IN THE COURT OF ASJ-II, NORTH WEST DISTT. ROHINI: DELHI

Sunil Garg
W/o Sh. Sunil Garg,
D/o Sh. Jai Kumar,
R/o C-451/9, Chandra Quarters,
Rampura, Delhi-35.
Presently residing at
T/367/29, Onkar Nagar-B,
Tri Nagar, Delhi-35.

VERSUS

1. Sunil Garg
S/o Sh. S. C. Garg,
R/o 30, Rajdhani Enclave,
Pitampura, Delhi-34.
Address given in the complaint
E-1/21, Phase-I,
Budh Vihar, Delhi.

2. The State (NCT of Delhi)
Date of institution : 24.12.2009
Arguments heard on : 13.05.2010
Date of final order : 02.06.2010

O R D E R

This revision petition has been preferred by the revisionist/ petitioner Uma Devi the estranged wife of the respondent no.1, against the order of Ld. MM dated 21.10.2009 by way of which Ld. MM directed the SHO PS Maurya Enclave to conduct investigation on the allegations made in the complaint as they attracted the commission of cognizable offence under Section 3 of Dowry Prohibition Act.

The facts leading to the filing of the revision are briefly stated as under:

A complaint was made by the petitioner/ revisionist regarding harassment by the respondent and his family on account of dowry demand, on the basis of which FIR No. 218/09 was registered at Police Station Keshavpuram. In the said complaint it was alleged by the petitioner/ revisionist that she was married to respondent no.1 on 21.4.2008 according to Hindu Rites and ceremonies at Shubham Vatika, Mundka, Delhi. As per the allegations prior to the marriage Roka ceremony had taken place on 28.1.2008 and God-Bharai ceremony was conducted on 15.4.2008 at Meri-Maker Banquet Hall, Wazirpur, Delhi and during the Roka and God-Bharai ceremonies the father of respondent no.1 had spoken to her father regarding the expenses to be incurred on the marriage and had demanded that Rs.15 to 16 lacs should be spent on the marriage and 25% to 30 % more was to be spent on the amount settled. It is also alleged by the petitioner/ present revisionist that after the marriage she was being harassed on account of insufficient dowry and demands were made by her inlaws on account of which a detail complaint was filed by the revisionist with the CAW Cell on 16.1.2009, which was after the almost 8 to 9 months of marriage. It was further alleged that respondent no.1 and his parents are influential people and despite her complaint,

except registration of the FIR No. 218/09 under Section 498A/406/34 IPC PS Keshavpuram, neither any dowry articles have been returned nor any arrest has been made.

After the registration of the above FIR the respondent no.1 who is the husband of the petitioner filed a complaint under Section 156 (3) Cr.P.C. before the Ld. MM alleging that the complaint of the present petitioner itself reflected that offences under the Dowry Prohibition Act, 1961 have been committed. It was alleged by the respondent no.1 that since the petitioner before this court has already alleged in her complaint on the basis of which the FIR was registered, that pursuant to the demand by the family of the respondent, the father of the petitioner fulfilled their demands.

The Ld. MM taking into account the aforesaid directed the investigations and now being aggrieved by the same the petitioner has approached this court alleging that in the complaint filed by the respondent u/s 156 (3) Cr. P.C, he had intentionally given wrong address as L-425, Shakarpur Colony, New Delhi-34 whereas he is in-fact residing with his parents at 30, Rajdhani Enclave, Pitampura, Delhi and now in the complaint on the basis of which the impugned order has been passed, he has given another false address i.e. E-1/21, Phase-I, Budh Vihar, Delhi.

The Revisionist has also assailed the order of Ld. MM on the ground that it is against the law and facts. It is pleaded that the revisionist was residing earlier at Rampura, and now at Onkar Nagar, Tri Nagar and the petitioner after her marriage had resided with respondent no. 1 and her in-laws at 30, Rajdhani Enclave, Pitampura, Delhi and no incident has happened within the jurisdiction of PS Maurya Enclave and the respondent no.1 has intentionally mentioned the police station Maurya Enclave in his complaint and the order passed on the said complaint is having no territorial jurisdiction. It is alleged that the impugned order has been passed on the basis of the false facts as a counter blast and as such is liable to he set aside. It is pleaded that the respondent no.1 and his relatives have been causing mental and physical harassment to her in respect of which FIR No.218/09 under Section 498A/406/34 IPC PS Keshav Puram has been registered. It is further pleaded that the offences for which directions have been given are not made out against her and her relations and as such the impugned order may be set aside as no specialized investigation is required to prove the allegations for commission of an offence under Section 3 of the Dowry Prohibition Act.

