

(1978) 02 AP CK 0001

Andhra Pradesh High Court

Case No: None

P.T.S. Saibaba and Another

APPELLANT

Vs

P. Mangatayaru and Another

RESPONDENT

Date of Decision: Feb. 17, 1978

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 177, 7
- Dowry Prohibition Act, 1961 - Section 3, 4, 6

Citation: (1978) CriLJ 1362

Hon'ble Judges: Gangadhara Rao, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Gangadhara Rao, J.

The petitioners are the accused in C. C. No. 54/77 on the file of the Judicial 1st Class Magistrate's Court Narasipatnam. They have filed this petition to quash the proceedings. The 2nd accused is the father of the first accused. The complainant was married to the first accused at Annavaram on 25th June, 1975. According to her, a dowry of Rs. 8,500/- was agreed to be paid to the first accused as consideration for marrying her. That amount was paid in two instalments of Rs. 2,000/- and Rs. 6,500/- to the 2nd accused at Yeleswaram. It is stated that the 2nd accused had received the amount for and on behalf of the first accused as per the agreement between the parties. The complainant submits that the dowry amount is liable to be returned to her u/s 6(1) of the Dowry Prohibition Act, 1961, (hereinafter referred to as "the Act") on or before 25-6-1976. On the ground that the accused have failed to pay that amount at the latest by 25-6-1976 at Narasipatnam where she was living to the knowledge of the accused, she has filed the complaint (C. C. No. 54/ 77) in the Court of the First Class Magistrate, Narasipatnam. In her sworn statement, she has stated that she is living at Narasipatnam, that her husband the first accused

wanted Rs. 8,500/- dowry to marry her, that her father-in-law the second accused also demanded dowry, that the dowry of Rs. 8,500/- was paid to the accused, that her husband also wrote a letter with a request to pay the dowry amount to his father the second accused and that the dowry amount was not returned to her.

2. Kumari Suseela Devi, the learned Counsel for the petitioners has impeached the proceedings on three grounds. First, no offence is made out against the first accused, the husband of the complainant, u/s 6(1) of the Act. Section 6(1) reads thus:

6. (1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman-

(a) if the dowry was received before marriage, within one year after the date of marriage; or

(b) if the dowry was received at the time of or after the marriage, within one year after the date of its receipt; or

(c) if the dowry was received when the woman was a minor, within one year after she has attained the age of 18 years; and pending such transfer shall hold it in trust for the benefit of the woman.

(2) If any person fails to transfer any property as required by Sub-section. (1) and within the time limited therefor, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both; but such punishment shall not absolve the person from his obligation to transfer the property as required by Sub-section (1).

(3) Where the woman entitled to any property under Sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being.

(4) Nothing contained in this section shall affect the provisions of Section 3 or Section 4.

It is submitted that the dowry amount was received only by the second accused but not by the first accused, and therefore Section 6(1) has no application to the first accused. I do not agree. In the complaint petition it is stated that a dowry of Rs. 8,500/- was stipulated to be paid to the first accused as consideration for his marrying the complainant. It is also stated that the second accused received the same for and on behalf of the first accused as per the original agreement between the parties. In the sworn statement it is stated that the first accused wanted Rs. 8,500/- dowry to marry the complainant. It is further alleged that the first accused had written a letter with a request to pay the dowry amount to his father. In these circumstances, if the dowry is paid to the second accused because he is the father of the first accused, it has to be held that it was only paid to the first accused in

consideration of his having married the complainant. Therefore, it is really a payment to the first accused. Hence, I reject this contention.

3. Next it was submitted that the Judicial First Class Magistrate's Court at Narasipatnam has no jurisdiction to take cognizance of the case. It is true that the accused are not residents of Narasipatnam. The marriage has taken place at Annavaram in East Godavari District. The accused are residents of Yeleswaram in East Godavari District, Only the complainant is living at Narasipatnam. Section 6(1) of the Act provides that when a dowry is received by any person other than the woman in connection with whose marriage it is given, that person should transfer the dowry to the woman. If he fails to transfer within the time limited therefore he is punishable with imprisonment or with fine. It means, it is obligatory on the part of the person who has received the dowry to transfer it to the woman. He can transfer it at the place where the woman is residing. If he fails to transfer it, then the woman gets cause of action for filing a complaint at the place where it should have been transferred to her. Consequently, I am of the opinion that where the woman is residing she can file the complaint there for return of the amount. In this case, since the complainant is residing at Narasipatnam, the complaint filed by her in the Court at Narasipatnam is valid.

4. In this connection I may refer to the decision in Employees' State Insurance Corporation, Madras Vs. Md. Ismail Sahib and Others, . That case arose under the Employee's State Insurance Act. u/s 39 of that Act the contribution payable in respect of an employee has to be paid to the Corporation at Madras. A Full Bench of Madras High Court held that:

On the common law principle, the payment has to be made at the office of the Corporation and the fact that the factories are enabled to make payments at mofussil centres, will not relieve the factories from their obligation to make the payments at Corporation office and the consequences arising from default thereof. Where therefore the corporation is situated in Madras and there is default in payment, the Chief Presidency Magistrate has territorial jurisdiction to enquire into the matter and the fact that different parts of the offence were committed in a different jurisdiction would make no difference. Where the offence consists of several acts done in different local areas, it may be enquired into or tried by a Court having jurisdiction over any of such local areas.

Following this decision, I hold that the Judicial First Class Magistrate's Court at Narasipatnam is competent to entertain the complaint. Kumari Susheela Devi, the learned Counsel for the petitioner relying upon Section 177, Cr. P.C., and the decision in Surinder Singh v. Rajinder Kaur ILR (1974) 1 P & H 654, submitted that Narasipatnam Magistrate's Court has no jurisdiction to try the case. Section 177, Cr. P.C. says that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. I have already held that it was the duty of the petitioners to return the dowry amount to the complainant at

Narasipatnam and in default they had to suffer criminal prosecution. Since the offence is committed within the local jurisdiction of Narasipatnam Magistrate's Court, that Court, has got jurisdiction to entertain the complaint, In Surinder Singh v. Rajinder Kaur (supra), I do not find any observations contrary to the view taken by me, Consequently, I reject this contention,

5. Next it was submitted by Kumari Susheela Devi that the complaint is barred by limitation. In this case, the marriage has taken place on 25-6-1975 and the complaint was filed on 25-6-1977. It is submitted that since the complaint was not filed within one year from the date of the marriage the prosecution is barred. Section 7 of the Act provides that no Court shall take cognizance of an offence except on a complaint made within one year from the date of the offence. The question is what is the date of the offence in this case, Section 6(1) of the Act provides that if the dowry was received before marriage, it should be returned within one year after the date of marriage. If it was received at the time of or after the marriage, it should be returned within one year after the date of its receipt. If the dowry was received when the woman was a minor, it should be returned within one year after she has attained the age of eighteen years. In this case, the dowry was received before the marriage. Therefore, it should be returned within one year after the date of the marriage. The marriage was on 25-6-1975. Therefore, it should have been returned on or before 25-6-1976. Till that date if it is not returned it is not an offence. It becomes an offence only after that date. Consequently, the complaint filed in this case on 25-6-1977 is not barred by time, for it was filed within one year from the date of the offence. Therefore, this contention fails.

6. In the result, this petition is dismissed.