

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL APPEAL No.1226 OF 2016

ORDER:

This criminal appeal is filed by the petitioner/defacto complainant/victim under Section 372 of Cr.P.C challenging the acquittal of respondents 2 to 5 for the offences punishable under Sections 498-A IPC and Sections 3 & 4 of Dowry Prohibition Act.

The facts of the case are that the petitioner/defacto complainant lodged a complaint with the police against the respondents 2 to 5 for the offences punishable under Sections 498-A IPC and Sections 3 & 4 of Dowry Prohibition Act. The Sub-Inspector of Police, Vontimitta Police Station registered Crime No.78 of 2007 and after completing investigation, filed final report under Section 173 Cr.P.C against the respondents 2 to 5/accused.

Petitioner is the wife of respondent No.1. Respondent no.2 is the mother of 1st respondent and respondents 3 & 4 are the brothers of respondent no.1. prosecution case is that the marriage of the petitioner was performed with respondent no.2 in the year 2003 according to Muslim Rights and Customs and at the time of their marriage, the parents of the petitioner gave cash of Rs.3 lakhs, 25 tolas of gold, house hold articles worth Rs.80,000/- towards dowry, as demanded by the respondents 2 to 5/accused. The second respondent is a Teacher working at Mandapampalli and also involved in real estate business. When the petitioner was blessed with a male child, respondents 2 to 5 demanded 5 tolas of gold and Hero Honda Motor Cycle towards additional dowry for which father of the petitioner paid Rs.30,000/-. Again, in the year 2007, when the petitioner was blessed

with another child, the respondents 2 to 5/accused demanded Rupees one lakh cash and colour television as additional dowry. When father expressed his inability to pay the illegal demand of dowry, the respondents 2 to 5/accused abused and assaulted the petitioner, subjected her to cruelty. The II Additional Judicial Magistrate of First Class, Kadapa, after following necessary procedure recorded evidence of P.W.1 to 6 and marked Exs.P-1 & P-2 on behalf of the prosecution. None of the witnesses were examined on behalf of the respondents 2 to 5/accused and a portion of statement of PW-3 recorded under 161 Cr.P.C was marked on behalf of the accused.

Upon hearing argument of both the counsel, II Additional Judicial Magistrate of First Class, Kadapa in C.C.No.94 of 2009 dated 19.01.2012 found the respondents 2 to 5/accused not guilty for the offences punishable under Sections 498-A IPC and Section 4 of Dowry Prohibition Act and acquitted the respondents 2 to 5/accused. However, as the accused were found guilty for the offence punishable under Section 3 of Dowry Prohibition Act, the Court convicted the respondents 2 to 5 to undergo simple imprisonment for a period of two years each.

Aggrieved by the sentence imposed by the II Additional Judicial Magistrate of First Class, Kadapa, in C.C.No.94 of 2009, the respondents 2 to 5 filed Crl.A.No.14 of 2012 before the Principal Sessions Judge, Kadapa. Upon hearing arguments of both the counsel, the Principal Sessions Judge, Kadapa recorded a finding in paragraph 14 of the judgment as follows:

“The learned counsel appearing for the appellants/accused urges that according to Rule-10 of A.P. Dowry Prohibition Act, 1998, any offence under Sections 3 & 4 of or any disputed under Section 5 of the Act shall be filed before the expiry of one

year and the same shall be finalized within two years from the date of filing. As per the case of prosecution, the alleged demand and collection of dowry amount is on the date of marriage i.e. 11.05.2003, whereas the complainant lodged a complaint on 10.10.2007, obviously it is beyond limitation.”

With the said observation, the Principal District Judge, Kadapa allowed the appeal and set-aside the conviction and sentence imposed by the II Additional Judicial Magistrate of First Class, Kadapa in C.C.No.94 of 2009 dated 19.01.2002.

The present appeal is filed by the petitioner/defacto complainant challenging the acquittal of respondents 2 to 5 in C.C.No.94 of 2009 dated 19.01.2002, mainly on the ground that the Trial Court did not appreciate the evidence under Rule 10 of the Andhra Pradesh Dowry Prohibition Rules, 1998, has no application and also challenged the findings recorded by the II Additional Judicial Magistrate of First Class, Kadapa. But, it is brought to the notice of this Court that an appeal before the Sessions Judge is pending against the acquittal of the respondents 2 to 5/accused for the offences punishable under Section 498-A IPC and Sections 3 & 4 of Dowry Prohibition Act.

The Trial Court having found the respondents 2 to 5/accused guilty for the offences punishable under Section 3 of Dowry Prohibition Act, the allegations made in the complaint are substantiated by adducing evidence and even according to the allegations made in the complaint that the parents of the petitioner paid Rs.3 lakhs and presented 25 tolas of gold and house hold articles worth Rs.80,000/- towards dowry.

