

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

RESERVED ON: 17th April, 2012
PRONOUNCED ON: 19th April, 2012

+ **CRL.M.C. No. 145/2012 & CrI.M.A.541/2012**

KULBIR SINGH & ORS Appellants
Through: Mr.Kumar Gaurav, Advocate.

Versus

STATE & ANR. Respondent
Through:Ms.Rajdipa Behura, APP for
the State.
None for respondent No.2

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

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1. By the present petition, the Petitioners have challenged the order dated 24th November, 2011 passed by the learned Addl. Sessions Judge in CrI. Rev. P. No. 120/2011 titled as "Kulbir Singh & Ors. vs. Bani Singh & Anr". Vide the impugned order, the learned Addl. Session Judge confirmed the summoning order dated 19th October, 2010 passed by the learned Metropolitan Magistrate in Complaint Case No. 2896/2008 titled as "Bani Singh vs. Kulbir Singh & Ors".

2. The Petitioners have been summoned for committing the offence punishable under Section 406 IPC on the basis of complaint filed by the father of Poonam i.e. his deceased

wife on their refusal to return the dowry articles. The impugned order has been challenged contending that as per the provisions of Hindu Succession Act after the death of the wife, the property of a Hindu female dying intestate shall devolve upon her sons, daughters and husband. Since in the instant case, the wife of the Petitioner died intestate and issueless, the property owned by her would devolve upon the husband.

3. The question arising for determination in the present petition is whether the articles of dowry given by the father to his daughter at the time of marriage, on the death of daughter devolved upon her husband or her parents.

4. Before dealing with the question arising in the proceedings, it is pertinent to mention here that before the commencement of arguments, this Court specifically asked the learned counsel for the Petitioner whether he is ready and willing to return the articles even as on date. The answer given by the learned counsel for the Petitioner was that the property has devolved on the husband and the same would not be returned to the parents of the deceased, the summoning order is bad in law in view of the clear provisions of Section 15(1) and 15(2) of the Hindu Succession Act. It has been further submitted that an

amount of Rs.6 lacs was received as compensation by the Petitioner from the Motor Accident Claim Tribunal and he was gracious enough to give Rs.1 lakh to the father of the deceased, out of the compensation amount. As nothing is due and returnable to the father of the deceased, his petition be disposed of after considering the merits of this case, in view of provisions of Hindu Succession Act.

5. Learned counsel for the Petitioners has further submitted that learned Addl. Sessions Judge has committed the illegality in passing the impugned order while referring to Section 25 of the Hindu Succession Act which disqualifies a murderer from inheriting the property of the person murdered. It has been submitted that the analogy drawn is inaccurate as there is no charge of murder against the Petitioner till date.

6. Learned counsel for the Petitioners, in support of his contention, has relied upon the judgments of **Azad Singh and Anr. vs. State of Haryana 2003 (3) SCC 13** , **Mangat Ram vs. The State of Haryana & Anr., II(1988) DMC 566, Ajit Singh & Anr vs. State of Punjab** in **Crl.Rev.P.No.1308/1982** and **Shashi Ahuja(Dr.) v. Kulbhushan Malik & Ors. 152(2008) Delhi Law Times 196.** The contention of learned counsel for the petitioner

that reference to Section 25 of Hindu Succession Act by learned A.S.J. is bad in law as no charge of murder was ever leveled against the petitioner, has substance and to that extent the reasoning given by learned A.S.J. is bad.

7. I have carefully considered the submissions made on behalf of the Petitioner. The facts of the case are not in dispute. The Petitioner got married to Poonam(deceased) on 2nd May, 2008. On 5th June, 2008 while the Petitioner No.1 was driving motorcycle No. UP 17-C-1363 with his wife as pillion rider, the motorcycle was hit by a truck and Poonam died in the accident. In this regard, a case FIR No. 481/2008 under Section 279/304-A IPC was also registered at PS Loni, Ghaziabad, Uttar Pradesh.