Notice was issued to the respondents but no reply has been filed. The trial court record has been called which I have duly perused. I have also gone through the written synopsis of arguments filed on behalf of the revisionist and the authorities relied upon by the parties, which are as under:

1. Sabir Vs. Jaswant and Others (2003) Vol. (1) RCR (Criminal) 479.
2. Ajai Malviya Vs. State of U.P. and Others, 2001 (Vol. I) RCR (Criminal) 83.
3. Pawan Verma Vs. SHO PS Model Town & Ors.2009 (Vol. 2) JCC 1000, Delhi High Court.
4. Kalia Prem Rattan Vs. State of Punjab, 2000 (Vol.1), RCR (Criminal) 769 (Punjab & Haryana High Court).
5. Trisuns Chemicals Industry Vs. Rajesh Aggarwal and Others, (1999) Vol. 8, SCC, 686.
6. Smt. Neera Singh Vs. The State (Govt. of NCT of Delhi) and Ors. 138 (2007), DLT-152, I (2007) DMC 545.
7. Suresh Chand Jain Vs. State of Madhya Pradesh, 2001, AIR, SCW 189.

Before proceeding further to decide the present revision on merits, it is necessary to observe that the order of Ld. Magistrate directing the police to investigate on the basis of the allegations made in a complaint under Section 156(3) Cr.P.C. can always be challenged in revision and therefore, the present revision petition is maintainable against the order of the Ld. MM.

The first challenge to the impugned order is on the ground of territorial jurisdiction of the Ld. MM to entertain the complaint. In this regard it may be observed that the present revision is the outcome of the order passed by the Ld. MM dated 21.10.2009 on a complaint under Section 156 (3) Cr.P.C. filed by the respondent. On that aspect it is necessary to observe that provisions of Sections 190, 193, 179, 177 Cr. PC, are very clear. The arguments that the Ld. Magistrate taking cognizance should have the territorial jurisdiction to try the case as well, is on the face of it erroneous. The provisions of Section 177 and Section 179 Cr.PC do not restrict the power of any court of Magistrate to take cognizance of the offence and the only restriction contained in Section 190 Cr. PC is that the power to take cognizance is subject to the provisions of this Chapter. Any Metropolitan Magistrate has the power to take cognizance of any offence, no matter whether the offence has been committed within his territorial jurisdiction or not. There is nothing in Chapter-IV of the Code of Criminal Procedure to impair the power of Metropolitan Magistrate to take cognizance of the offence on the strength of any territorial jurisdiction. The aspect of territorial jurisdiction would become relevant only when the question of inquiry or trial arises. Therefore, under these circumstances, I hereby hold that the Ld. Trial Court being the Metropolitan Magistrate, has power to take cognizance of the offence even if the offence was not committed within his territorial jurisdiction. The aspect of territorial jurisdiction becomes relevant only after during the post cognizance stage.

Before proceeding further to discuss the validity of the impugned order on merits, it is necessary to discuss the existing statutory law. Dowry Prohibition Act, is a welfare legislation which aims at curtailing and abolishing the vice of dowry. Whenever the valuable security has been given as a consideration for marriage or for continuation of marriage for a good and happy relationship, then under such circumstances an act of giving or taking of valuable securities are both covered by the Act. (Ref.: Inder Sen Vs. Sinte, 1988, Criminal Law Journal, 1116). Dowry is a two way traffic and unless there is a giver there can be no taker and it is for this reason that in order to eliminate this evil both the giver and taker have been made liable (Under Section 3 of the Dowry Prohibition Act) apart from the fact that even demand for dowry made is punishable (Under Section 4 of the Act). In a case where it is evident that there was a demand of dowry even before the marriage and pursuant to such demand, dowry was given as consideration of marriage, all persons making such demand for dowry and those giving valuable security as a consideration for marriage or for its continuance as well as those receiving this valuable security would be guilty under this Act. It is not possible to leave one and book another. Therefore, it is only that interpretation which is in-consonance with the object sought to be attained by the act that has to be adopted and nothing else would suffice.

Numerous social welfare legislations have been enacted in favour of women and Dowry Prohibition Act, 1961 is one such legislation denouncing traditions and customary practices derogatory to women. It is unfortunate that this legislation has been reduced to a mere paper tiger and what is more unfortunate is the fact that it is none else but the family of the women (involved in the marriage) who is responsible for non accomplishment of this legislation. Dowry is shamelessly demanded, given and received under the pretext of social compulsions. It is time that this Social Welfare legislation (Dowry Prohibition Act) is ruthlessly implemented and none is permitted to take the shield of social compulsions. This has become all the more necessary in order to check the misuse and abuse of Special Laws.

