmity in the order and there are no grounds for quashing of the FIR. It was however, not disputed that against the judgment in *Pooja Saxena vs. State and Another*, SLP was preferred, which has been dismissed.

9. In order to properly appreciate the submissions made by the respective parties, it would be useful to have a look upon Section 3 as well as Section 7(3) of the Dowry Prohibition Act, 1961, which are reproduced thus:

“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 [(Note: Subs. by Act 43 of 1986, Sec.3) 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 of a term of less than [(Note: Subs. by Act 43 of 1986, Sec.3) five years.]

(2) [(Note: Ins. by Act 63 of 1984, sec.3) 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).

(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.”

“7. Cognizance of offences –

(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. In the instant case, it is obvious that respondent no.2 has filed petition u/s 156(3) Cr.P.C only on the basis of allegations made by Noor Jahan in her complaint made to CAW Cell which formed basis of registration of FIR No.176/2009 u/s 498/406/34 IPC against respondent no.2 and others as well as in her petition u/s 125 of the Code of Criminal Procedure and Domestic Violence Act. Thus, it is clear that FIR No.596/2010 registered against the present petitioner u/s 3 of the Dowry Prohibition Act, 1961 is based upon the statements

made by the daughter of the petitioner in her complaint to CAW Cell and the other petitions.

11. In *Pooja Saxena* (supra) it was observed that the observations made in *Neera Singh's* case were obiter and does not constitute a binding precedent for the reason that the provision of Dowry Prohibition Act, 1961 were not the subject matter of the dispute before the Court in the petition u/s 482 Cr.P.C in that case. Moreover in that case, the Court has not taken into account the protection given to a victim of offence of dowry demand as provided u/s 7(3) of The Dowry Prohibition Act, 1961. In *Pooja Saxena* (supra), the allegations in the complaint were regarding demand of dowry by the father of respondent no.2 at the time of engagement ceremony of the petitioner, failing which he would call off the marriage. It was observed that the petitioner and her parents were confronted with the unenviable situation either to concede to the demand or face loss of honour of their family in the society and if under that fear the petitioner and her parents conceded to the demand for dowry, they cannot be faulted as they were victims of circumstances. As such, Section 7(3) comes to the rescue of the petitioner and she could not be

subjected to prosecution for the offence u/s 3 of the Dowry Prohibition Act, 1961.

12. A perusal of the complaint u/s 156(3) Cr.P.C filed by respondent no.2 goes to show that he was invoking Section 3 of the Dowry Prohibition Act only on the basis of allegations made in the complaint by Noor Jahan whereas in para 7 of the complaint he did not admit to the contents of the FIR. Merely on the basis of allegations which were not admitted by respondent no.2, the petitioner could not have been booked for offence u/s 3 of the Dowry Prohibition Act. Moreover as held in *Pooja Saxena*(supra) and *Ram Gopal Shah v. State of Jharkhand*, II 2009 DMC 848, the petitioner being father of the complainant is an aggrieved person from whom the dowry was being demanded. Such aggrieved person is protected u/s 7(3) from prosecution under the Act.

13. In view of the above, I find it difficult to sustain the impugned order dated 29.10.2010 of learned Additional Sessions Judge, vide which he directed registration of FIR against the petitioner ignoring the protection extended to him u/s 7(3) of The Dowry Prohibition Act, 1961. Accordingly, the impugned order of learned Additional

Sessions Judge and the FIR registered in furtherance of the said order are hereby quashed. The petition stands disposed of.

**SUNITA GUPTA
(JUDGE)**

JULY 29, 2013
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