

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: September 30, 2010

Judgment delivered on: October 20, 2010

+ W.P.(CRL.) NO. 501/2010 & CRL.M.A. 3921/2010(stay) POOJA SAXENA ....PETITIONER Through:  
Mr.Vijay Aggarwal with Mr.Rakesh Mukhija and Mr.Gurpreet Singh,

Advocates.

Versus

STATE & ANOTHER .....RESPONDENTS

Through: Ms. Meera Bhatia, ASC for the State with

Mr.Roshan Kumar, Advocate with I.O. S.I.

Mr.Prabhanshu, P.S. Roop Nagar.

Mr.Abhishek Gupta, Advocate for

R.2/Sameer Saxena.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers

may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be

reported in Digest ?

AJIT BHARIHOKE, J.

1. Pooja Saxena, the petitioner herein, vide instant writ petition under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure is seeking direction for quashing of the order of learned W.P.(Crl.) No.501/2010 Page 1 of 8 ACMM dated 10.03.2010 as well as FIR No.59/2010 dated 22.03.2010 registered at P.S. Roop Nagar pursuant to the aforesaid order of learned ACMM.

2. Briefly put, facts relevant for the disposal of this petition are that the petitioner Pooja Saxena filed a complaint of dowry demand and harassment against her husband (respondent No.2) with CAW Cell and on the basis of the said complaint, after preliminary inquiry and on the recommendation of the senior police officer, an FIR No.232/2009 under Sections 498A/406/34 IPC was registered against respondent No.2 Sameer Saxena and others at P.S. Roop Nagar.

3. Petitioner Pooja Saxena in her above referred complaint alleged that at the time of her marriage, her parents had given sufficient amount of cash and valuable articles including jewellery, Swift car, Sony TV, washing machine, double bed and gift items to respondent No.2 and his relatives. It was also alleged in the complaint that at the time of her engagement ceremony on 20.08.2006, father of respondent No.2 raised a demand for a Sony TV besides cash/gifts for the relatives as also gold ornaments, diamond jewellery and clothes etc. for the sister-in-law of the respondent as also her two daughters. Father of the petitioner fulfilled the said demands but the father-in-law of the petitioner was not satisfied and he raised a demand for a car of a prestigious brand or in the alternative asked for a deposit of ` 5 lakhs as a corpus to enable them to purchase a car. He suggested that the car should be purchased in the name of the petitioner, failing which he would not go on with the marriage which may W.P.(CrI.) No.501/2010 Page 2 of 8 cause harassment to the parents of the petitioner and create difficulty in finding a match for the marriage of the younger sister of the petitioner.

4. Respondent No.2 Sameer Saxena, as a counterblast to the aforesaid FIR, filed a petition under Section 156(3) Cr.P.C. seeking direction for registration of FIR under Section 3 of the Dowry Prohibition Act, 1961 against the petitioner and learned ACMM, vide order dated 10.03.2010 directed the SHO, P.S. Roop Nagar to register an FIR on the basis of the allegations made in the petition under Section 156(3) Cr.P.C. and investigate the matter in accordance with law.

5. Respondent No.2 in his petition under Section 156(3) Cr.P.C. contended that the petitioner in her complaint to CAW Cell, which formed basis for registration of FIR No.232/2009 under Sections 498A/406/34 IPC P.S. Roop Nagar, as well as in her petition Section 24 of the Hindu Marriage Act and in her petition under Section 12 of the Domestic Violence Act, 2005 made categorical allegations that demand of dowry as a precondition to marriage was made by the husband and in-laws of the petitioner and pursuant to that demand huge dowry was given which, prima facie, amounts to admission of commission of an offence under Section 3 of the Dowry Prohibition Act, 1961 by the petitioner and her parents.

6. Learned counsel for the petitioner has contended that registration of the aforesaid FIR No.59/2010 pursuant to the petition under Section 156(3) Cr.P.C. moved by respondent No.2, which obviously is a counterblast to the FIR W.P.(CrI.) No.501/2010 Page 3 of 8 registered on the complaint of the petitioner, is a gross abuse of process of law. Learned counsel for the petitioner referred to Section 7(3) of the Dowry Prohibition Act and contended that aforesaid provision of the Act provides for the protection from prosecution to the person aggrieved by the offence under the Dowry Prohibition Act, 1961, as such the learned ACMM ought not to have directed the registration of the FIR. No.59/2010. Thus, he has strongly urged for the quashing of the FIR No.59/2010 registered pursuant to the impugned order dated 10.03.2010 of the learned ACMM.

7. Learned counsel for respondent No.2, on the other hand, has argued in favour of the impugned order of the learned ACMM dated 10.03.2010 and submitted that learned ACMM has rightly ordered registration of FIR No.59/2010 on the basis of allegations in the petition of the respondent under Section 156(3) Cr.P.C. for the reason that as per Section 3 of the Dowry Prohibition Act, 1961, giving of dowry is also prohibited and is a punishable offence. Learned counsel for the respondent, in support of this contention has relied upon the judgment of this Court in the matter of Neera Singh Vs. State (Govt. of NCT of Delhi) & Ors, 138 (2007), Delhi Law Times 152.