The word ‘Dowry’ is defined under Section 2 of Dowry Prohibition Act and it is 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 parent of either party to a marriage or by any other person, , to either party to the marriage or to any other person,

at or before ¹[or any time after the marriage] ²[in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.”

Here, the petitioner and respondents 2 to 5 are Muslims and are governed by Shariat Law i.e. Muslim personal Law and it is not known whether the amount was paid as dower or Mahr. On the other hand, it is the contention before the Trial Court and Appellate Court that the said payment was towards Dower. In the absence of any such plea, the propriety does not permit me to decide about the legality of the contention raised before the Trial Court and the Appellate Court.

The sole ground on which the appeal was allowed by the Appellate Court is that taking cognizance of the complaint is barred by limitation.

Section 7 of Dowry Prohibition Act deals with Cognizance of offences and it reads as follows:

“7. Cognizance of offences –

¹(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(b) No court shall take cognizance of an offence under this Act except upon-

(i) Its own knowledge or a police report of the facts which constitute such offence, or

(ii) A complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognized welfare institution or organisation.

(c) It shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass any sentence authorised by this Act on any person convicted of an offence under this Act.

The appellate court based on Rule 10 of the Andhra Pradesh Dowry Prohibition Rules, 1998 concluded that the complaint is barred by limitation.

Rule 10 of the Andhra Pradesh Dowry Prohibition Rules, 1998 reads as under:

“10. Time for settlement of disputes:- Any Offence under Section 3 and Section 4 or any dispute under Section 6 of the Act shall be filed before expiry of one year and the same shall be finalized within two years from the date of filing.”

Since the Rule 10 of the Andhra Pradesh Dowry Prohibition Rules, 1998 prescribes one year period to file complaint in respect of the offences under Sections 3 and 4 or any dispute under Section 6 of the Dowry Prohibition Act, 1961. After long lapse of time i.e., one year, the complaint is barred by limitation.

An identical question came up before this Court in **Tammineedi Bhaskara Rao & Ors. v. State of A.P. & Anr.**¹. wherein this Court considered the effect of Rule 10 of the Andhra Pradesh Dowry Prohibition Rules, 1998 which provides that any offence under Section 3 and 4 shall be filed before expiry of one year. It cannot, however be lost sight of that giving of property or valuable security at any time after the marriage also falls within the definition

¹ 2007Cri.L.J. 1204

of "dowry" and any person who either takes or abets the taking of dowry or directly or indirectly demands dowry is liable to be punished for offences under Sections 3 and 4 of the Dowry Prohibition Act.

Here, the marriage took place on 11.05.2003 and the alleged incident of demanding dowry in the year 2004. According to Section 3 of Dowry Prohibition Act, 1961 payment and demand of dowry are punishable with imprisonment for a period of five years. But in view of specific rule under the Andhra Pradesh Dowry Prohibition Rules, 1998, the special rules will prevail over the general provisions of CPC. Therefore, it can safely be concluded that the complaint for the offence under Section 3 and 4 of Dowry Prohibition Act, 1961 is barred by limitation, though the trial court did not look into Rule 10 of the Andhra Pradesh Dowry Prohibition Rules, 1998 framed under the Act, but for the first time such contention was raised regarding the limitation before the appellate court. The appellate court, at paragraph 14 of the Judgment, recorded its finding that the complaint is barred by limitation. The findings recorded by the trial court are totally inconsistent with the law declared by this Court in **Tammineedi Bhaskara Rao & Ors. v. State of A.P. & Anr.** (1supra).

Hence, I find no illegality in the order dated 31.01.2014 in Crl.A.No.14 of 2012 passed by the Principal Sessions Judge, Kadapa, acquitting the accused/ respondents 2 to 5 herein for the offences punishable under Section 3 and 4 of the Dowry Prohibition Act, 1961, warranting interference of this Court. Hence, this court has no option except to accept the finding recorded by the learned Sessions Judge while setting aside the finding recorded by the trial Court in C.C. No.94 of 2009.

Consequently, I find no ground to set aside the Calendar and Judgment dated 31.01.2014 in CrI.A. No.14 of 2012 passed by the Principal Sessions Judge, Kadapa against the Calendar and Judgment dated 19.01.2012 in C.C. No.94 of 2009 passed by the II Additional Judicial Magistrate of First Class, Kadapa, the appeal is devoid of merits and hence the appeal is liable to be dismissed.

In the result, the criminal appeal is dismissed.

Consequently, miscellaneous applications pending, if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:23.03.2017

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