

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 137 of 2010

Ram Nandan Jha. Petitioner -Versus-

1. The State of Jharkhand.
2. Bibhuti Bhushan Jha. Opp. Parties -----

CORAM: THE HON'BLE MR. JUSTICE D.K.SINHA

For the Petitioner: Mr. B.M.Tripathy, Sr. Advocate, Mr. Navin Kumar Jaiswal, Advocate.

For the State: Mr. T. Kabiraj, A.P.P.

For the O.P.No.2: M/s N.P.Singh, Bhaiya Vishwajeet Kumar & A.K.Singh, Advocates.

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C.A.V. on 11.02.2011 : Pronounced on .02.2011 -----

D.K.Sinha,J. This Criminal Revision is directed against the judgment dated 02.12.2009 passed in Criminal Revision No.155 of 2009 by the Additional Judicial Commissioner, F.T.C.-VI, Ranchi by which the order taking cognizance dated 29.06.2009 passed by Shri M.K.Tripathy, Judicial Magistrate, 1st Class, Ranchi for the alleged offence under Section 3 of the Dowry Prohibition Act in Complaint Case No. 2806 of 2008 was set aside and the Criminal Revision was allowed.

2. The prosecution story in short was that the petitioner-complainant Ram Nandan Jha had filed a Complaint Case No.2860 of 2008 before the C.J.M., Ranchi in various Sections of the Indian Penal Code as also under Section 3 of the Dowry Prohibition Act stating therein that his son Sudhanshu Kumar Jha was married with Rimjhim Jha i.e the daughter of O.P.No.2 on 11.06.2003 at Bhagalpur. Soon after joining her matrimonial home, Rimjhim Jha started harassing her husband and other in-laws despite all efforts to settle and resolve the matter but of no avail and finally she left her matrimonial home with all her belongings and started residing at her parental home. The husband persuaded her and requested to come back and join his society but of no avail and finally he filed a petition under Section 9 of the Hindu Marriage Act before the Court of District Judge, Gurgaon, Haryana for the restitution of conjugal rights, at the place where he was posted in service but after about three months, in retaliation, Rimjhim Jha i.e. the daughter of O.P.No.2 filed a Complaint Case No. 685 of 2005 on 30.06.2005 in the Court of C.J.M., Ranchi alleging for the offence under Sections 323/420/406/498-A/120B of the Indian Penal Code and under Sections 3/4 of the Dowry Prohibition Act against her husband, father-in-law i.e. the petitioner herein and other in-laws out of vengeance wherein she alleged that 2

after accused No.1, 2 & 3 started demanding dowry Rs. 9 lakhs in cash and jewellerys, her father being the Government employee, under the compelling circumstances raised loan from her G.P.F. account and managed to pay Rs. 9 lakhs and 100 grams gold to them during intervening period of her engagement and marriage. The petitioner, who is the father-in-law of Rimjhim Jha stated that as per statement of the daughter of the O.P.No.2, who was his daughter-in-law, a cognizable offence by giving and abetting to accept dowry was made out against the Opposite Party No.2 in terms of Section 3 of the Dowry Prohibition Act and at the same time, they were not entitled to get immunity of the offence under Section 7(3) of the Dowry Prohibition Act because the father of the girl Rimjhim Jha was not a complainant and such immunity was provided only to the complainant. The petitioner complainant herein filed a petition before the Senior Superintendent of

Police-cum-Dowry Prohibition Officer on 12.08.2008 but when no action could be taken, he filed Complaint Case No.2806 of 2008 before the C.J.M., Ranchi. The statement of the complainant-father-in-law of Rimjhim Jha was recorded on his solemn affirmation and in course of enquiry under Section 202 his son Sudhanshu Kumar Jha was also produced as enquiry witness, who supported the allegation made by his father and having been satisfied with the prima facie materials, Judicial Magistrate, 1st Class, at Ranchi took the cognizance of the offence under Section 3 of the Dowry Prohibition Act against the O.P.No.2 - Bibhuti Bhushan Jha by the order dated 29.06.2009. Against the said order the O.P.No.2- Bibhuti Bhushan Jha preferred a Criminal Revision No.155 of 2009 and the Additional Judicial Commissioner, F.T.C.-VI, Ranchi set aside the impugned order wherein the Judicial Magistrate found a prima facie case and directed the processes to be issued against the O.P.No.2- Bibhuti Bhushan Jha for the offence under Section 3 of the Dowry Prohibition Act.

