

Andhra High Court

The Public Prosecutor, High Court ... vs Nese Jilakara Sreeramulu on 29 August, 2003

Equivalent citations: 2004 (1) ALD Cri 519, 2004 (2) ALT 504, 2004 CriLJ 1629

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Bench: B Nazki, G Raghuram, K Bhanu

JUDGMENT K.C. Bhanu, J.

1. A Division Bench of this Court has made this Reference for consideration, by a Full Bench of this Court, of the question as to whether the law laid down by a Division Bench of this Court in Ayyala Rambabu v. State of Andhra Pradesh, 1993 (1) Andh LT (Cri) 73 and by a learned single Judge of this Court in Nunna Venkateswarlu v. State of A. P., 1996 Cri LJ 108 is good law.

2. We have heard the learned Public Prosecutor as well as the learned counsel appearing for the respondent.

3. Before proceeding further, it is necessary to extract the relevant provisions of the Dowry Prohibition Act, 1961. (for short, "the Act") for a clear understanding of the question under Reference.

Section 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 mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."

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.

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4. Penalty for demanding dowry--If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees;

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4. In Nunna Venkateswarlu (1996 Cri LJ 108) (supra), the learned single Judge of this Co

"By looking to the definition of "Dowry" prosecution must prove that the property or the valuable security must have been given or agreed to be given either directly or indirectly at the time of marriage or earlier to the marriage or subsequent to the marriage. In other words, the prosecution must prove that there was an agreement between the parties where one party must agree to pay the valuables to the other party. Unless the agreement is proved on record, it is not possible to find the accused guilty of an offence punishable under Section 304-B, IPC."

5. The learned single Judge made the above said pronouncement relying upon the decision of the Division Bench of this Court in Ayyala Rambabu (1993 (1) AndhLT (Cri) 73) (supra), wherein the Division Bench of this Court has held as follows :

"To bring the demand within the meaning of "dowry" any property or valuable security must have been given or agreed to be given, either directly or indirectly (a) at the time of marriage or (b) before the marriage or (c) at any time after the marriage in connection with the marriage of the parties. If there has been no agreement between the parties to a marriage to give or take any property or valuable security or where the property or valuable security has been given and taken, but thereafter further amounts are demanded after the marriage, such demands will not fall within the meaning of dowry and even if all other requirements of Section 304-B are satisfied, it will riot be dowry death."

6. The Division Bench, which has made the Reference, has felt that the above law is directly in conflict with various decisions of the Supreme Court in State of H. P. v. Nikku Ram, , Prem Singh v. State of Haryana, and State of Karnataka v. M. V. Manjunathgowda, . The Division Bench has observed that it could have held that the law laid down by the Division Bench of this Court in Ayyala Rambabu (1993 (1) Andh LT (Cri) 73) (supra) is not good law in view of the judgments of the Apex Court, but inasmuch as conflicting judgments of equal strength of Benches create confusion. It is appropriate that a Full Bench lays down the law, and directed the matter to be placed before the Hon'ble the Chief Justice for necessary directions. In pursuance of the order of the Hon'ble the Chief Justice, the Reference has thus come before us for a decision on the said question.

7. The definition of term "dowry" shows that any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other party to the marriage at or before or after the marriage as a consideration for the marriage of the said parties would become "dowry" punishable under the Act. Property or valuable security so as to constitute "dowry" within the meaning of the Act must therefore be given or demanded "as consideration for the marriage".

8. Since the question now is whether a demand for property or valuable security made after the marriage without any prior agreement between the parties to the marriage at the time or before the marriage for payment would fall under the category of "dowry", it is necessary to see the intendment of the Act. The definition of "dowry" given in the Statute is the determinative factor. The Act is a piece of legislation which aims to check the growing menace of the social evil of dowry and it makes

punishable not only the actual receiving of dowry but also the very demand of dowry made before or at the time or after the marriage where such demand is referable to the consideration of marriage.

9. It is a well-known rule of interpretation of statutes that the text and the context of the entire Act must be looked into while interpreting any of the expressions used in a Statute, The Courts must look to the object which the statute seeks to achieve while interpreting any of the provisions of the Act. A purposive approaching of interpreting the Act is necessary.

