

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

CRIMINAL PETITION No. 3634 of 2011

Between:

Ashpathi Raju and 2 others

... Petitioners

AND

1. The State of Andhra Pradesh and another

.... Respondents

Date of Judgment pronounced on : 27.04.2018

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers : Yes / No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes / No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes / No
Of the Judgment?

GUDISEVA SHYAM PRASAD, J

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**CRIMINAL PETITION No. 3634 of 2011**

% 27.04.2018

Ashpathi Raju and 2 others

..... Petitioners

Versus

\$ 1. The State of Andhra Pradesh and another

..... Respondents

< GIST:

> HEAD NOTE:

! Counsel for the Petitioners : D. Bhaskar Reddy

^ Counsel for the Respondents : Public Prosecutor (R1)
Sanjeev Gillela (R2)

? CASES REFERRED:

(2016) 1 SCC 348
(2002) 1 SCC 241: 2002 SCC (Cri) 129
(2005) 10 SCC 228
1194 CrLJ.NOC 255 Allahabad
II 1990 DMC 368 Punjab and Haryana
1991 CC Cases 594

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**CRIMINAL PETITION No. 3634 of 2011****ORDER:**

This criminal petition is filed under Section 482 of Cr.P.C., for quashing the proceedings in C.C.No.13 of 2011 on the file of Principal Judicial First Class Magistrate, Warangal. The 2nd respondent-Uppu Bhadramma filed a private complaint, under Section 200 Cr.P.C., before the Principal Judicial Magistrate of First Class, Warangal, alleging offences punishable under Section 417 IPC and Section 4 of Dowry Prohibition Act (for short, 'the DP Act') against the petitioners/accused Nos.1 to 3. The learned Magistrate forwarded the private complaint to the police concerned, under Section 156(3) Cr.P.C., for investigation and report. The Inspector of Police, P.S., Kakatiya University Campus, conducted investigation and filed charge sheet against accused Nos.1 to 3 for the offences punishable under Section 417 IPC and Section 6 of the DP Act.

2. Brief facts of the private complaint given by the 2nd respondent-defacto complainant Uppu Bhadramma are as under:

The 2nd respondent performed the marriage of her daughter Ashpathi Bhavani (hereinafter referred to as 'the deceased') with the accused No.1 at Bheemaram village,

Warangal, on 24.03.2006, and paid an amount of Rs.2,50,000/- to accused No.1 as consideration for marriage as per the demand made by the accused at the time of settlement of marriage. It is further averred in the complaint that the deceased led matrimonial life for about six months and during that period the accused started harassing the deceased physically and mentally for additional dowry, and they threatened that they would perform second marriage to accused No.1. On 24.09.2006, in the panchayat, accused No.1 promised to look after the deceased, but again started harassing the deceased physically and mentally and the accused No.1 took Rs.5,000/- from the 2nd respondent, and the deceased went to her parents house. On 31.05.2008, he threatened the deceased and warned her not to come to his village, and when the deceased went there, the accused Nos.1 to 3 quarreled with her for not bringing additional dowry, and on 01.06.2008, in the morning hours, they killed her by throttling and threw her dead body into an agricultural well. On the complaint of the 2nd respondent, P.S. Huzurabad registered a case in Crime No.146 of 2008, against accused Nos.1 to 3 for the offences punishable under Sections 302, 304B, 498-A and 201 IPC and Sections 3 and 4 of the DP Act and, the case was committed to the I Additional Sessions Judge, Karimnagar, and the same it

was numbered as Sessions Case No.132 of 2009. The learned Sessions Judge, on consideration of evidence, convicted the accused No.1 for the offences under Sections 304-B, 498-A IPC and Section 4 of the DP Act, and sentenced him to suffer rigorous imprisonment for seven years for the offence punishable under Section 304-B IPC; and also sentenced to undergo rigorous imprisonment for a two years and pay a fine of Rs.1,000/- for the offence under Section 498-A IPC, and in default of payment of fine, he shall undergo simple imprisonment for a period of two months; and he was further sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- for the offence under Section 4 of DP Act, and in default of payment of fine, he shall undergo simple imprisonment for a period of two months. The accused Nos.2 and 3 were acquitted of all the charges. On 03.06.2008, the accused have executed an agreement on a non-judicial stamp paper of Rs.20/- denomination, in the presence of LWs.4 to 7, admitting the receipt of dowry and undertook to return an amount of Rs.2,25,000/- to the 2nd respondent on or before 05.08.2008; and on 13.08.2008, the accused paid an amount of Rs.90,000/- and agreed to pay the balance amount of Rs.1,35,000/- on or before 20.09.2008 and made an endorsement to that effect on the reverse of the stamp paper.