8. In order to properly appreciate the submissions made by the respective parties, it would be useful to have a look upon Section 3 as well as Section 7(3) of the Dowry Prohibition Act, 1961, which are reproduced 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 W.P.(CrI.) No.501/2010 Page 4 of 8 shall not be less than [(Note: Subs. by Act 43 of 1986, Sec.3) 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 a adequate and special reasons to be recorded in he judgment, impose a sentence of imprisonment of a term of less than [(Note: Subs. by Act 43 of 1986, Sec.3) five years.] (2) [(Note: Ins. by Act 63 of 1984, sec.3) Nothing is 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).

(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." "7. Cognizance of offences

(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."

9. No doubt, as per Section 3 of the Dowry Prohibition Act, giving or abetting to give dowry is a punishable offence, but the petitioner does have protection of Section 7(3) of the Act. Section 7(3) provides that notwithstanding anything contained in any law for the time being in force, a statement made by the person aggrieved by the offence under the Act shall not subject him to prosecution under this Act. In the instant case, it is obvious that respondent No.2 has filed his petition under Section 156(3) Cr.P.C. only on the basis of the allegations made by the petitioner Pooja Saxena in her complaint made to CAW Cell which formed basis for the registration of FIR No.232/2009 under Section 498A/406/34 IPC W.P.(Crl.) No.501/2010 Page 5 of 8 against respondent No.2 and others as well as in her petition under Hindu Marriage Act and Domestic Violence Act. Thus, it is clear that FIR No.59/2010 registered against the petitioner under Section 3 of the Dowry Prohibition Act, 1961 is based upon the statements made by the petitioner in her complaint to CAW Cell and above noted petitions. Therefore, she is entitled to the protection of Section 7(3) of the Act, being the victim of demand of dowry.

10. In the case of Neera Singh (supra) relied upon by the respondent No.2, the order of Additional Sessions Judge upholding the order of discharge of accused persons passed by the Magistrate in a case under Section 498A/406 IPC was under challenge and the petitioner had sought quashing of said order. While deciding said issue, this court, taking note of Section 3 of Dowry Prohibition Act 1961 and the rules framed thereunder made following observations:- "3. A perusal of the complaint would show that as per allegations dowry demand was made even before marriage i.e. at the time of engagement and an AC was demanded from her father by her in-laws and her father had assured that AC would be given at the time of marriage. However, she told her father You have given car and AC at the demand of in laws, what will happen if they demand a flat tomorrow?. Despite her this conversation with her father and despite her knowing that dowry demand had already been made, she married in the same family irrespective of the fact that she was well-educated lady and was an engineer and her brother was in police. In fact, these kinds of allegations made after breakdown of the marriage show the mentality of the complainant. I consider where these kinds of allegations are made, the police should simultaneously register a case under Dowry Prohibition Act (in short the 'Act') against the parents of the complainant as well, who married their daughter despite demand of dowry. Section 3 of the Act prohibits giving and taking of dowry. If a woman of grown up age and well educated gets married to a person W.P.(Crl.) No.501/2010 Page 6 of 8 despite dowry demand, she and her family becomes accomplice in the crime under Dowry Prohibition Act.

5. The Metropolitan Magistrates should take cognizance of the offence under the Act in respect of the offence of giving dowry whenever allegations are made that dowry was given as a consideration of marriage, after demand. Courts should also insist upon compliance with the rules framed under the Act and if rules are not complied with, an adverse inference should be drawn. If huge cash amounts are alleged to be given at the time of marriage which are not accounted anywhere, such cash transactions should be brought to the notice of the Income Tax Department by the Court so that source of income is verified and the person is brought to law. It is only because the Courts are not insisting upon compliance with the relevant provisions of law while entertaining such complaints and action is taken merely on the statement of the complainant, without any verification that a large number of false complaints are pouring in.

11. The above observation of this Court obviously is an obiter and does not constitute a binding precedent for the reason that the provisions of the Dowry Prohibition Act 1961 were not the subject-matter of the dispute before the court in the petition under Section 482 Cr.P.C. in Neera Singh's case. Moreover, in the aforesaid judgment, the Court has not taken into account the protection given to a victim of offence of dowry demand as provided under Section 7(3) of the Dowry Prohibition Act 1961. Thus, in my view the above referred judgment is of no avail to respondent No.2. Further, on perusal of FIR No.232/2009, it transpires that as per the allegations in the complaint made by the petitioner, the demand for dowry was made by the father of respondent No.2 at the time of engagement ceremony of the petitioner when he allegedly asked the father of the petitioner to concede to W.P.(Crl.) No.501/2010 Page 7 of 8 his demand for dowry, failing which he would call off the marriage. From the aforesaid facts, it is obvious that the petitioner and her parents were confronted with the unenviable situation either to concede to the demand or face the loss of honour of their family in the society, and if under that fear, the petitioner and her parents conceded to the demand for dowry, they cannot be faulted as they were victims of the circumstances. Given the aforesaid facts, Section 7(3) comes to the rescue of the petitioner and in terms of the aforesaid provision, she cannot be subjected to prosecution for the offence under Section 3 of the Dowry Prohibition Act, 1961.

12. In view of the above, I find it difficult to sustain the impugned order dated 10.03.2010 of learned ACMM vide which he has directed registration of FIR against the petitioner herein ignoring the protection extended to the petitioner under Section 7(3) of the Dowry Prohibition Act 1961. Accordingly, the impugned order of learned ACMM and the FIR registered in furtherance of said order are hereby quashed.

13. The petition stands disposed of.

(AJIT BHARIHOKE)

JUDGE

OCTOBER 20, 2010

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