10. In High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat, (2003) 4 SCC 712 : (AIR 2003 SC 1201) it has been held by the Apex Court that it is a well-settled principle of law that an attempt should be made to give effect to each and every word employed in a statute and such interpretation which would render a particular provision redundant or otiose should be avoided. In J. P. Bansal v. State of Rajasthan, it has been held by the Supreme Court that the elementary principle of interpreting or considering a statute is to gather the mens or sententia legis of the legislature, and interpretation postulates the search for the true meaning of the words used in the statute as a medium of expression to communicate a particular thought. In Pandian Chemicals Ltd. v. Commr. of Income-tax, it has been held by the Apex Court that the rule of interpretation would come into play only if there is any doubt with regard to the express language used. Where the words are unequivocal, there is no scope for importing any rule of interpretation. In Bhavnagar University v. Paltiana Sugar Mills (P) Ltd., the Apex Court has held that it is the basic principle of construction of statute that the same should be read as a whole, then chapter by chapter, section by section and words by words, recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity, or inconsistency therein and not otherwise, and an effort must be made to give effect to all parts of the statute and unless absolutely necessary, no part thereof shall be rendered surplusage or redundant.

11. Bearing the above principles as to the interpretation of a statute/provision, we would now see whether the definition of "dowry" extends to the demands made even after the marriage for any property or valuable security, with reference to the object of the Act and the various decisions of the Apex Court.

12. The history of developments leading to the enactment of the Dowry Prohibition Act, 1961 and the Amendments to the Act have been dealt with in a great deal in State of Karnataka (2003 Cri LJ 900) (SC) (supra). For immediate reference, the relevant paragraphs are extracted below (paras 16, 17).

"The Dowry Prohibition Act 1961 was enacted by the Legislature effective from 20th May, 1961. The Statement of Objects and Reasons for enactment of the legislation are as follows :--

"The object of this Bill is to prohibit the evil practice of giving and taking of dowry. This question has been engaging the attention of the Government for some time past, and one of the methods by which this problem, which is essentially a social one, was sought to be tackled by the conferment of improved property rights on women by the Hindu Succession Act, 1956. It is, however, felt that a law which makes the practice punishable and at the same time ensures that any dowry, if given, does

ensure for the benefit of the wife will go a long way to educating public opinion and to the eradication of this evil. There has also been a persistent demand for such a law both in and outside Parliament. Hence, the present Bill."

Ever since the Act came into being, there is a sea of change by various amendments so as to make the Act more purposeful and punishment deterrent. Realising that despite the Dowry Prohibition Act, the evil practice of giving and taking of dowry remains unabated and the dowry related offences were menacingly on the increase, the Act was amended by Act No. 63 of 1984. After taking note of the observations of the Committee on Statute of Women in India and with a view to taking of thorough and compulsory investigations into cases of dowry deaths and stepping up anti-dowry publicity, the Government referred the whole matter for consideration by a Joint Committee of both the Houses of Parliament. The Committee, after examining the whole matter in great depth in its proceedings, recommended to examine the working of the Dowry Prohibition Act. The Act was further amended vide Act No. 43 of 1986. The Statement of Objects and Reasons is as follows :--

"The Dowry Prohibition Act, 1961 was recently amended by the Dowry Prohibition (Amendment) Act, 1984 to give effect to certain recommendations of the Joint Committee of the House of Parliament to examine the question of the working of the Dowry Prohibition Act, 1961 and to make the provisions of the Act more stringent and effective. Although the Dowry Prohibition (Amendment) Act, 1984 was an improvement on the existing legislation, opinions have been expressed by representatives from women's voluntary organisations and others to the effect that the amendments made are still inadequate and the Act needs to be further amended.

2. It is, therefore, proposed to further amend the Dowry Prohibition Act, 1961 to make provisions therein further stringent and effective. The salient features of the Bill are :

(a) The minimum punishment for taking or abetting the taking of dowry under Section 3 of the Act has been raised to five years and a fine of rupees fifteen thousand.

(b) The burden of proving that there was no demand or dowry will be on the person who takes or abets the taking of dowry.

(c) The statement made by the person aggrieved by the offence shall not subject him to prosecution under the Act.

