

1990 CALHN 2 184 . 1990 CALCRILR 2010 . 1992 DMC 1 30 . 1991 CRI LJ 639 . 1990 SCC ONLINE CAL 183 . 1990 CHN 2 184 . 1991 CRILJ 639 . 1991 CRLJ 639 .

Sankar Prasad Shaw & Ors. v. The State & Anr.

Calcutta High Court (Jul 27, 1990)

CASE NO.

No. 345 of 1985

JUDGES

Siba Prasad Rajkhowa, J.

IMPORTANT PARAS

1. 4. Sri Mukherjee, learned counsel for the petitioner has submitted that the case as made out by the opposite parties before the trial court does not attract the penalty contemplated under s. 4 of the Act. In support of his contention, the learned counsel has drawn my attention to the definition of dowry as given in s. 2 of the Act, which runs as follows:—

2. (a) by one party to a marriage to the other party to the marriage; or

1. In this Criminal Revision, the petitioners have prayed for quashing the proceeding in Case no. 1249 of 1984 under **s. 4 of the Dowry Prohibition Act of 1961 read with S. 120B of the Indian Penal Code** pending before the Metropolitan Magistrate, 12th Court, Calcutta.

2. The facts of the proceeding in brief are as follows:— Smt. Usha *Shaw* , sister of the complainant Bhagwat Prosad Gupta (O.P No. 2) was given in marriage to *Shankar* Prosad. *Shaw* alias Gupta (accused-petitioner no. 1) according to the Hindu rites and rituals on 14.5.81 at Calcutta. After the marriage Usha *Shaw* was brought to the matrimonial nouse of Shunkar Prosad and both of them spent their conjugal life happily for about a month but that happiness was shortlived. The husband along with his father Parameswar Prosad *Shaw* (accused petitioner no. 2), his brother Anil Kumar *Shaw* accused petitioner no. 3) and his sister Smt. Asha ??? (accused-petitioner no. 4) began to make illegal demands to Usha *Shaw* to bring costly electronic appliances such as T.V Set. Refrigerator, Gas Connection and cash of Rs. 50,000/- and also 15 tolas of gold from her parents. Otherwise they would not allow Usha *Shaw* to retain her marital status in their house. On failing to get the aforesaid articles the opposite parties jointly and severally started tort ring Usha *Shaw* . Ultimately, on 14.4.82 the members of the opposite parties took Usha *Shaw* to the house of the complainant and left her there saying that they would not allow her to come to

husband's house unless their demands were met. Under the circumstances, the complainant filed a complaint case against the opposite parties earlier under **s. 4 of the Dowry Prohibition Act, hereinafter referred to as the Act**, after obtaining the sanction from the Director, Social Welfare Department, Government of West Bengal. But the case was compromised on 17.2.83 and the opposite parties had forgone their illegal demands and took back Usha Shaw to her husband's house. Having compromised the case and thus releasing themselves from the legal consequences of their illegal demands, the opposite parties renewed their old demands and began to torture Usha Shaw and heap indignities upon her. So the complainant again obtained required sanction for prosecution of the opposite parties from the Director, Social Welfare Department, Government of West Bengal and launched criminal prosecution under s. 4 of the said Act read with s. 120B of the Indian Penal Code.

3. Cognizance being taken of an offence under s. 4 of the said Act, the learned Metropolitan Magistrate, 12th Court, Calcutta directed to issue summons upon all the accused petitioners vide his order dated 27.4.84. It is against this order that the petitioners have come up before this Court in this revision with a prayer to quash the proceeding pending before the learned Magistrate.

4. Sri Mukherjee, learned counsel for the petitioner has submitted that the case as made out by the opposite parties before the trial court does not attract the penalty contemplated under s. 4 of the Act. In support of his contention, the learned counsel has drawn my attention to the definition of dowry as given in s. 2 of the Act, which runs as follows:—

“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 the marriage or by any other person, to either party to the marriage or to any other person;

at or before or after the marriage in connection with the marriage of the said parties, but does not include dower or mehr in the case of persons to whom the Muslim Personal Law (Shariat) applies”.

5. So, as per the definition, dowry means 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 or by the parents of either party to the marriage or to any other person, at or before or after the marriage in connection with the marriage of the said parties. Sri Mukherjee has laid emphasis on the words ‘given’ or ‘agreed to be given’ at or before or after the marriage in connection with the marriage. Judged in terms of the definition, the learned counsel has submitted that in the case in hand, neither party to the marriage nor their relations had ever given or agreed to give any property or valuable security to the other party at or before or after the marriage, and, therefore, the learned counsel argues, s. 4 of the Act is not attracted to the case in hand.

6. I find much substance in the submissions of the learned counsel for the petitioners. The complaint petition does not disclose that the complainant had given any property or valuable security or that he had agreed to give such things to the accused petitioner No. 1, either at or before or after the marriage between Usha *Shaw* and petitioner No. 1 or to his parents or other relations. Although in common parlance we very often use the term “dowry demand” in the cases where the husband or his relations demand valuable security from the parents and other relations of the wife after the marriage, yet, in my opinion this will not amount to demand for dowry under the Act in view of the definition of dowry contained in **s. 2 the Act. Demand** for dowry under the Act and in the legal sense will mean the demand for dowry only when it refers to property or valuable security given or agreed to be given at or before or after the marriage. The alleged offence as made out in the complaint petition may attract the penal provisions as contained in s. 498A of the Indian Penal Code. The Parliament in its wisdom appended the explanation as to what “cruelty” means and has constructed sub clause (b) of s. 498A in the following words, “Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand”. In my opinion, if the cases of this nature are to be brought within the ambit of s. 4 of the Act, then the word ‘dowry’ under s. 2 of the Act shall have to be redefined in the light of sub-clause (b) under s. 498A of the Indian Penal Code. The term “extortion demand” popularised by the media may also find a place in the definition of dowry.

7. In the result, the revision petition is allowed and the impugned proceeding is quashed and the rule is made absolute.

Petition allowed; proceeding quashed.