

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

Judgment delivered on: August 01, 2011

+ **W.P.(CrI.) No.1722/2010**

UMA DEVI

....PETITIONER

Through: Mr. S.S. Sidhu, Advocate

Versus

THE STATE & ANR

.....RESPONDENTS

Through: Ms. Jasbir Kaur, APP for the State
Ms. Puja Bhatia, Advocate for respondent
No.2.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.(ORAL)

1. Petitioner Uma Devi, in her complaint to the police alleged that she was married to accused Sunil Garg s/o Subhash C.Garg on 21st April, 2008. She claimed that before marriage, her `roka' ceremony was performed on 28<sup>th</sup> January, 2008 and `God-Bharai' ceremony was performed on 15th April, 2008. Before `God-Bharai' ceremony, her father-in-law held several meetings with her father on the issue of expenses to be incurred in her marriage. Her father-in-law insisted that 15/16 lacs be spent in her marriage but her father showed his inability and promised that he will not leave any stone unturned in the marriage. Petitioner Uma Devi further claimed in her complaint that her father-in-law told her father to pay ₹5

lacs in cash, in lieu of the car which he intended to give her in the marriage on the pretext that he would purchase the vehicle himself. Thus, her father was forced to give ₹5 lacs, in cash, to her father-in-law through her cousin brothers Rakesh and Suresh. It was even insisted that the jewellery, furniture and other articles of dowry should be of very good quality.

2. Respondent No.2, as a counter-blast to the aforesaid FIR, filed a petition under Section 156(3) Cr.P.C. seeking directions for registration of FIR under Section 3/4 of Dowry Prohibition Act(hereinafter referred to as 'The Act') read with Sections 384/506/34 IPC against the petitioner and her parents and others. Respondent No.2 claimed in the said FIR that a bare perusal of the complaint filed by petitioner Uma Devi along with the list of dowry articles would show that the petitioner and others are guilty of giving and abetting dowry in violation of the provisions of The Act. It is also alleged in the FIR that all the accused persons are continuously humiliating, harassing, torturing and threatening the complainant Sunil Garg and his parents for settlement amount for separation and they have been threatening that if the demand of ₹25 lacs is not met, they would implicate whole family of the complainant Sunil Garg and ensure that they are sent behind bars. It is also alleged in the complaint that brothers of the petitioner, namely, Bharat and Pradeep, named as accused No.4 and 5 in the FIR, also threatened to kill the complainant if he failed to pay the demanded amount of ₹25 lacs.

3. Learned counsel for the petitioner has contended that the registration of FIR No.50/2009 under Section 3/4 of D.P. Act and Section 384/506/34 IPC pursuant to the petition under Section 156(3) Cr.P.C. moved by the respondent No.2, is a counter-blast to the FIR No.218/2009, P.S. Keshav Puram registered under Section 498A/406 IPC and is a gross abuse of process of law. Learned counsel for the petitioner referred to Section 7(3) of The Act and contended that the aforesaid provision of The Act provides for the protection from prosecution to the person aggrieved by the offence under The Act. As such, learned M.M. ought not to have directed the registration of FIR No.50/2009 P.S. Rani Bagh. Learned counsel for the petitioner further contended that the allegations regarding commission of offences under Section 384/506 IPC are false because prior to the filing of the FIR by respondent No.2, the petitioner had already filed FIR No.218/2009 under Sections 498A/406 IPC, P.S. Keshav Puram on 28th July, 2009 and this FIR has been filed only to counter balance the FIR filed on the complaint of petitioner and to pressurise her to withdraw her case.

4. Learned counsel for respondent No.2, on the other hand, has argued in favour of the impugned order of learned Metropolitan Magistrate dated 21st October, 2009 as also the order of learned Additional Sessions Judge in revision dated 2nd June, 2010. Learned counsel submitted that learned M.M. has rightly ordered registration of FIR on the basis of allegations in the petition of respondent No.2 under Section 156(3) Cr.P.C. for the reason that as per Section 3 of The Act, giving of dowry is also prohibited and is a punishable offence. Learned counsel further submitted that apart from the offence under Section 3 & 4 of The Act, there are specific

allegations in the complaint that the petitioner and her family members are continuously harassing and threatening respondent No.2 and his family members to pay ₹25 lacs as separation amount to the petitioner, or they would get the entire family of respondent No.2 implicated in a criminal case. Learned counsel further submitted that there is also a specific allegation that brothers of the petitioner had threatened to kill respondent No.2 if he failed to pay ₹25 lacs to the petitioner. Respondent No.2, in support of his contention, has relied upon the judgment of coordinate bench of this Court in the matter of **Neera Singh Vs. State(Govt. of NCT of Delhi) & Ors. 138(2007), Delhi Law Times 152.**

5. 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 a adequate and special reasons to be recorded in he 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 is 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."

6. No doubt, as per Section 3 of The Act, giving or abetting to give dowry is a punishable offence, but the petitioner does have protection of Section 7(3) of the Act. Section 7(3) provides that notwithstanding anything contained in any law for the time being in force, a statement made by the person aggrieved by an offence under the Act shall not subject him to prosecution under this Act. In the instant case, it is obvious that respondent No.2 has filed his petition under Section 156(3) Cr.P.C. only on the basis of the allegations made by the petitioner Uma Devi in her complaint made to CAW Cell which formed basis for the registration of FIR No.218/2009 P.S. Keshav Puram under Section 498A/406/34 IPC against respondent No.2 and others as well as in her petition under Hindu Marriage Act and Domestic Violence Act. Thus, it is clear that FIR No.50/2009 registered against the petitioner under Section 3 of the Dowry Prohibition Act, 1961 is based upon the statements made by the petitioner in her complaint to CAW Cell and above noted petitions. Therefore, she is entitled to the protection of Section 7(3) of the Act, being the victim of demand of dowry.