8. On the death of Poonam, the dowry articles given by her parents were demanded back by them but Petitioners refused to return the same thereby compelling the father of the deceased to file the abovementioned complaint case before the learned Metropolitan Magistrate. It is not in dispute that the articles being demanded from the Petitioners are the articles given in dowry to deceased Poonam at the time of her marriage. It would be advantageous to refer to Section 6 of the Dowry Prohibition Act 1961 to deal with questions raised. Section 6 of the

Dowry Prohibition Act, 1961 provides that dowry to be for the benefit of the wife or her heirs and it reads as under:-

“Section 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 receipt; 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 therefor, [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. Undisputedly, Poonam has died an unnatural death within one month of her marriage. As per Section 6(3) Proviso (a) of Dowry Prohibition Act, 1961 in such

circumstances the property has to be transferred to her parents.

10. In the case of ***Rajeev v. Ram Kishan Jaiswal*** MANU/UP/0197/1992, it was held that when the woman had died issueless, the articles constituting dowry were to be returned to her parents.

11. In another case of ***Pirthichand v. Des Raj Bansal***:II(1990) DMC 368 P & H while dealing with Section 6(3) of the Dowry Prohibition Act, it was held as under: -

“it will be recalled that the proviso to Sub-Section (3) of Section 6 of the Dowry Prohibition Act, 1961 was inserted by Amending Act No. 43 of 1986. The proviso is to the effect that where a woman dies within seven years of her marriage, otherwise than due to natural causes, the property in question shall be transferred to her parents if she has not left any children and shall be held in trust for such children where she has left some children and shall be ultimately transferred to such children. Shri V.K.Jhanji, learned counsel for the respondent referred to the notification G.S.R. 1185-E dated 5-11-1986 whereby the Central Government appointed 19th day of November, 1986 as the date on which the Dowry Prohibition(Amendment) Act, 1986(No.43 of 1986) came into force. The said notification is published in Part VI at page 36 of 1987 Lahore Law Times. In view of the notification the proviso referred to above came into force with effect from 19.11.1986 and Sushma having not left any child her Ishtri Dhan has to be transferred to her parents. The contention of the learned counsel for the petitioners is, therefore, without any merit.”

12. So, the legal position is not in dispute. The wife of the Petitioner No. 1 died an unnatural death within one month of her marriage and the dowry articles pertaining to her were to be returned to her parents and could not be retained by

the husband. The petitioners have challenged the summoning order praying for quashing of the complaint by invoking the provisions of Section 482 Cr.P.C.

13. I have considered the submissions made by the learned counsel for the Petitioners and also gone through the reports cited by him. The impugned order has also been perused wherein the judgments of **Azad Singh and Anr. vs. State of Haryana 2003 (3) SCC 13** , **Mangat Ram vs. The State of Haryana & Anr., II(1988) DMC 566 and Ajit Singh & Anr vs. State of Punjab** in **Crl.Rev.P.No.1308/1982** have already been dealt with by the learned Addl. Session Judge, while passing the impugned order. Reliance placed on **Shashi Ahuja(Dr.) v. Kulbhushan Malik & Ors. 152(2008) Delhi Law Times 196** is of no help to the petitioner in the given facts.

14. The question regarding quashing of the complaint/summoning order was considered by the Supreme Court in **M/s Medchi Chemicals & Pharma P. Ltd. vs. Biological E. Ltd. & Ors. (2000) 3 SCC 269** wherein after discussing its previous judgment on the subject, the Apex Court held as under: -

“Needless to record however and it being a settled principle of law that to exercise powers under Section 482 of the Code, the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint and the High

Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear ex facie on the complaint. The observation in Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi MANU/SC/0173/1976 : 1976CriLJ1533 lend support to the above statement of law.

(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.

58. The same principles would apply mutatis mutandis to a criminal complaint.

59. We now come to the question as to whether or not a clear allegation of entrustment misappropriation of properties was made by the appellant in her complaint and, if so, was the High Court justified in quashing the complaint at that stage. It is well settled by a long course of decisions that for the purpose of exercising its power under Section 482 Cr.P.C. to quash a FIR or a complaint the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se. It has no jurisdiction to examine the correctness or otherwise of the allegations. In case no offence is committed on the allegation and the ingredients of Sections 405 and 406, IPC are not made out, the High Court would be justified in quashing the proceedings”.

15. In the instant case, in view of the provisions of Section 6(3) of the Dowry Prohibition Act, 1961, the case law referred to above and the legal position emerging, I am of the considered opinion that the petition is liable to dismissed.

Dismissed.

PRATIBHA RANI, J

APRIL 19, 2012

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