

(2004) 02 JH CK 0086

Jharkhand High Court

Case No: Criminal Revision No. 181 of 1998 R

Sujit Kumar Roy

APPELLANT

Vs

State of Bihar (Now
Jharkhand)

RESPONDENT

Date of Decision: Feb. 24, 2004

Acts Referred:

- Dowry Prohibition Act, 1961 - Section 4
- Penal Code, 1860 (IPC) - Section 120B, 420, 467, 468, 471

Citation: (2004) CriLJ 3693 : (2004) AIR Jhar HCR 2255 : (2004) 23 AllIndCas 268 : (2004) 2 BLJR 1118 : (2004) 2 DMC 477 : (2004) 2 EastCriC 310

Hon'ble Judges: Vikramaditya Prasad, J

Bench: Single Bench

Advocate: B.B. Sinha, L. Sahay and A.K. Chakraborty, for the Appellant; S.K. Dutta, for the Respondent

Final Decision: Dismissed

Judgement

Vikramaditya Prasad, J.

The trial Court convicted the revisionist for the offence under Sections 468, 471, 467, 476, 420 and 120B, IPC and sentenced him to undergo R.I. for three years on each count, besides the revisionist was also convicted u/s 4 of the Dowry Prohibition Act and sentenced to undergo R.I. for one year. Against those convictions and sentence, the revisionist had preferred an appeal. The Appellate Court acquitted him of the charge under Sections 467 and 476, IPC and with that modification, confirmed the conviction under other sections and also the sentence. This revision has been filed against the aforesaid conviction and sentence ordered by the Appellate Court.

2. The brief facts of the case is that as per the written report of the informant, PW 7, this revisionist was his patient and the informant had a niece to marry. This revisionist informed him that his nephew (son of the brother of his wife) was a high

official in the Central Government and if he so likes, he can negotiate the marriage of his niece with that boy, Amitabh Sen. He also informed that for that, the informant, had to talk, with the father of that Amitabh Sen. Some time after the informant along with others went to the quarters of the revisionist, where that Amitabh Sen also lived. At the time, the father of Amitabh Sen was also present and in course of negotiation, three documents, Ext. 2 series, were handed over to the informant by the afore- said two persons including the revisionist. These documents indicated that Amitabh Sen was actually a Central Government employee as was informed to him by this revisionist. At that time, no talk with regard to any demand of dowry was made and the marriage was settled. Thereafter one day that Amitabh Sen came to the clinic of the informant and demanded Rs. 10,000/- as loan, which the informant gave to him by taking it from one of his friend, PW 3. Two days after, the revisionist along with that Amitabh Sen went to the clinic of the informant and this revisionist asked for payment of Rs. 50,000/- as dowry and for adjustment of Rs. 10,000/- taken by Amitabh Sen against that. As there was no demand of dowry at the time of negotiation of the marriage, the informant became suspicious. In the meanwhile, the invitation cards of the marriage had been printed and distributed. Being suspicious, the informant got the matter verified from the Calcutta office and he came to know that in fact, that Amitabh Sen was not at all employed as informed by this revisionist consequently, the marriage did not then materialize as it was cancelled and cancellation of the marriage brought down the reputation of the informant in the society and thereafter, the FIR was lodged, the police raided the quarters of the revisionist along with witnesses and from that quarters, some documents, Ext. 7 and 8 series, and Rs. 6,000/- were recovered, which included forged documents, seal etc. The prosecution witnesses were cross- examined jointly on behalf of this revisionist and Amitabh Sen. From the trend of the cross-examination, it appears that the defence case was that the negotiation for marriage had already broken; therefore, in order to pressurize the revisionist this case was lodged. In the statements under 313, Cr PC, this revisionist while denied all the allegations, but in his defence said that he came to know of the marriage of the niece of the informant with Amitabh Sen from the invitation card received by him. Thus, from his own admission, it is clear that there was talk of marriage and subsequent thereto, cards were also printed. So, it cannot be said that the prosecution case is altogether a fictitious one.

3. On fact and on appreciation of evidence, both the Court, trial and appellate, have come to a concurrent finding that this revisionist had introduced Amitabh Sen to the informant and the marriage negotiations were held at his residence when the documents, Ext. 2 series, were delivered to the informant and it is also the finding of both the Courts that Amitabh Sen had taken Rs. 10,000/- as loan but subsequently, this revisionist had gone and demanded Rs. 50,000/- and had suggested for adjustment of Rs. 10,000/- taken by Amitabh Sen. On careful consideration of the evidence on record, I find that these findings are based on proper appreciation of

