

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 45 OF 2016
(Arising out of SLP (CrI.) No. 9344 of 2014)

BOBBILI RAMAKRISHNA RAJU YADAV & ORS.Appellants

Versus

STATE OF ANDHRA PRADESH REP. BY ITS
PUBLIC PROSECUTOR HIGH COURT OF A.P.
HYDERABAD, A.P. & ANR. ...Respondents

J U D G M E N T

R. BANUMATHI, J.

Leave granted.

2. The present appeal assails the order dated 23.07.2014 passed by the High Court of Judicature at Hyderabad in Criminal Petition No.1778 of 2010, whereby the High Court declined to quash the proceedings against appellants No.1 to 6 in C.C. No. 532 of 2009 under Section 6 of the Dowry Prohibition Act 1961 pending before Additional Judicial First Class Magistrate, Vizianagaram.

3. Brief facts leading to the filing of this appeal are as follows:- First appellant is working as an Engineer in G.E. India Technology Company at Bangalore. Appellants No.2 and 3 are the parents, appellant No.4 is widowed sister and appellants No.5 and 6 are the sisters of appellant No.1. Marriage of first appellant and Syamala Rani was performed at Vizianagaram on 04.05.2007 and after marriage, Syamala Rani was residing at Bangalore with her husband-appellant No.1. Syamala Rani died on 06.09.2008 under suspicious circumstances and a case was registered in FIR No.1492 of 2008 under Sections 304B, 498A IPC read with Sections 3 and 4 of the Dowry Prohibition Act at H.A.L. Police Station, Bangalore City. On completion of investigation in the said case, chargesheet was filed against the appellants No.1 to 6 and the case was committed to Sessions Court vide committal order dated 29.12.2008 and was taken on file as S.C. No.79 of 2009 in the Court of Principal Sessions Judge, Bangalore. Second respondent-father of Syamala Rani filed a private complaint against the appellants under Section 6 of the Dowry Prohibition Act alleging that he had paid dowry amount and other articles which were presented as dowry to the appellants on their demand and the same were not returned.

The Magistrate took cognizance of the offence under Section 6 of the Dowry Prohibition Act in C.C. No.532 of 2009.

4. The appellants then preferred a petition under Section 482 Cr.P.C. before the High Court to quash the complaint i.e. C.C.No.532 of 2009 contending that the complaint does not disclose an offence and that FIR No.1492 of 2008 was already registered against the appellants at Bangalore city. The High Court vide the impugned order dismissed the petition filed by the appellants holding that the offences alleged in the previous case in S.C.No.79 of 2009 emanating from the FIR No.1492 of 2008 and the subsequent complaint in C.C.No.532 of 2009 are not one and the same as the previous case was registered under Sections 304B and 498A IPC read with Sections 3 and 4 of the Dowry Prohibition Act, whereas the subsequent case is registered under Section 6 of the Dowry Prohibition Act which is independent of the previous case. Being aggrieved, the appellants have preferred this appeal.

5. Learned counsel for the appellants submitted that the Magistrate ought not to have taken cognizance of the complaint as the previous case was already registered against the appellants in FIR No.1492 of 2008 under Sections 304B and

498A IPC read with Sections 3 and 4 of the Dowry Prohibition Act and the same is pending trial in Sessions Case No.79 of 2009 at Bangalore city and hence the subsequent complaint is not sustainable. It was further submitted that the subsequent complaint C.C.No.532 of 2009 emanates from the same cause of action and the allegations in the complaint do not constitute the alleged offence under Section 6 of the Dowry Prohibition Act and the complaint is an afterthought for wrecking vengeance on the appellants.

6. Per contra, the learned counsel for respondent No.2 submitted that the complaint case in C.C. No.532 of 2009 under Section 6 of the Dowry Prohibition Act is independent of the previous case i.e. FIR No.1492 of 2008 and the pendency of the said case before the Sessions Court, Bangalore shall not affect the complaint filed under Section 6 of the Dowry Prohibition Act. It was submitted that even after death of Syamala Rani, the appellants threatened the complainant and his family members and the complainant-respondent No.2 had led several mediations with the appellant No.1 for return of dowry amount and other articles which were presented as dowry on demand made by the appellants and inspite of such

mediations, the appellants did not return the dowry amount and other articles and hence a *prima facie* case is made out against the appellants and the High Court rightly declined to quash the proceedings.

