

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.7363 of 2010

ORDER:

Petitioners/A1 to A3 seek to quash the proceedings against them in C.C.No.320 of 2007 on the file of Additional Judicial First Class Magistrate, Ananthapur registered for the offences under Section 4 of Dowry Prohibition Act, 1961 (for short "DP Act").

2) A1 is the proposed bridegroom; A2 and A3 are his parents. The accused and complainant are close relatives.

a) Brief facts of the complaint allegations are that complainant is the resident of Ananthapur and she is eking her livelihood by doing coolie work; she had two sons and two daughters; she lost her husband 6 years back; while so, complainant proposed to give her daughter (LW3) in marriage with A1; at the time of marriage talks, the accused party demanded Rs.60,000/- cash towards dowry besides one gold chain and ring with a condition that the same has to be paid on the date of betrothal function. The complainant agreed to comply with their demand and fixed the betrothal function on 24.09.2006. On the date of betrothal function, A1 to A3 demanded the complainant to give a house plot situated in Jainagar, Bangalore besides cash of Rs.60,000/- and gold ornaments as agreed earlier and threatened the complainant that unless and until they fulfil their demand of house plot, they would not attend the betrothal function and marry LW3. The mediators and other relatives who attended the betrothal function, tried to convince the accused, but they did not

heed and left the house. Later, having no other go the complainant went to Mahila PS, Ananthapur and lodged a complaint. Basing on the said complaint, the police registered a case in Cr.No.31 of 2006 and after investigation filed charge sheet. The learned Magistrate took cognizance of the same and registered as C.C.No.320 of 2007 for the offence under Section 4 of DP Act.

Hence, the quash petition by petitioners/A1 to A3.

3) Heard arguments of Sri K.Srinivas, learned counsel for petitioners and learned Additional Public Prosecutor (AP) for respondent No.1. None appeared for 2nd respondent/complainant.

4) Learned counsel for petitioner while denying the charge sheet allegations as false and untenable, sought to quash the proceedings on two main grounds:

a) Firstly, that when the accused were arrested and produced on 26.09.2006 before the Additional Judicial Magistrate of First Class, Anantapur, for remand to the judicial custody, learned Magistrate refused to remand them to the judicial custody on the ground that no *prima facie* material existed against the accused for the offences under Section 385 IPC and Sections 3 & 4 of the D.P Act and accordingly, discharged them. Therefore, the order of the Magistrate would manifest that apparently there was no case, much-less *prima facie* case against the accused to not only remand them to judicial custody but also to conduct further investigation. However, the police have without stopping further proceedings, continued an armchair investigation and filed charge sheet and without referring to its earlier order of

discharging the accused, surprisingly, the learned Magistrate has taken cognizance of the offence and registered it as C.C.No.320/2007 which is against the law. Therefore, continuation of further proceedings would amount to abuse of process of the Court.

5) The above argument though apparently sounds attractive but legally untenable. It is true that during the course of investigation, when police arrested petitioners/A.1 to A.3 and produced them before the Additional Judicial Magistrate of First Class, Anantapur, for remand to judicial custody on the ground that investigation was pending and not yet completed, the learned Magistrate having observed that the party who was ready to give dowry was not shown as accused and that there was no *prima facie* material against the accused for the offences under Section 385 IPC and Sections 3 & 4 of D.P Act, discharged them and set at liberty. The question is whether the aforesaid discharge order passed by the Magistrate under Section 167 r/w Section 59 Cr.P.C is, in legal parlance, the discharge from arrest or discharge from the case itself. Under Section 167 Cr.P.C, whenever any person is arrested and detained in custody and it appears to the Investigating Officer that the investigation cannot be completed within the period of 24 hours fixed by Section 57, and that there are grounds for believing that the accusation or information is well-founded, the officer-in-charge of police station or the Investigating Officer not below the rank of sub-inspector, shall forthwith transmit the arrested person to the nearest Judicial Magistrate along with the remand report and Case Diary. The Magistrate in turn, may, from time to time authorize the detention of the accused in such custody as he thinks fit, for a

term not exceeding fifteen days in the whole. Therefore, Section 167 lays down that when the arrested accused is produced before the Magistrate seeking his remand to the judicial custody, the Magistrate has to apply his judicial mind to the record produced before him to know whether there is a *prima facie* material at that stage to remand the arrested person to the judicial custody or not and upon satisfying himself that indeed there existed a *prima facie* material, then remand him to the judicial custody. If he has not found such *prima facie* material at that stage, he may discharge the accused from arrest and set him at liberty in terms of Section 59 Cr.P.C. What is crucial to be noted and should not be forgotten is, investigation at that stage was still pending and not completed. Therefore, when the Magistrate discharges a person under Section 167(1) r/w 59 Cr.P.C, it does mean, at that stage he did not find a *prima facie* material warranting the remand of accused to judicial custody. It does not mean that Magistrate has power to stop further investigation altogether. We have a thicket of decisions to the effect that investigation in a cognizable offence is the domain of the police and Courts except to the extent permitted by law such as ordering remand and police custody while the accused in judicial custody under Section 167 Cr.P.C, granting or refusing bail etc., cannot interfere with the investigation. In ***State of Bihar and others v. P.P. Sharma and others***¹, the Apex Court has dealt with the issue of powers of the police in respect of investigation and the Courts indulgence in that aspect. It was held thus:

¹ MANU/SC/0542/1992=AIR 1991 SC 1260

“Para 41: *On completion of the investigation, if it appears to the investigator that there is sufficient evidence or reasonable ground to place the accused for trial, the investigating officer shall forward to the court a report in that regard along with the evidence and the accused, if he is in the custody to the Magistrate. If on the other hand he opines that there is no sufficient evidence or reasonable grounds connecting the accused with the commission of the offence he may forward the report to the Magistrate accordingly. The Magistrate is empowered to consider the report and on satisfying that the accused prima facie committed the offence, take cognizance of the offence and would issue process or warrant to the accused, if on bail, to appear on a date fixed for trial or to commit him for trial to the court of session. It is not incumbent upon the Magistrate to accept the report of the investigating officer that there is no sufficient evidence or reasonable ground to connect the accused with the commission of the crime; he may direct further investigation or suo moto the investigator may himself submit supplemental charge sheet under Section 173(8) if he subsequently becomes aware of certain facts or itself or through a subordinate Magistrate to make further enquiry or to take cognizance of the offence upon consideration of the material so placed before him and take further steps as aforesaid. Then only proceedings in a criminal case stands commenced. Taking cognizance of the offence is coterminous to the power of the police to investigate in the crime. Until then there is no power to the Magistrate except on a private complaint in a cognizable/non-cognizable offence to direct the police to investigate into the offence. The Magistrate is not empowered to interfere with the investigation by the police.”*

Having regard to the above jurisprudence on the right of the investigating agency conduct investigation and non-interference of the Magistrate, it is clear that at the stage of Section 167(1) Cr.P.C, when the Magistrate found no *prima facie* material and discharged the accused from arrest in terms of Section 59 Cr.P.C, he cannot stop the further investigation which was in fact pending. Therefore, when the police after investigation

found cogent material to connect the accused with the offence, they can certainly file final report under Section 173 Cr.P.C and upon perusing the same, the Court can take cognizance. Therefore, the discharge made by the Court initially can be treated as discharge from remanding to the judicial custody and not from the case itself. There is no force in the argument of learned counsel for petitioners.

6) The next argument of learned counsel for petitioners is that the offence under Section 4 of DP Act is attracted only if the marriage between LW.3 and A.1 is completed by the date of alleged demand. He put-forth the said argument having regard to the fact that in Section 4, the word “bride” or “bridegroom” is employed. In this regard, he relied upon the judgment in ***L.V.Jadhav v. Shanakarrao Abasaheb Pawar and others***².

Section 4 of DP Act read thus:

“Section 4. Penalty for demanding dowry.—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.”

As stated supra, having regard to the fact that the word “bride” or “bridegroom” is employed in Section 4 of DP Act, it is argued that the offence

² AIR 1983 Supreme Court 1219

under Section 4 can be completed only when the marriage between the parties is completed. However, in *L.V.Jadhav's* case (2 supra) relied upon by the petitioner, the facts would show that when the marriage ceremonies were in progress, demand of Rs.40,000/- was made by the appellant on the pretext that the said amount was required for the passage of the bride and the 2nd respondent to USA. In that context, it was sought to be argued that Section 4 of DP Act has no application. However, the Apex Court has observed as follows:

***“Para 10:** x x x x . . . But having regard to the dominant object of the Act which is to stamp out the practice of demanding dowry in any shape or form either before or after the marriage, we are of the opinion that the entire definition of the word "dowry" should not be imported into Section 4 which lays down that "if any person after the commencement of this Act, demands, directly or indirectly from the parents or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both." According to Webster's New World Dictionary, 1962 edn. bride means a woman who has just been married or is about to be married, and bridegroom means a man who has just been married or is about to be married. If we give this strict meaning of a bride or a bridegroom to the word bride or bridegroom used in Section 4 of the Act property or valuable security demanded and consented to be given prior to the time when the woman had become a bride or the man had become a bridegroom, may not be "dowry" within the meaning of the Act, We are of the opinion that having regard to the object of the Act and a liberal construction has to be given to the word "dowry" used in Section 4 of the Act to mean that any property or valuable security which if consented to be given on the demand being made would become dowry within the meaning of Section 2 of the Act. We are also of the opinion that the object of Section 4 of the Act is to discourage the very demand for property or valuable security as*

consideration for a marriage between the parties thereto. Section 4 prohibits the demand for 'giving' property or valuable security which demand, if satisfied, would constitute an offence under Section 3 read with Section 2 of the Act. There is no warrant for taking the view that the initial demand for giving of property or valuable security would not constitute an offence and that an offence would take place only when the demand was made again after the party on whom the demand was made agreed to comply with it. The learned Magistrate was, therefore, right in proceeding on the basis that the allegations in the complaint prima facie constitute an offence under Section 4 of the Act and issuing processes to the respondents.”

Therefore, it cannot be said that merely because the demand was made sometime prior to the marriage, the offence under Section 4 of DP Act, has no application. Therefore, the arguments put-forth by the petitioners have no force warranting quashment of the proceedings. The charge sheet and other material reveal a strong *prima facie* case against the accused.

7) In that view, this Criminal Petition is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 20.09.2018

Murthy/Scs