It is averred by the 2nd respondent that the accused are under legal obligation to return the dowry amount and other articles mentioned in the agreement, but they have not returned the same and, therefore, the accused have committed offences punishable under Section 6 of the DP Act.

On receiving the private complaint of the 2nd respondent, the learned Principal Judicial Magistrate of First Class, Warangal, has forwarded it to the Police concerned, for investigation and report, as contemplated under Section 156(3) of Cr.P.C. The Inspector of Police, P.S., Kakatiya University Campus, filed charge sheet which was taken on file as C.C.No.13 of 2011 for the offences punishable under Section 417 IPC and Section 6 of the DP Act.

Seeking to quash the proceedings in C.C.No.13 of 2011 on the file of Principal Judicial Magistrate of First Class, Warangal, petitioners/accused Nos.1 to 3 filed the present criminal petition.

3. Heard the arguments of learned counsel for petitioners, learned counsel for the 2nd respondent, and the learned Public Prosecutor (TS).

4. The contents of the agreement entered into between the parties as per translated version reads as under:

DEED OF AGREEMENT

It is agreed today i.e., on 3-06-2008, Smt. Ashpathi Bhavani (Anitha) W/o Ashpathi Raju, R/o Pothireddipeta, Karimnagar District died on 1-06-2008 due to drowning. It is also agreed that the dowry amount given to her Rs.2,25,000/- will be returned on 5-08-2008 in presence of the elders and Sarpanch, Pothireddipet in Huzurabad Police Station by us i.e., Ashpathi Raju, Ashpathi Bathukamma, Ashpathi Naresh. It is further agreed that the above said amount will be paid to Uppu viswanatham, S/o Siddaiah, R/o Bheemaram, District Warangal on 5-08-2008.

Witnesses

- | | | |
|----|------|---------|
| 1. | Sd/- | 1. Sd/- |
| 2. | Sd/- | 2. Sd/- |
| 3. | Sd/- | 3. Sd/- |
| 4. | Sd/- | |

Note: Today, i.e., 13-08-2008 an amount of

Total amount	Rs.2,25,000/-
Amount paid	Rs.90,000/-
Balance amount	Rs.1,35,000/-

The balance amount of Rs.1,35,000/- will be paid on 20-09-2008.

Sd/-

5. Learned counsel for the petitioners submitted that the agreement was got executed forcibly in the police station on 03.06.2008, whereas the arrest of accused was shown on 05.06.2008. It is further contended that the accused were in the custody of police on 03.06.2008, while his actual arrest was on 05.06.2008, which is an illegal detention and as the agreement was got forcibly executed by the police during illegal detention

was by force and coercion, as such, the agreement is illegal and not binding on the parties and it cannot be executed under Section 6 of the DP Act.

6. Learned Public Prosecutor and the learned counsel for 2nd respondent submitted that the accused have not taken the plea that they were coerced by the police and forcibly got executed the agreement, at any subsequent stage. It is further contended that the accused have also not raised this plea when they were remanded by the Magistrate, or before the Sessions Court at any point of time during the course of trial and, therefore, the accused cannot take such a plea that the agreement was got forcibly executed by the police.

7. As far as the contention of forcible execution of agreement by petitioners/accused Nos.1 to 3 is concerned, it is a question of fact. In a petition filed under Section 482 Cr.P.C., a question of fact cannot be decided. Whether the agreement was got forcibly executed or not has to be decided only by the competent Court after receiving evidence in that regard.