7. We have considered the rival contentions and perused the impugned judgment and material available on record.

8. Section 6 of the Dowry Prohibition Act lays down that where the dowry is received by any person other than the bride, that person has to transfer the same to the woman in connection with whose marriage it is given and if he fails to do so within three months from the date of the marriage, he shall be punished for violation of Section 6 of the Dowry Prohibition Act. Section 6 reads as under:-

6. Dowry to be for the benefit of the wife or her heirs.-(1)

Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman-

- (a) if the dowry was received before marriage, within [three months] after the date of marriage; or
- (b) if the dowry was received at the time of or after the marriage, within [three months] after the date of its receipts; or
- (c) if the dowry was received when the woman was a minor, within [three months] after she has attained the age of eighteen years; and pending such transfer, shall hold it in trust for the benefit of the woman.

[(2) If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefore, [or as required by Sub-section (3),] he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years or with fine [which shall not be less than five

thousand rupees, but which may extend to ten thousand rupees] or with both.]

(3) Where the woman entitled to any property under sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being:

[Provided that where such woman dies within seven years of her marriage, otherwise than due to natural causes, such property shall,-

- (a) if she has no children, be transferred to her parents; or
- (b) if she has children, be transferred to such children and pending such transfer, be held in trust for such children.]

9. If the dowry amount or articles of married woman was placed in the custody of his husband or in-laws, they would be deemed to be trustees of the same. The person receiving dowry articles or the person who is dominion over the same, as per Section 6 of the Dowry Prohibition Act, is bound to return the same within three months after the date of marriage to the woman in connection with whose marriage it is given. If he does not do so, he will be guilty of a dowry offence under this Section. The section further lays down that even after his conviction he must return the dowry to the woman within the time stipulated in the order.

10. In *Pratibha Rani vs. Suraj Kumar & Anr.* (1985) 2 SCC 370, this Court observed as follows:-

“20. We are clearly of the opinion that the mere factum of the husband and wife living together does not entitle either of them to commit a breach of criminal law and if one does then he/she will be liable for all the consequences of such breach. Criminal law and matrimonial home are not strangers. Crimes committed in matrimonial home are as much punishable as anywhere else. In the

case of stridhan property also, the title of which always remains with the wife though possession of the same may sometimes be with the husband or other members of his family, if the husband or any other member of his family commits such an offence, they will be liable to punishment for the offence of criminal breach of trust under Sections 405 and 406 of the IPC.

21. After all how could any reasonable person expect a newly married woman living in the same house and under the same roof to keep her personal property or belongings like jewellery, clothing etc., under her own lock and key, thus showing a spirit of distrust to the husband at the very behest. We are surprised how could the High Court permit the husband to cast his covetous eyes on the absolute and personal property of his wife merely because it is kept in his custody, thereby reducing the custody to a legal farce. On the other hand, it seems to us that even if the personal property of the wife is jointly kept, it would be deemed to be expressly or impliedly kept in the custody of the husband and if he dishonestly misappropriates or refuses to return the same, he is certainly guilty of criminal breach of trust, and there can be no escape from this legal consequence.....”

11. It is well-settled that power under Section 482 Cr.P.C. should be sparingly exercised in rare cases. As has been laid down by this Court in the case of *Madhavrao Jiwajirao Scindia & Ors. vs. Sambhajirao Chandrojirao Angre & Ors.*, (1988) 1 SCC 692, that when a prosecution at the initial stage was asked to be quashed, the test to be applied by the Court was as to whether the uncontroverted allegations as made in the complaint *prima facie* establish the offence. It was also for the Court to take into consideration any special feature which appears in a particular case to consider whether it was expedient and in the interest of justice to permit a prosecution to continue. This was so on the basis that the Court cannot be utilized for any oblique purpose and

where in the opinion of the Court chances of an ultimate conviction are bleak and therefore, no useful purpose was likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceedings even though it may be at a preliminary stage.