It has been observed that a large number of customary gifts are exchanged at the time of marriage. These gifts fall outside the purview of dowry in case if they are Istridhan and find a mention in the list prepared and signed by both the parties (the family of the girl and boy) as required under the Dowry Prohibition Rules. However, expensive gifts given to relatives which

do not fall within the definition of Istridhan are taxable in the hands of the recipient, in case if the value of the gift which would be a transfer for inadequate consideration exceeds the statutory limit as provided under the Income Tax Act. Also, in case of gift of any immovable property, the same would require a compulsory registration. It is, therefore, necessary for the courts of law to ensure that due inquiry and investigations are got conducted not only with regard to the source of income of the person giving dowry but also as to whether these transactions are duly reflected in the Wealth Tax returns of both the Donor and the Donee. Further, in case if it is established that expensive gifts (i.e. transfer for inadequate consideration) were given to relatives (beyond the stipulated limit), the competent authority be informed so as to ensure a proper fiscal benefit to the government by way of tax from recipient of such a gift.

Coming now to the ground raised by the Revisionist that the order of the Ld. MM is against the law and facts. I may observe that the case of the present petitioner is that there was a demand of dowry by the respondent no.1 and his family even prior to her marriage. It is evident from the pleadings of the petitioner and even in her revision petition before this court she has alleged that there were discussions between her father and father of the respondent no.1 between the roka and godbharai ceremonies, wherein certain demands were made. On the basis of the aforesaid allegations FIR No.218/09 under Section 498A/406/34 IPC, PS Keshav Puram has already been registered on the basis of the complaint given by the petitioner against respondent no.1 and his family, which is under investigation. While the said investigations were pending, the respondent against whom allegations have been made by the petitioner in the main FIR, approached the court in the complaint under Section 156 (3) for proceedings against the present petitioner and her family for the various offences committed by him under the Dowry Prohibition Act and the Ld. MM vide the impugned order dated 21.10.09 directed the SHO concerned to carry out investigation into the allegations made which disclosed the commission of a cognizable offence.

In the present case, on the basis of the complaint given by the present petitioner, an FIR bearing No. 218/09, PS Keshav Puram had already been registered. Another complaint has now been given by the accused husband of petitioner for registration of counter FIR against the family of the petitioner who are alleged to have given dowry pursuant to the demand raised by the family of the husband even before the marriage. This being so, it is not possible for the Ld. Magistrate under the given circumstances to make inquiries with regard to the correctness of the allegations regarding giving or taking of dowry which can only be got inquired into and investigated by the investigating agency which is already investigating the complaint given by the present petitioner alleging harassment on account of insufficient dowry on the basis of which the FIR has been already registered.

Directions of the High Court are the laws declared binding all subordinate courts. While dealing with a similar case Hon'ble Mr. Justice S.N. Dhingra of the Delhi High Court has in the case of Smt. Neera Singh Vs. The State (Govt. of NCT of Delhi) and Ors. 138 (2007), DLT-152, I (2007) DMC 545, observed that Section 3 of the Act lays down a punishment for giving and taking dowry and therefore not only is it necessary for the courts to insist upon the compliance of the rules framed under the Act and draw adverse inference where these rules are not followed, but also to ensure that due inquiry and investigations are got conducted in all such cases which come before it with allegations of demand of dowry……. Whenever it is noticed that unaccounted cash amounts or expensive gifts are given at the time of marriage as consideration there of, then it is necessary for the courts of the Ld. Magistrates to bring these facts to the notice of the government authorities including the Income Tax authority so that not only the sources of the income of the person allegedly giving dowry but also the correctness of the allegations with regard to giving dowry are got verified and both the giver and the taker are brought to law. This being so, all

subordinate courts are bound by the aforesaid directions and are under an obligation to get an inquiry conducted and bring these facts to the notice of the Government Authorities particularly the Income Tax authorities.

The incidents of misuse and abuse of special provisions of dowry harassment are increasing by the day. The already overburdened judicial system cannot permit its misuse and abuse and it has, therefore, become necessary for the courts to verify the correctness of such allegations so as to eliminate the false complaints made in this regard at its inception. In view of the aforesaid, I find no ground to intervene. The revision petition is hereby dismissed being devoid of merits. The trial court record be sent back alongwith copy of this order. Copy of this order be placed before the Commissioner of Police, Delhi to ensure strict compliance of the directions of the Hon'ble Delhi High Court in the case of Smt. Neera Singh Vs. The State (Govt. of NCT of Delhi) and Ors. (Supra) while conducting investigations in cases of dowry harassment. Revision file be consigned to Record Room.

Announced in the open court

(Dr. Kamini Lau)