8. The contention of the learned counsel for the petitioners is that the accused No.1 was only convicted for the charge under Section 4 of the DP Act, and accused Nos.2 and 3 were

acquitted of all the charges and, therefore, they are not liable for prosecution under Section 417 IPC and Section 6 of the DP Act.

9. Learned counsel for the petitioners placed reliance on a decision in **International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) v. Nimra Cerglass Technics Private Limited**¹, and submitted that when the accused have no dishonest intention to cheat, the offence under Sections 419 and 420 do not attract. Learned counsel referred to paras 15 and 16 which read as under:

“15. The essential ingredients to attract Section 420 IPC are (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security; and (iii) mens rea of the accused at the time of making the inducement. The making of a false representation is one of the essential ingredients to constitute the offence of cheating under Section 420 IPC. In order to bring a case for the offence of cheating, it is not merely sufficient to prove that a false representation had been made, but, it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant.

16. The distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established is that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil

¹ (2016) 1 Supreme Court Cases 348

court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction. In **S.W. Palanitkar v. State of Bihar**², this Court held as under:

“21... In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating.”

10. In the light of this decision, *mens rea* should be there for cheating, and there must be dishonest inducement to deliver property. In the instant case, the dishonest inducement to deliver property does not appear to be present in case of accused Nos.2 and 3. Learned counsel for the petitioners has placed reliance on **Anil Mahajan v. Bhor Industries Limited**³, for the same proposition of law. As per this decision, in the complaint filed before the police, there must be an averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU, wherefrom it can be inferred that the accused had the intention to deceive the complainant.

11. Learned counsel for the petitioners has made an alternative argument that if at all the 2nd respondent has got

² (2002) 1 SCC 241 : 2002 SCC (Cri) 129

³ (2005) 10 Supreme Court Cases 228

any right basing on the agreement, her remedy is to approach competent civil Court, but she cannot seek recourse in a criminal proceeding against accused Nos.2 and 3.

12. The learned Public Prosecutor submitted that accused No.1 was found guilty under Section 4 of DP Act which clearly indicates that there was demand of Dowry by accused No.1. The fact that accused Nos.2 and 3 have also demanded dowry is proved by the agreement entered into by the parties. Therefore, the accused Nos.2 and 3 are also liable for prosecution under Section 417 IPC and Section 6 of the DP Act.

13. There is some force in the contention raised by the learned counsel for the petitioners with regard to the fact that accused Nos.2 and 3 were acquitted of offence under Section 4 of DP Act, and the findings in the Sessions Case have become final as no appeal has been preferred against the said judgment. Therefore, when there was no demand of dowry by accused Nos.2 and 3, the question of implicating them for the offence under Section 417 IPC and Section 6 of the DP Act does not arise.

14. Section 417 of IPC reads as under:

“417. **Punishment for cheating:** Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

15. Sections 4 and 6 of the DP Act read as under:

4. Penalty for demanding dowry.-

(1) If any person demands directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

6. Dowry to be for the benefit of the wife or 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 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: if she has no children, be transferred to her parents, or if she has

children, be transferred to such children and pending such transfer, be held in trust for such children.

(3-A) Where a person convicted under sub-section (2) for failure to transfer any property as required by sub-section (1) or sub-section (3) has not, before his conviction under that sub-section, transferred such property to the women entitled thereto or, as the case may be, her heirs, parents or children, the Court shall, in addition to awarding punishment under that sub-section, direct, by order in writing, that such person shall transfer the property to such woman, or as the case may be, her heirs, parents or children within such period as may be specified in the order, and if such person fails to comply with the direction within the period so specified, an amount equal to the value of the property may be recovered from him as if it were a fine imposed by such Court and paid to such woman, as the case may be, her heirs, parents or children.

(4) Nothing contained in this section shall affect provisions of Sec. 3 or Sec. 4.

16. The learned Sessions Judge has disbelieved the demand of dowry by accused Nos.2 and 3 and the alleged harassment made by them for additional dowry. The accused Nos.2 and 3 were also acquitted of the offence under Section 304-B IPC which is punishable offence for dowry death. Since the trial Court acquitted the accused for the main offence under Section 304-B and 498-A and also for the offence under Section 4 of the DP Act, the accused Nos.2 and 3 cannot be tried for the offence under Section 6 of the DP Act.