12. In the light of the well settled principles, it is to be seen whether the allegations in the complaint in the present case and other materials accompanying the complaint disclose the offence punishable under Section 6 of the Dowry Prohibition Act. Marriage of first appellant and Syamala Rani was solemnized in Vizianagaram on 04.05.2007 and the couple was living in Bangalore. Appellants 2 to 6—the parents and sisters of appellant No.1 were living in Vizianagaram. It is the contention of the appellants that there are no allegations in the complaint that the ‘stridhana articles’ were given to appellants 2 to 6 and that they failed to return the same to Syamala Rani. In paras (3) and (4) of the complaint filed by the second respondent, it is alleged that he paid the dowry amount “to the accused and some ‘stridhana articles’ like double cot and other furniture and utensils required to set up a family”. In the complaint, it is vaguely alleged that even

after death of deceased-Syamala Rani, the accused started threatening the complainant and that the accused offered to pay an amount of Rs.10,000/- towards full and final settlement. The relevant averments in the complaint in paragraphs (5) and (6) read as under:-

“5. The complainant submits that even after the death of the deceased the accused by keeping the dead body on one side, started threatening the complainant and his family members that if they give any report to the police, they will be killed then and there only and they offered to pay an amount of Rs.10,000/- towards full and final settlement. There the complainant, who was in deep shock at the death of his daughter could not answer anything but gave a report to the police.

6. The complainant submits that he lead several mediations with the accused through his colleagues, whose names are mentioned below for return of the dowry, but the accused did not return the amount and other amounts, given under different heads. A duty cast upon the accused to return those articles and amount, which were presented as dowry on demand made by the accused. The complainant reserves his right to file a fresh complaint against all the accused for return of the dowry.”

By reading of the above, it is seen that there are no specific allegations against appellants 2 to 6 that the dowry articles were entrusted to them and that they have not returned the dowry amount and the articles to Syamala Rani. Equally, there are no allegations that those dowry articles were kept in Vizianagaram and used by appellants 2 to 6 who were separately living away from the couple in Bangalore. Even though complainant has alleged that the dowry amount was paid at the house of the accused at

Gajapathinagaram, there are no specific allegations of entrustment of the dowry amount and articles to appellants 2 to 6.

13. Giving of dowry and the traditional presents at or about the time of wedding does not in any way raise a presumption that such a property was thereby entrusted and put under the dominion of the parents-in-law of the bride or other close relations so as to attract ingredients of Section 6 of the Dowry Prohibition Act. As noticed earlier, after marriage, Syamala Rani and first appellant were living in Bangalore at their matrimonial house. In respect of 'stridhana articles' given to the bride, one has to take into consideration the common practice that these articles are sent along with the bride to her matrimonial house. It is a matter of common knowledge that these articles are kept by the woman in connection with whose marriage it was given and used by her in her matrimonial house when the appellants 2 to 6 have been residing separately in Vizianagaram, it cannot be said that the dowry was given to them and that they were duty bound to return the same to Syamala Rani. Facts and circumstances of the case and also the uncontroverted allegations made in the complaint do not constitute an offence under Section 6 of the Dowry Prohibition Act against appellants 2 to 6 and there is no sufficient ground for

proceeding against the appellants 2 to 6. Be it noted that appellants 2 to 6 are also facing criminal prosecution for the offence under Sections 498A, 304B IPC and under Sections 3 and 4 of the Dowry Prohibition Act. Even though the criminal proceeding under Section 6 of the Dowry Prohibition Act is independent of the criminal prosecution under Sections 3 and 4 of Dowry Prohibition Act, in the absence of specific allegations of entrustment of the dowry amount and articles to appellants 2 to 6, in our view, continuation of the criminal proceeding against appellants 2 to 6 is not just and proper and the same is liable to be quashed.

14. The impugned order in Criminal Petition No.1778 of 2010 is set aside qua the appellants 2 to 6 and the appeal is partly allowed.

JUDGMENT

.....CJI.
(T.S. THAKUR)

.....J.
(A.K. SIKRI)

.....J.
(R. BANUMATHI)

New Delhi;
January 19, 2016