3. Mr. B.M.Tripathy, learned Sr. Counsel, appearing on behalf of the petitioner submitted that the learned Additional Judicial Commissioner, Ranchi without appreciating the materials on the record set aside the order impugned by which the learned Judicial Magistrate having been satisfied with the prima facie case directed for the issuance of notice against the Opposite-Party- Bibhuti Bhushan Jha in the backdrop that his daughter in the complaint filed against her husband and in-laws admitted that her father after obtaining G.P.F. loan to the tune of Rs. 9 lakh delivered the amount and 10 grams of gold to the petitioner which prima facie constituted offence under Section 3 of the Dowry Prohibition Act.

4. Mr. Tripathy, learned Sr. Counsel, further submitted that the O.P.No.2, who is the father of the complainant-Rimjhim Jha was not entitled for the benefit under Section 7(3) of the Dowry Prohibition Act which was an 3

immunity clause enacted for the protection of the complainant and that the Opposite Party No.2 was not the complainant.

5. Finally, Mr. Tripathy the learned Sr. Counsel assailed the impugned order passed in Criminal Revision wherein the learned Additional Judicial Commissioner observed,

" this court is of the considered view that learned trial court has erred in law by not extending the benefit of Section 7(3) of the D.P. Act 1961 to the petitioner/revisioner while extending the same benefit to his daughter and other family members, even after they were made accused in the same complaint petition and against them learned court below has refused to issue process by the order impugned itself."

6. On the other hand, learned Counsel Mr. Bhaiya Vishwajeet Kumar appearing on behalf of the Opposite Party No.2 submitted that the petitioner- complainant in his statement recorded on solemn affirmation before the C.J.M., Ranchi admitted in paragraph No.3 that a case was instituted against him, his daughter and all the members of his family on the allegation of extending torture to his daughter in law Rimjhim for dowry wherein he was on bail but in the question put to him by the Court during course of his statement on solemn affirmation the complainant-petitioner admitted, " as a matter of fact nobody had given dowry to him". Now the question arose, the learned Counsel asserted that when he has admitted in his statement solemn affirmation that neither he had received dowry nor anybody had given dowry to him then how the Complaint Case No. 2806 of 2008 could be maintainable against the Opposite Party- Bibhuti Bhushan Jha under Section 3 of the D.P.Act for alleged abetment. The complaint case was frivolous, brought about maliciously to counter the gravity of the case instituted by Rimjhim for the alleged offence under Section 498A I.P.C. against the petitioner, his son and other members of his family.

7. Having regard to the facts and circumstances of the case, I find that the learned Additional Judicial Commissioner, F.T.C.-VI, Ranchi did not consider this aspect that the complainant-petitioner had admitted that he had not received any amount in dowry and that nobody had given him dowry. In that view of the matter there was no material at all for the alleged offence under Section 3 of the Dowry Prohibition Act to

which Mr. Tripathy, learned Sr. Counsel very fairly conceded that this aspect was left untouched by the revisional court.

8. Having heard learned Counsels appearing on behalf of the petitioner and the Opposite Party No.2, I find that since no prima facie offence under Section 3 of the Dowry Prohibition Act could be made out against the Opposite Party No.2 his criminal proceeding for the alleged offence would tantamount to misuse of the process of Court. The order dated 02.12.2009 recorded in Criminal 4

Revision No.155 of 2009 is affirmed however on the grounds stated above and not on the grounds mentioned in the order aforesaid and thereby order dated 29.6.2009 passed in Complaint Case No.2806 of 2008 is set aside.

9. This petition is dismissed.

[D.K.Sinha,J.]

P.K.S./N.A.F.R.