

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO.1017/2018

1. Mohd. Faizur Rab s/o Mohd Abdur Rab,
aged about 32 years, Occ. Service.
2. Mohd. Abdur Rab s/o Mohd Amminuddin,
aged about 58 years, Occ. Service.
3. Smt. Kausar w/o Mohd Abdur
aged about 53 years, Occ. Housewife,
4. Mohd. Tausif Rab s/o Mohd Abdur Rab,
aged about 28 years, Occ. Student.
5. Zeba Rab d/o Mohd. Abdur Rab,
aged about 24 years, Occ. Student,

All above r/o Nalco Township, Sector 2,
Type B, Quarter No.441, Damanjodi,
Dist. Koraput Odisha.

.....APPLICANTS

...V E R S U S...

1. The State of Maharashtra, through
PSO Mankapur, Nagpur.
2. Sau. Sitara Parveen Ex w/o Mohd.
Faizur Rab, Aged about 25 years,
Occ. Service.

R/o Plot No. 52, Behind Rathod Lawn,
Sangam Nagar, Gorewada Ring Road,
Nagpur.

...NON APPLICANTS

 Mr. Hitesh Katekar, Advocate for applicants.
 Mr. S. S. Doifode, A.P.P. for non applicant no.1.
 Dr. A. H. Jamal, Advocate for non applicant no.2.

CORAM:- ROHIT B. DEO & ANIL L. PANSARE, JJ.

DATE OF RESERVING THE JUDGMENT : 13.09.2022

DATE OF PRONOUNCING THE JUDGMENT : 19.10.2022

ORAL JUDGMENT (Per: Anil L. Pansare, J.)

Heard. Admit. Heard finally by consent of learned counsel for the parties.

2. The applicants have put forth following prayers.

“a) Quash the proceedings bearing Regular Criminal Case No.492/2018 pending in the Court of Addl. Chief Juridicial Magistrate Nagpur for the offences punishable under section 498-A, 406 R/w 34 of Indian Penal Code along with section 3 and 4 of the Dowry Prohibition Act vide crime no. 99/2017 registered with Non Applicant no.1 Police Station.”

3. Learned counsel for the applicants submit that even if the allegations levelled by the prosecution are taken at its face value, no case is made out against the applicants under Section 498-A, 406, read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act.

Learned A.P.P. for non applicant no.1 and learned counsel for non applicant no.2 argues otherwise.

4. We have considered the rival submissions. We have gone through the record. Case of the prosecution, in short, is that on 15.03.2016, applicant no.1 got married with non applicant no.2 as per the customs and traditions prevailing in Muslim religion. Applicant nos.2 to 5 are father, mother, brother and sister of applicant no.1. It is alleged that the parents of non applicant no.2 had paid an amount of Rs.4,50,000/- to the applicants through RTGS, that too prior to few days of marriage and that in addition they have also paid cash of Rs.5,50,000/- on 17.02.2016. It is alleged that the applicant no.2 along with other applicants have harassed the non applicant no.2. It is alleged that on the very next day of the reception, to mean on 21.03.2016, father in law of applicant no.2 has said to brother of non applicant no.2 that the dowry given in the marriage is meager. Applicant no.2 then abused him. He also abused in-laws stating that his son is an engineer and that the parents of the non applicant no.2 ought to have given more dowry. It is then alleged that applicant no.1 left for Dubai as he was working there. The in-laws continued ill treatment on the ground of non receipt of

sufficient dowry. On 18.11.2016, when applicant no.1 was in India, his father demanded Rs.10,00,000/-.Prior thereto, on 07.04.2016, when the applicant no.1 had gone to Dubai to attend his duties, he did not carry non applicant no.2 on the ground that he will obtain Visa from Dubai and then take her. On the same night, on 07.04.2016, applicant nos. 3 and 4 asked non applicant no.2 to bring gold from her house. Both of them abused non applicant no.2 in filthy language and tortured her physically and mentally. All the applicants have demanded dowry.

5. In short, it is the case of the prosecution that prior to solemnization of marriage an amount of Rs.4,50,000/- was paid as dowry by family members of non applicant no.2 to the applicants. The bank statement to that effect has been annexed with the reply filed by non applicant no.2, which is also given to the investigation officer. It is further the case of the prosecution that the deceased continued harassment to the non applicant no.2 for unlawful demand and therefore charge-sheet has been filed under Sections 498-A, 406 read

with Section 34 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act.

6. Before considering the rival submissions, it will be appropriate to go through the provisions of Sections 3 and 4 of the Dowry Prohibition Act, which read thus:

“3. Penalty for giving or taking dowry.—

(1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more.

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

(2) Nothing in sub-section (1) shall apply to, or in relation to,—

(a) presents which are given at the time of a marriage to the bride without any demand having been made in that behalf.

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

(b) presents which are given at the time of a marriage to the bridegroom without any demand having been made in that behalf.

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act.

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.

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.”

Thus, giving and taking dowry is a punishable offence for which punishment shall not be less than five years with fine which shall not be less than Rs.15,000/- or the amount of such dowry whichever is more. At present, we are dealing with the allegations of taking dowry and not giving dowry.

7. There are certain exceptions, which we find, would not apply in the present case inasmuch as learned A.P.P. has correctly pointed out that Rs.4,50,000/- was transferred through RTGS in the account of Smt. Kausar Rab, i.e. applicant no.3, that too prior to marriage. It clearly indicates that the demand of dowry was made and that marriage has been solemnized after meeting the initial demand. The further allegation against the applicants are that they have also received Rs.5,50,000/- in cash.

8. Thus, prima facie, there is material against the applicants to attract ingredients of Sections 3 and 4 of the Dowry Prohibition Act. So far as the harassment for meeting the unlawful demand is concerned, there are allegations that non applicant no.2 was subjected to harassment, firstly on the ground that applicants have received trivial dowry in marriage and thereafter for getting more such amount.

9. In the circumstances, if the allegations are accepted at its face value, prima facie, the case is made out against the applicants. We are, therefore, not inclined to exercise

inherent jurisdiction under Section 482 of the Code of Criminal Procedure. The application is devoid of merit and is rejected accordingly.

(Anil L. Pansare, J.)

(Rohit B. Deo, J.)

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