

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

% *Judgment Reserved on: March 15, 2016*
Judgment Delivered on: March 21, 2016

+ **W.P.(CRL) 2656/2015**

CHITRANJAN DEV GOEL & ORS Petitioners
Through: Mr.Sanjeev Kumar & Mr.Ranvir Vats,
Advocates

versus

STATE (NCT OF DELHI) & ORS Respondents
Through: Mr.Rajesh Mahajan, ASC for State
with SI Ganga Ram, PS Janakpuri
Mr.A.K. Padhy, Adv. for R-3

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

W.P.(CRL) 2656/2015

1. The petitioners before this Court have invoked the writ jurisdiction of this Court with a prayer to quash FIR No.349/2015 registered against them at PS Janakpuri for allegedly committing the offence punishable under Section 3 of the Dowry Prohibition Act.
2. In brief the case of the petitioners is that petitioner No.4, Ashima Goel got married to Vipul Gupta, son of respondent No.3, Rajender Gupta. The petitioners alleged that the respondent No.3 and his family had been making dowry demand on different occasions and had also been causing harassment to petitioner No.4. On not being able to bear such kind of harassment, the

petitioner No.4 left the matrimonial home and reached parental home on 13th June, 2014. Efforts by the family of the petitioner No.4 to contact her in-laws could not succeed as they were neither present at home nor were taking the calls resultantly a complaint was made by petitioner No.1, father of petitioner No.4, to SSP, Karnal, Haryana which was marked to the Women Cell, Karnal. There a compromise took place and thereafter petitioner No.4 along with her husband shifted to a rented accommodation. Since the situation did not improve, a case FIR No.962/2014 was registered at PS Janakpuri on 31st August, 2014 against the respondent No.3 and his family at the behest of petitioner No.4, Ashima Goel for allegedly committing the offence under Sections 323/328/342/376/498-A/406/506/34 IPC. Thereafter, respondent No.3, who is father-in-law of the petitioner No.4 filed a complaint against these petitioners for allegedly committing the offence under Section 3 of Dowry Prohibition Act. The learned CMM vide its order dated 16th March, 2015 has passed an order for registration of FIR in the said complaint case and on 19th March, 2015, FIR No.349/2015 under Section 3 of the Dowry Prohibition Act has been registered at PS Janakpuri.

3. The grievance of the petitioners is that on the basis of averments made in FIR No.962/2014 registered at the behest of petitioner No.4, Ashima Goel wherein she extracted the complaint made by her father to SSP, Karnal on 16th June, 2014, no case could have been registered against them under Section 3 of the Dowry Prohibition Act hence the impugned order dated 16th March, 2015 directing registration of FIR No.349/2015 being illegal may be quashed.

4. Notice of this petition was sent to the respondents.

5. Heard.

6. Learned counsel for the petitioners as well as learned ASC for the State submit that in view of the decision of this Court in Pooja Saxena Vs. State & Anr., 2010 (4) JCC 2780, the petitioners being victim of demand of dowry are protected under Section 7(3) of the Dowry Prohibition Act hence the impugned order directing registration of FIR as well the FIR registered under Section 3 of the Dowry Prohibition Act and the criminal proceedings emanating therefrom against the petitioners may be quashed.

7. Learned ASC for the State has also submitted that SLP was preferred before Hon'ble Supreme Court against the decision of Pooja Saxena (supra) which has also been dismissed.

8. Learned counsel for the respondent No.3 has contended that the decision of this Court in Pooja Saxena's case (supra) is not applicable to the facts of the present case. Drawing attention of this Court to the facts in Pooja Saxena's case, he has submitted that in that case the dowry demand was made with a threat that if demands are not fulfilled the marriage would be called off. Thus, the family of the bride was faced with a situation either to concede the demand or face loss of honour of the family in the eyes of society. It is not the case of the petitioners herein before this Court that dowry demands were fulfilled under the circumstances similar to the one in Pooja Saxena's case.

9. In Pooja Saxena's case, facts were identical to the extent that Pooja Saxena filed a complaint of dowry demand and harassment against her husband with CAW Cell. After a preliminary enquiry and on the recommendation of the senior police officer, FIR was registered against her husband and others. As a counter blast her husband filed a complaint under Section 156(3) Cr.P.C., seeking direction for registration of FIR under

Section 3 of Dowry Prohibition Act, 1961 against the petitioner. In that case also learned ACMM in exercise of power under Section 156(3) Cr.P.C had given direction for registration of the FIR and investigation in accordance with law. The issue before the Court was whether the petitioner was covered within the definition of victim and protected from prosecution under Section 7(3) of Dowry Prohibition Act.

10. After referring to the provisions of Section 3 as well as Section 7 of the Dowry Prohibition Act as well the decision in Neera Singh Vs. State, 138 (2007) DLT 152, it was held as under:-

“11. 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 Dowry Prohibition Act 1961 were not the subject-matter of the 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 Dowry Prohibition Act 1961. Thus, in my view the above referred judgment is of no avail to respondent No.2. Further, on perusal of FIR No.232/2009, 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 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 Dowry Prohibition Act, 1961.

12. In view of the above, I find it difficult to sustain the impugned order dated 10.03.2010 of learned ACMM vide which he has directed registration of FIR against the petitioner herein ignoring the protection extended to the petitioner under Section 7(3) of the Dowry Prohibition Act 1961. Accordingly, the impugned order of learned ACMM and the FIR registered in furtherance of said order are hereby quashed.”

11. Thereafter, SLP Nos. 1339-1340/2011 preferred by Sameer Saxena, on whose complaint FIR under Section 3 of the Dowry Prohibition Act was registered against his wife, Pooja Saxena, has been dismissed by Hon'ble Supreme Court on 7th March, 2011 by passing the following order:-

*“Heard the learned counsel for the parties.
We see no reason to interfere in the Special Leave Petitions which are, accordingly, dismissed.”*

12. Reverting to the facts of the present case, it is a matter of record that complaint against the petitioners has been filed by respondent No.3, who is father-in-law of the petitioner No.4 on the basis of allegations made in case FIR No.962/2014 PS Janakpuri. Since FIR No.349/2015 for committing the offence punishable under Section 3 of the Dowry Prohibition Act has been registered against the petitioners based on the averments made by the petitioners of fulfilling the demands to save the marriage, merely because there was no threat given by the respondent No.3 to call off the marriage if demands are not fulfilled, is no ground to hold that it is not covered by the decision in Pooja Saxena's case. The dowry demands have been allegedly met by the petitioners to save the marriage of petitioner No.4.

13. The petitioner Nos.1 to 3 being aggrieved persons from whom dowry was demanded which they have allegedly given to save the marriage of petitioner No.4, are protected from prosecution under Section 7(3) of the Dowry Prohibition Act.

14. The impugned order dated 16th March, 2015 passed by learned CMM directing for registration of FIR as well the FIR No.349/2015 registered in compliance of the said order are hereby quashed.

15. The petition stands allowed in above terms.

16. Order *dasti*.

CrI.M.A. No.4599/2016

Dismissed as infructuous .

PRATIBHA RANI, J.

MARCH 21, 2016

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