(d) Any advertisement in any newspaper, periodical, journal or any other media by any person offering any share in his property or any money in consideration of the marriage of his son or daughter is proposed to be banned and the person giving such advertisement and the printer or publisher of such advertisement will be liable for punishment with imprisonment of six months to five years or with fine up to fifteen thousand rupees.

(e) Offences under the Act are proposed to be made non-bailable.

(f) Provision has also been made for appointment of Dowry Prohibition Officers by the State Government for the effective implementation of the Act. The Dowry Prohibition Officers will be assisted by the Advisory Boards consisting of not more than five social welfare workers (out of whom at least two shall be women).

(g) A new offence of "dowry death" is proposed to be included in the Indian Penal Code and the necessary consequential amendments in the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 have also been proposed."

13. The above Statement of Objects and Reasons amply demonstrates the importance of the legislation and the intendment of the legislature in enacting the Act and the subsequent Amendment. The Act was aimed at curbing the practice of giving and taking dowry in any form.

14. In State of H. P. (1995 Cri LJ 4184) (SC) (supra) their Lordships of the Apex Court have held as under (para 13) :

"The aforesaid definition (definition of "dowry") makes it clear that the property or the valuable security need not be as a consideration for marriage, as was required to be under the unamended definition. This apart, the addition of the words "any time" before the expression "after the marriage" would clearly show that even if the demand is long after the marriage, the same could constitute dowry, if other requirements of the section are satisfied."

15. In Patwan Kumar v. State of Haryana the Apex Court has held as follows (para 16) :

"It is significant that Section 4 of the 1961 Act, was also amended by means of Act 63 of 1984, under which it is an offence to demand dowry directly or indirectly from the parents or other relatives or guardian of a bride. The word "agreement" referred to in Section 2 has to be inferred on the facts and circumstances of each case. The interpretation that the appellant seeks, that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. "Dowry" definition is to be interpreted with the other provisions of the Act including Section 3 which refers to giving or taking dowry and Section 4 which deals with penalty for demanding dowry, under the 1961 Act and the Indian Penal Code. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable."

16. In Prem Singh (1998 Cri L J 4019) (supra), the observations of the Supreme Court are as follows (para 12) ;

"Learned counsel for A1 urged that any additional demand of dowry would not be covered by the definition of "dowry" under Section 2 of the Dowry Prohibition Act, 1961. This argument needs to be Just stated and rejected. This argument completely overlooks the amended definition of "dowry" contained in Section 2."

17. The definition of "dowry", the object of the Act and the above decisions of the Apex Court clearly show that any property or valuable security given or agreed to be given comes within the purview of

"dowry" on three occasions in which any property or valuable security comes within its purview. They are -- (i) before the marriage, (ii) at the time of marriage, and (iii) "at any time" after the marriage. The third occasion may appear to be an unending period, but the crucial words are "in connection with the marriage of the parties". This means, giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties.

18. The Legislature in its wisdom while providing for the definition of "dowry" has emphasized that any money, property or valuable security given as consideration for marriage "before, at or any time after" the marriage would be covered by the expression "dowry", and this definition as contained in Section 2 of the Act has to be read whenever the expression "dowry" occurs in the Act, The meaning of expression "dowry" as commonly used and understood is different from the peculiar definition thereof under the Act.

19. Under Section 3 of the Act, if a person gives or takes or abets the giving or taking dowry shall be punished. Under Section 4 of the Act mere demand of dowry is sufficient to bring home the offence to an accused. Thus, any demand of money, property or valuable security, made from the bride or her parents or other relatives, or the bridegroom or his parents or other relatives, or vice versa, would fall within the mischief of "dowry" under the Act, where such demand is not properly referable to legally recognized claim and relatable only to the consideration of the marriage.

20. In view of the above discussion, the law laid down in Ayyala Rambabu and Nunna Venkateswarulu (1 and 2 supra) is not good law.

21. We hold that there need not be an agreement at or before or after the marriage between the parties to constitute the definition of "dowry". Any demand made before or at or after the marriage for any property or valuable security falls within the definition of "dowry". A mere demand for dowry/additional dowry after the marriage also is punishable, on the other ingredients being satisfied.

22. The Reference is accordingly answered.