7. In the case of **Neera Singh (supra)** relied upon by the respondent No.2, the order of Additional Sessions Judge upholding the order of discharge of accused persons passed by the Magistrate in a case under Section 498A/406 IPC was under challenge and the petitioner had sought quashing of said order. While deciding said issue, this court, taking note of Section 3 of The Act and the rules framed thereunder made following observations:-

"3. A perusal of the complaint would show that as per allegations dowry demand was made even before marriage i.e. at the time of engagement and an AC was demanded from her father by her in-laws and her father had assured that AC would be given at the time of marriage. However, she told her father You have given car and AC at the demand of in laws, what will happen if they demand a flat tomorrow?. Despite her this conversation with her father and despite her knowing that dowry demand had already been made, she married in the same family irrespective of the fact that she was well-educated lady and was an engineer and her brother was in police. In fact, these kinds of allegations made after breakdown of the marriage show the mentality of the complainant. I consider where these kinds of allegations are made, the police should simultaneously register a case under Dowry Prohibition Act (in short the 'Act') against the parents of the complainant as well, who married their daughter despite demand of dowry. Section [3](#) of the Act prohibits giving and taking of dowry. If a woman of grown up age and well educated gets married to a person despite dowry demand, she and her family becomes accomplice in the crime under Dowry Prohibition Act.

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5. The Metropolitan Magistrates should take cognizance of the offence under the Act in respect of the offence of giving dowry whenever allegations are made that dowry was given as a consideration of marriage, after demand. Courts should also insist upon compliance with the rules framed under the Act and if rules are not complied with, an adverse inference should be drawn. If huge cash amounts are alleged to be given at the time of marriage which are not accounted anywhere, such cash transactions should be brought to the notice of the Income Tax Department by the Court so that source of income is verified and the person is brought to law. It is only because the Courts are not insisting upon compliance with the relevant provisions of law while entertaining such complaints and action is taken merely on the statement of the complainant, without any verification that a large number of false complaints are pouring in. "

8. The above observation of this Court obviously is an obiter and does not constitute a binding precedent for the reason that the provisions of The Act were not the subject-matter of dispute before the court in the petition under Section 482 Cr.P.C. in Neera Singh's case. Moreover, in the aforesaid judgment, the Court has not taken into account the protection given to a victim of offence of dowry demand as provided under Section 7(3) of The Act. Thus, in my view, the above referred judgment is of no avail to respondent No.2. Further, on perusal of FIR No.218/2009, it transpires that as per the allegations in the complaint made by the petitioner, the demand for dowry was made by the father of respondent No.2 at the time of engagement ceremony of the petitioner when he allegedly asked the father of the petitioner to concede to his demand for

dowry, failing which he would call off the marriage. From the aforesaid facts, it is obvious that the petitioner and her parents were confronted with the unenviable situation of either to concede to the demand or face the 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 the circumstances. Given the aforesaid facts, Section 7(3) comes to the rescue of the petitioner and in terms of the aforesaid provision, she cannot be subjected to prosecution for the offence under Section 3 of The Act.

9. As regards the allegations pertaining to the offence under Section 384/506/34 IPC, it would be seen from the record that on the complaint of the petitioner, FIR No.218/2009 under Section 498A/406 IPC was registered against respondent No.2 and his family members at P.S. Keshav Puram. The FIR which is sought to be quashed, being FIR No.50/2009 under Section 3/4 of The Act and Section 384/506/34 IPC P.S. Rani Bagh was registered against the petitioner and others on 03.11.2009 i.e. after a span of 3 and a half months from the registration of the FIR against respondent No.2 and his parents. Thus it is obvious that this FIR is a counter-blast to the FIR by the petitioner. Otherwise also, undisputedly there is a matrimonial dispute between the parties and if during negotiations for settlement/separation, a demand for ₹ 25 lacs has been made by the petitioner for settlement of her claim for dowry expenses incurred in marriage and the maintenance, it cannot be termed as extortion. As regards the offence of criminal intimidation, on perusal of FIR

No.50/2009, it would be seen that there is only a vague allegation that brothers of the petitioner, namely Bharat and Pradeep also threatened to kill the complainant if ₹ 25 lacs were not given. No specific date or time at which the threat was extended is mentioned in the FIR. Thus, in my view, the allegations are vague.

9. When the FIR which is sought to be quashed is looked into in the context of overall facts and circumstances, it is apparent that the FIR filed by respondent No.2 is a counter-blast to the FIR registered against him and his family members on the complaint of petitioner Uma Devi and it appears to have been filed with a view to pressurise the petitioner. This is nothing but an abuse of process of law. Therefore, in my considered view, FIR No.50/2009 P.S. Rani Bagh registered pursuant to the directions of learned M.M. is liable to be quashed.

10. In view of the above, writ petition is allowed and the order dated 21st October, 2009 of learned M.M., Rohini as also the order of revision court dated 2nd June, 2010 maintaining that order are set aside and the FIR No.50/2009 registered at P.S. Rani Bagh is hereby quashed.

11. Petition stands disposed of.

(AJIT BHARIHOKE)
JUDGE

AUGUST 01, 2011
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