

HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO

CrI.R.C.No.1209 of 2006

JUDGMENT:

Against the concurrent findings of the Courts below in C.C.No.642 of 2005 of the learned I Additional Judicial First Class Magistrate, Warangal convicting the revision petitioner-accused vide judgment dated 06.06.2006 for the offence punishable under Section 3 of Dowry Prohibition Act while acquitting for the offence under Section 4 of the Dowry Prohibition Act and 498-A of IPC on the two charges leveled against the accused from hearing under Section 239 Cr.P.C., that was confirmed by the lower appellate Court in CrI.A.No.56 of 2006 by the learned IV Additional Sessions Judge, Warangal dated 13.07.2006.

Contentions of the said present revision petition are concurrent findings contrary to law borne by record by evidence and having acquitted for the offence under Section 498-A IPC should have been acquitted for the offence under Section 3 of the Dowry Prohibition Act also that the father of the *de facto* complainant who allegedly given dowry on behalf of the *de facto* complainant was examined D.W.1 not stated demand of dowry and even stated by the 5 prosecution witnesses including the I.O. and thereby sought for allowing the revision.

The learned Public Prosecutor opposed the above contentions and stated that once two concurrent findings while appreciating the Courts below borne by record also from the proceedings of the Family Court in OP No.49 of 2003 at Warangal where there was admission about the return of the dowry of Rs.2,00,000/- with articles i.e. also part of the record there is nothing to interfere and sought for dismissal of the revision.

Heard and perused the material on record.

Leave about PWs 1 to 4 deposed in one voice as observed by the trial Court particularly PWs 1, 3 and 4 with reference to Ex.P.2 certified copy of the divorce petition filed by A.1 against the *de facto* complainant where admitted by A.1 that he has taken dowry of Rs.2,00,000/- that was also confronted to him when came to the witness box in defence evidence as DW.1. He also admitted in his evidence as pointed out in answering Point No.1 page 3 para No.9 of the trial Court's judgment wherein the middle - it is categorically observed with reference to the evidence that DW.1 also categorically deposed in his cross examination (as per Point No.2 para 10 page 4) of receiving of Rs.2,00,000/- and other articles and repaying of said amount through demand draft. Thus there is nothing to interfere with the findings of the trial Court. The trial Court also answered the contention of accused of father of *de facto* complainant stated given the dowry to A.1 is equally a co-accused should have been impleaded with array from the very wording of giving and taking of dowry under Section 3 of the Dowry Prohibition Act is prohibited and penal consequences and thereby he is no other than an accomplice and his evidence is not worthy of credit. As referred supra even PW2 claimed as accomplice, remaining out of the four witnesses in one voice particularly the *de facto* complainant deposed, leave about the admission from the evidence of A-1/DW1 including from the cross examination of witnesses of returned back the dowry received. Without taking of dowry question of returning does not arise. Even otherwise evidence of accomplice though stated unworthy of credit from the very wording of Section 133 of the Evidence Act the very Section 114 of the Evidence Act says categorically within the scope of Section 134 of the

Evidence Act that conviction based on evidence of accomplice is not illegal though under section 134 of the Evidence Act a corroboration is to be considered as Rule of prudence to insist. Even that is satisfied as discussed supra from the evidence of PW1, corroborated by evidence of PWs 2 to 4 about giving and taking of dowry.

Having regard to the above, there is nothing to interfere with the trial Court's finding that is confirmed by the lower appellate Court in finding the accused guilty for the offence under Section 3 of the D.P. Act. The revision is thus liable to be dismissed.

However, it is not the only issue. While hearing the appeal, it is also the contention raised on the sentence imposed by the trial Court in the factual scenario supra, confirmed by the lower appellate Court as excessive of two years rigorous imprisonment with fine of Rs.2,00,000/- dowry amount. Section 3 of the Dowry Prohibition Act provides imprisonment (as per 1986 Amendment) not less than five years and with fine not less than Rs.50,000/- or the amount of dowry which is more. However, the trial Court may impose a lesser sentence of imprisonment. Here the record shows entire dowry amount was refunded. Once such is the case that was the conclusion of the trial Court of giving and taking and refund from which the so called offence proved, imposing of fine up to the dowry amount used in Section 3 of the Dowry Prohibition Act referred to supra to recover the same does not arise. Thus, the fine amount of Rs.2,00,000/- can be altered and reduced to Rs.2,000/-, with default sentence of one month. So far as the contention of sentence of imprisonment to two years is on high side concerned substantial sentence of two years, for the reasons that the entire conviction is based on the admission of the accused, that too already paid back is the said

admission, the sentence of two years is reduced to one year by giving set off to the period already undergone.

Accordingly, and in the result, the Criminal Revision Case is allowed to the above extent.

Miscellaneous applications if any, pending in the appeal shall stand closed.

Date: 1st April, 2019

PNV

Dr. B. SIVA SANKARA RAO, J



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Date: 01.04.2019

