

Allahabad High Court

Yogesh Chhibbar vs State Of U.P. on 6 December, 1999

Equivalent citations: 2000 CriLJ 2849, II (2000) DMC 537

Author: U Tripathi

Bench: U Tripathi

ORDER U.S. Tripathi, J.

1. By moving this application under Section 482, Cr.P.C. the applicants have prayed for quashing the criminal complaint and its entire proceeding in Case No. 286 of 1996 under Sections 4/6 Dowry Prohibition Act, Dowry Prohibition Officer, Agra v. Yogesh Chhibbar and Ors., pending before A.C.J.M. II, Agra as well as the summoning order dated 4.2.1994.

2. It appears that the opposite party No. 2 Smt. Kanchan Chhibbar moved an application before District Prohibition Officer/Dowry Prohibition Officer, Agra alleging that she was married three years ago with Yogesh Chhibbar applicant No. 1. Her husband opposite party No. 1, father-in-law opposite party No. 2, mother-in-law opposite party No. 3, and sister-in-law opposite party Nos. 4 and 5 started demanding dowry and, therefore, action be taken against them. The Dowry Prohibition Officer made enquiry and ultimately filed a complaint against the applicants before A.C.J.M. 1st, Agra. On receipt of the above complaint the learned Magistrate vide his order dated 26.3.1994 registered a case and Summoned the accused persons (applicants) fixing 7.5.1993 for appearance. The applicants preferred revision before Sessions Judge, Agra against the above summoning order. The Criminal Revision No. 263 of 1993 was decided by IInd Additional Sessions Judge, Agra, vide his order dated 10.1.1994. He allowed the revision, set aside the order of A.C.J.M. and remanded back the case to the Trial Court for passing fresh order for summoning the accused after applying his mind. Thereafter, vide order dated 4.2.1994 the A.C.J.M. again summoned the applicants under Sections 4/6, Dowry Prohibition Act. The above summoning order as well as proceeding arising out of it have been sought to be quashed.

3. Heard the learned Counsel for the applicants and the learned A.G.A. None appeared from the side of opposite party No. 2 despite of sufficient personal service on her.

4. The contention of the learned Counsel for the applicants was that cognizance was taken by the Magistrate and the applicants were summoned on complaint filed by Dowry Prohibition Officer, but he had no right to file complaint and, therefore, the summoning of applicants was wrong. He also placed reliance on the provisions of Section 7, Dowry Prohibition Act.

5. Section 7 of Dowry Prohibition Act, 1961 reads as under :

"Cognizance of offences-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,-

(a) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence under this Act;.

(b) no Court shall take cognizance of an offence under this Act except upon-

(i) its own knowledge or a police report of the facts which constitute such offence, or

(ii) a complaint by the person aggrieved by the offence or a parent or other relative of such person or by any recognized welfare institution or organisation;

(c) it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the First Class to pass any sentence authorised by this Act on any person convicted of any offence under this Act.

Explanation-For the purposes of this sub-section, "recognized welfare institution or organisation" means a social welfare institution or organisation recognized in this behalf by the Central or State Government.

(2) Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973, shall apply to any offence punishable under this Act.

(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."

6. It is not disputed that the learned Magistrate had taken cognizance on the complaint filed by Dowry Prohibition Officer. Section 7(1)(b) of Dowry Prohibition Act bars taking cognizance of an 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 recognized welfare institution or organisation. In this case undisputedly, the complaint was not filed by opposite party No. 2, or her parents or other relatives. Dowry Prohibition Officer has not been authorised by above section to file complaint. No doubt, Section 8B of Dowry Prohibition Act says that the State Government may appoint as many Dowry Prohibition Officer as it thinks fit and specified area in respect of which they shall exercise their jurisdiction and powers under this Act.

7. The powers of Dowry Prohibition Officer have been specified in Sub-section (2) of Section 8B which are as below :

(a) to see that the provisions of this Act are complied with;

(b) to prevent, as far as possible, the taking or abetting the taking of, or the demanding of dowry;

(c) to collect such evidence as may be necessary for the prosecution of persons committing offences under the Act; and

(d) to perform such additional functions as may be assigned to him by the State Government, or as may be specified in the rules made under this Act.

8. The learned Additional Sessions Judge has observed that though the Dowry Prohibition Officer was not authorised to file complaint, but he had power to collect evidence as may be necessary for the prosecution of persons committing offence under the Act and it appears that it was the intention of the Legislature to empower the District Dowry Prohibition Officer to move to the Court for prosecution of the person, who is found guilty of taking or demanding dowry. He further observed that if he was not empowered to file complaint for prosecution of guilty person, he cannot prevent the taking of dowry and his act of collecting evidence will go waste. In these circumstances, the Dowry Prohibition Officer has got power to collect evidence and also got powers to file complaint. The above observation of the learned Additional Sessions Judge shows that he acted beyond the scope of Section 7(1)(b) of the Act. If the Legislature actually intended to confer power of filing complaint on Dowry Prohibition Officer, it ought to have been mentioned in Section 7(1)(b) of the Act itself.

9. The power to file complaint, therefore, cannot be inferred from the analogy of the powers of Dowry Prohibition Officer enumerated in Section 8B. Anything which is not in the Act cannot be inserted by Courts. The Court does not possess law-making power. The Courts may interpret the law contained in the Act and not insert any fresh provision, which has deliberately not been incorporated by the Legislature. Therefore, the above observation of the learned Additional Sessions Judge that Dowry Prohibition Officer has got power to file the complaint is against the provisions of law.

10. The learned Additional Sessions Judge has further observed that Section 7(1)(b)(ii) and the Explanation to said section says that Court shall take cognizance of a complaint filed by a recognised welfare institution or organisation. The Harijan Welfare Department of the State of U.P. is a welfare institution and if its officer has filed complaint under the provisions of Dowry Prohibition Act, the Magistrate will take cognizance over it under Section 7(1)(b)(ii). This observation of the learned Additional Sessions Judge is also against the provisions of law. The complaint was not filed by Harijan Welfare Department allegedly a recognised welfare institution, but by Dowry Prohibition Officer. If the law requires that complaint should be filed by an institution, then it must be filed by institution and not by other Authority. It may be true that Dowry Prohibition Officer was appointed by Harijan Welfare Department, but that officer did not become the Department itself and no action has been taken by the Department, as there is no such indication in the complaint that it was filed by Harijan Welfare Department through Dowry Prohibition Officer. Therefore, above observations of the learned Additional Sessions Judge are against the provisions of law and cannot be accepted.

11. In the result it is clear that complaint was not filed by person enumerated in Clause (b) of Sub-section (1) of Section 7 of Dowry Prohibition Act and, therefore it was without authority. Therefore, the cognizance against the applicants on the complaint filed by unauthorised person could not have been taken. Therefore, there was legal bar for taking cognizance against the applicants and cognizance was wrongly taken. The prosecution of applicants on the complaint of unauthorised and incompetent person was nothing but abuse of process of law and on this ground the cognizance as well as proceedings arising out of it are liable to be quashed under the exercise of powers conferred under Section 482, Cr.P.C. Thus, the application succeeds.

12. The application is, accordingly, allowed and the cognizance against the applicants, vide order dated 4.2.1994 in the light of order of Additional Sessions Judge, Agra dated 10.2.1994 and proceedings arising out of it are hereby quashed.