17. It is pertinent to note that the trial Court has acquitted the accused Nos.2 and 3 for the offences for which they were

charged *inter alia* Section 4 of DP Act. When there was no demand of dowry under Section 4 of DP Act, the provision under Section 6 of DP Act does not attract. The 2nd respondent-defacto complainant ought to have filed the alleged agreement before the Sessions Court but it was not filed during the trial of the case by the Sessions Court.

18. In the light of the above two decisions, it does not appear that there is any dishonest intention on the part of accused Nos.2 and 3 to deceive or cheat the complainant. Therefore, Section 417 of IPC and Section 6 of the DP Act do not attract in respect of accused Nos.2 and 3 in this case.

19. In **Rajiv v. Ram Kishan Jaiswal**⁴, it was held that if a woman dies issueless, the articles constituting dowry are to be returned to her parents and not to her husband. In **Preeti Chand v. Desraj Bansal**⁵, it was held that in a case where the wife had died within less than three months of her marriage without issues, in that case, the dowry articles were transferred to the parents of the wife and not to the husband. Similar observations were made in **Pradeep Kumar v. State of Punjab**⁶, stating that dowry items are required to be transferred to parents and not to the husband of the deceased.

⁴ 1194 CrL.J.NOC 255 Allahabad

⁵ II 1990 DMC 368 Punjab and Haryana

⁶ 1991 CC Cases 594

20. In the instant case, accused No.1 is the husband of the deceased. The allegation of the 2nd respondent is that there was an agreement between the accused and the 2nd respondent whereby and whereunder the accused have agreed to return the dowry amount, but the agreement was not executed. In view of the fact that accused No.1 was convicted for the offences charged against him in S.C.No.132 of 2009, and accused Nos.2 and 3 were found not guilty for the offence under Section 4 of DP Act, the 2nd respondent may proceed against accused No.1 for the offence punishable under Section 6 of the DP Act. Further, as it is a question of fact as to whether the agreement was executed by accused Nos.1 to 3, and under what circumstances they have executed the said agreement, and in the light of the argument of learned counsel for the petitioners that the police did not register case against accused Nos.2 and 3 for the offence punishable under Section 6 of the DP Act when the charge sheet was filed against accused Nos.1 to 3 under Section 4 of the DP Act, the accused Nos.2 and 3, having been acquitted under Section 4 of DP Act, cannot be once again tried and convicted under Section 6 of the DP Act. It is pertinent to note that the trial Court has acquitted accused Nos.2 and 3 for the offence under Section 4 of DP Act, and no charge has been framed against accused Nos.2 and 3 for the

offence punishable under Section 6 of the DP Act, during the trial.

21. Having regard to the facts and circumstances of this case, since it is contended by the learned counsel for the petitioners that the return of dowry under Section 6 of the DP Act, as per the agreement between the parties, is a civil transaction and accused Nos.2 and 3 having been acquitted for the offence under Section 4 of the DP Act, cannot be prosecuted under Section 6 of the DP Act, may be a relevant factor for consideration of quashing of proceedings against accused Nos.2 and 3.

22. Therefore, the proceedings in C.C.No.13 of 2011 on the file of Judicial Magistrate of First Class, Warangal, against accused Nos.2 and 3 are liable to be quashed in view of the fact that the trial court has acquitted accused Nos.2 and 3 for the offence under DP Act. The 2nd respondent-defacto complainant is at liberty to proceed against accused No.1 under Section 6 of the DP Act for execution of the agreement for return of dowry and other articles stated in the agreement. The proceedings against accused No.1 cannot be quashed for the reason that he was found guilty and convicted for the offence under Section 4 of the DP Act by the trial Court.

23. **IN THE RESULT**, the criminal petition is partly allowed, by quashing the proceedings in C.C.No.13 of 2011 against accused Nos.2 and 3; and dismissing the criminal petition against accused No.1. Miscellaneous petitions if any pending shall stand closed.

GUDISEVA SHYAM PRASAD, J

27th April, 2018

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