evidence. On scrutiny, it has been found by me that Amitabh Sen lived in the two roomed quarters of this revisionist though this revisionist said that he (Amitabh Sen) sometimes used to come to his quarters, but the I.O. has said that both the rooms were inter-connected. In such circumstances it cannot be said that the revisionist, did not know the activities or the real profession of that Amitabh Sen. Though he said to the informant that the marriage will have to be negotiated with the father of Amitabh Sen, yet he also said to him regarding the employment of Amitabh Sen as an official of Telecom Department. The argument raised is that when the revisionist said that the marriage had to be negotiated with the father of Amitabh Sen, then this revisionist cannot be held liable for practising fraud upon the informant. If it is assumed that there was no relation between the informant, who is a Doctor, and this revisionist, then the question of receiving the marriage invitation card by him did not arise. The very fact that he himself admits that he has received the invitation card goes to show that whatever the informant has said is correct, because when a person, who is known to a Doctor for a long time, gave such information and in support of that certain documents, Ext. 2 series, were produced in his presence, in such a situation, the believing on them by the Doctor-informant is not unnatural, Ext. 2 series are interesting documents, Ext. 2 is a telegram, which shows that it was addressed to Amitabh Sen, this reads as follows :--

"To

Amitabh Sen,
AGM/R/IRS

Transfer from Ranchi HR to Pondichary HQ. Effect from 03.10.1992. Order No. - 016/TF/R-P/7/92 Training (Administration Grade 1) at Kanchipuram from 30.12.1992.

Order No. 06432-A/Training G-1/Kanchi/15-12 available at Ranchi after Training."

This document appears to have been issued on 30.12.1992.

Ext. 2/1 is a communication to Amitabh Sen by the department of Telecommunication and reads as follows :--

"Mr. Amitabh, Sen (0614/R/84) an employee of Telecommunication is the out of station on deputation to his works outside Ranchi, he would be available at Ranchi after 3 (Three) months."

This was issued on 9.1.1993. The Ext. 2/2 is the Advocate's notice sent with A/D to the Officer-in-Charge, Bhadeshwar P.S. West Bengal, where protection of Amitabh Sen's family has been sought from the police, Paragraph Nos. (i) and (ii) of the same read as follows :--

"(i) That the son of my client Mr. Amitabh Sen is working as AGM. SB.IRS Project, Department of Telecommunication, Ranchi, for the last two years to the knowledge of all concerned.

(ii) That Mr. Amitabh Sen was working in the same department at Calcutta prior to the period he joined at Ranchi."

This letter was issued on 7.9.1992, whereas the marriage was fixed as per Ext. 1/3 for 13th June, 1993 and the negotiations were going on prior to that. Therefore, the aforesaid documents undoubtedly were produced at the residence of this revisionist in his presence by Amitabh Sen and his father. Had it been the defence of the revisionist that he was also misled by these documents as because there were no reasonable ground to disbelieve those documents that Amitabh Sen was actually working as such, then the matter would have been otherwise. But this is not the defence. Thus, it is proved that Amitabh Sen lived in the same quarters, both the rooms were interconnected and the revisionist introduced him (Amitabh Sen) to the informant. On the point of demand of dowry, there is positive finding in the impugned judgments. Thus, the findings of the Courts below on dowry having been demanded by the revisionist, who is a relative of Amitabh Sen, hardly requires any interference by this Court as no error in appreciation of evidence appears to have been committed by Courts below.

4. In law, point raised was that for conviction u/s 4 of the Dowry Prohibition Act, sanction was required and as there was no sanction, conviction could not have been made for the offence under that section. Earlier there was an amendment by the State of Bihar of that section under which sanction was required, (1976 Amendment), but a Division Bench of the Patna High Court in a judgment [Deo Narayan Lall Das and 5 Ors. Vs. The State of Bihar and Another](#) , declared that no sanction was required. Thus, this legal plea is not available to the revisionist and the revisionist being the relation of the bridegroom had demanded dowry from the uncle of the bride, who was also her guardian, because there is evidence that the father of the girl died and the whole responsibility had been shifted on the informant. Thus, the charge u/s 4 of the Dowry Prohibition Act is proved.

Moreover, u/s 8A of the Dowry Prohibition Act, the burden of proving that he did not commit the offence, is on him. This burden has not been discharged by the revisionist after he had been prosecuted for the offence.

5. The learned Appellate Court had already set aside the conviction under other sections and has rightly done so and the findings on law against the Sections 468, 471, 420 and 120B, IPC are not unlawful. Consequently, I do not find any merit in this revision.

6. The total circumstances reveal that the revisionist played a pivotal role with the accused Amitabh Sen, which created problems for the informant and also stigmatized the bride, as the marriage could not be performed after publication and distribution of invitation cards. In our society, in such a situation, the further solemnization of marriage of such a stigmatized girl becomes more difficult and as such, the sentence awarded to the revisionist hardly requires any modification. The

revision is dismissed. As the revisionist is on bail, his bail is cancelled. The revisionist is directed to surrender before the Court below within 15 days to serve out the remaining part of the sentence. Transmit back the Lower Court records at once.