

CRM-M-20886-2018
Date of Decision: 02.04.2024

...PETITIONERS

...RESPONDENTS

Mr. Sandeep Kumar, DAG Punjab
(on instructions from ASI Mohinder Pal).

HARPREET SINGH BRAR J.(ORAL)

2. Briefly, the facts are that petitioner no.1 met Satinder Kaur, daughter of respondent no. 2-complainant at a wedding where he chased and harassed her while asking his relatives to fix his marriage with her. The respective families fixed their marriage, however, petitioner no. 1 began acting in an unbecoming manner. He insisted on taking the daughter of respondent no. 2 to Chandigarh and tried to touch her inappropriately, for which he apologised later. Subsequently, petitioner no.1 visited respondent no. 2 and his family for his birthday celebrations, which were hosted by respondent no.2 at Sahni

Bakery, Rajpura. During the said celebrations, petitioner no. 1 molested the daughter of respondent no.2 and did not cease despite her objection. However, the engagement/shagun ceremony was conducted at house of sister of respondent no. 2. Respondent no. 2 gifted a gold ring to petitioner no. 1 and clothes and money, as shagun, among other gifts to petitioners no. 2 to 5. However, the petitioners claimed to be insulted by lack of significant dowry items like a motorcycle or a car and called off the marriage.

3. Learned counsel for the petitioners submits that the gifts provided by respondent no. 2 does not fall within the definition of 'dowry' in accordance with Section 2 of the Act, especially since it is not the case of the prosecution that the said gifts or cash were given on demand of the petitioners. Furthermore, the list of articles gifted has not been prepared as required under the Dowry Prohibition (Maintenance of Lists of Presents to the Bride and Bridegroom) Rules, 1985. Furthermore, no previous sanction by the District Magistrate or an Authorised Officer of the State Government was obtained which is a *sine qua non* for the Courts to take cognisance of an offence under the Act. Reliance in this regard is placed on ***Rakesh Kumar and others v. The State of Haryana and others 1994(1) R.C.R.(Criminal) 288*** and ***Jatinder Singh v. State of Haryana 1993(2) R.C.R. (Criminal) 121.***

4. Learned counsel further contends that the allegations regarding Section 354 of the IPC are unfounded as the incidents cited by the prosecution to invoke the said provision allegedly occurred right before the family of Satinder Kaur. The FIR does not contain any specific incidences to this effect and they only figure in the report under Section 173 Cr.P.C. prepared by the police authorities.

5. Learned State counsel as well as the counsel appearing for respondent No.2 opposed the prayer made by the learned counsel for the petitioner on the ground that the sanction is not required in the present case as along with the offences punishable under the Act, the FIR (supra) is also registered under Section 354 IPC. Moreover, there are specific allegations and the arguments raised by the counsel for the petitioners can only be appreciated during the course of trial.

6. Having heard the learned counsel for the petitioner and perused the record with her able assistance, it transpires that the marriage between the petitioner and daughter of respondent no. 2 was fixed but not solemnised as differences arose due to the factor of age of daughter of respondent no. 2.

7. Indubitably, prior sanction was not obtained from the District Magistrate or an Authorised Officer of the State Government before invoking the offences alleged under the Act. Section 7 of the Act reads as under:

7. Cognizance of offences.—

“(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 recognised 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.

Explanation.—For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

(2) Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to any offence punishable under this Act.

(3) Notwithstanding anything contained in any law for the time being in force a statement made by the person aggrieved by the offence shall not subject such person to a prosecution under this Act.” (emphasis added)

This Court is of the considered view that if a certain method is prescribed by law, it must be followed to accomplish the task, necessarily forbidding use of other methods. Reliance in this regard can be placed on the judgment rendered by the Hon’ble Supreme Court in ***Dharani Sugars and Chemicals Ltd. v. Union of India and others (2019) 5 SCC 480***. Furthermore, the Act is a special statute and it is trite law that if a special enactment lays down the provisions regarding procedure that must be adopted for investigation and adjudication of an offence that falls in its purview, general provisions of the IPC or the Cr.P.C. will not be attracted. Reliance in this regard can be placed on the judgment of the Hon’ble Supreme Court in ***Jeewan Kumar Raut and another v. C.B.I (2009) 7 SCC 526*** and this Court in ***Ajay Kumar Sandhu v. State of Haryana in CRM-M-29708-2014***.

8. A two Judge bench of the Hon’ble Supreme Court in ***Premiya @ Prem Prakash v. State of Rajasthan (2008) 10 SCC 81***, speaking through Justice Dr. Arijit Pasayat, made the following observations:

“12. In order to constitute the offence under Section 354 Indian Penal Code mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of having such outrage alone for its object. There is no abstract conception of modesty that can apply to all cases. (See *State of Punjab v. Major Singh, (AIR 1967 Supreme Court 63)*). A careful approach has to be adopted by the court while dealing with a case alleging outrage of modesty. The essential ingredients of the offence under Section 354 Indian Penal Code are as under:

(i) that the person assaulted must be a woman;

- (ii) that the accused must have used criminal force on her;
and
- (iii) that the criminal force must have been used on the woman intending thereby to outrage her modesty”

The case of the prosecution does not satisfy the ingredients of Section 354 of the IPC as nothing on the record indicates use of criminal force on the daughter of respondent no.2. The instances that may have attracted the said offence only surface in the final report under Section 173 Cr.P.C. and a perusal of the same also reveals that no specific act has been attributed to petitioner no.1 and the allegations remain general and ambiguous. Even if the prosecution case was treated as gospel truth, it is highly unlikely that the father would still be willing to give her daughter’s hand in marriage. Further, it is highly improbable that the family of Satinder Kaur would be silent spectators if petitioner no.1 was indeed behaving inappropriately with her.

9. In view of the discussion above, the present petition is allowed and FIR No. 60 dated 10.03.2018 registered under Sections 3 and 4 of Dowry Prohibition Act, 1961 (hereinafter ‘the Act’) and Section 354 of the IPC at Police Station City Rajpura, District Patiala alongwith all consequential proceedings arising therefrom are quashed. Pending miscellaneous application(s) if any shall also stand disposed of.

02.04.2024
manisha

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No