L. V. Jadhav vs Shankarrao Abasaheb Pawar & Others on 30 August, 1983

Equivalent citations: 1983 AIR 1219, 1983 SCR (3) 762, AIR 1983 SUPREME COURT 1219, 1983 (4) SCC 231, (1983) 2 DMC 242, (1983) 2 CRIMES 470, (1983) 2 APLJ 45, 1983 SCC (CRI) 813, 1983 CRILR(SC MAH GUJ) 463, (1984) 1 ORISSA LR 1, 1984 BOM LR 86 61

Author: A. Varadarajan

Bench: A. Varadarajan, Syed Murtaza Fazalali, M.P. Thakkar

PETITIONER:
L. V. JADHAV

Vs.

RESPONDENT:
SHANKARRAO ABASAHEB PAWAR & OTHERS

DATE OF JUDGMENT30/08/1983

BENCH:
VARADARAJAN, A. (J)
BENCH:
VARADARAJAN, A. (J)
FAZALALI, SYED MURTAZA
THAKKAR, M.P. (J)

CITATION:
1983 AIR 1219 1983 SCR (3) 762
1983 SCC (4) 231 1983 SCALE (2)175
CITATOR INFO :
R 1985 SC 628 (54)
RF 1991 SC 792 (4)
RF 1992 SC 604 (106)

ACT:
Dowry Prohibition Act, 1961 -Sections 2 and 4 scope of-
Demand for payment of money made during marriage ceremonies-
Demand pressed later- Whether constitutes an offence under
section 4.
High Court-Inherent power-When should be exercised.

HEADNOTE:
In a complaint filed before the Judicial Magistrate the

appellant (bride's father) alleged that during the marriage ceremonies the first respondent (bride groom's father) had demanded a large sum of money to be paid to him as dowry and threatened that if the appellant did not pay the sum he would stop further marriage ceremonies, that even after his daughter. had gone to the first respondent's house after the marriage the respondent's continued to demand payment of money and that this constituted an offence under section 4 of the Dowry Prohibition Act, 1961.

After verifying the complaint the Judicial Magistrate issued processes to the respondents and sent summons is to the United States where the respondents were,

Allowing the respondent's application impugning the order of the Magistrate issuing summonses, the High Court held that since there was no allegation in the complaint that the respondents first demanded the dowry and the appellant had agreed to pay it and the respondents thereafter demanded it again, no offence under section 4 was made out.

In the appeal to this Court it was contended on- behalf of the appellant that a mere demand for dowry, even if there was no consent to comply with that demand, would constitute an offence under section 4 of the Act.

Allowing the appeal,

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HELD: From a reading of section 2 of the Act, it would appear that consent to comply with demand for payment of any property or valuable securities as 'consideration' for the marriage would alone make the property or valuable security given or agreed to be given directly or indirectly "dowry"
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within the meaning of the Act. But having regard to the dominant purpose of the Act the entries definition of "dowry" should not be imported into section 4. The dictionary meaning of the word 'bride' is a woman about to marry or has just been married and a `bridegroom' is a man who is about to marry or has just been married. If the literal-meaning of these words is given to the words bride and bridegroom used in the section any property or valuable security demanded and contented to be given before the woman had become a bride or the man had become a bridegroom may not be dowry. The avowed object of the Act being to eradicate the evil of demanding dowry, a liberal construction has to be given to the word "dowry" to mean any property or valuable security which if consented to be given on demand would be dowry within the meaning of section 2. There is, therefore, no warrant for the respondents' contention that initial demand for dowry would not constitute an offence but that it would be an offence only when the demand was made again after the party on whom it was made had agreed to comply with it. [771 B-H; 722 A]

Inder Sain and Another v. The State, 1981 Crl. L.J. 1116 approved.

The inherent power of the High Court must be exercised sparingly and with circumspection when there is reason to believe that the process of law is being misused to harass a citizen. In this case the High Court should have refused to involve its inherent power at the threshold to quash the proceedings.

[772 B-C]

JUDGMENT:

CAIMINAL APPELLATE JISRISDICTION: Criminal Appeal No 494 of 1982.

Appeal by Special Leave from the Judgment and order dated the 22nd December, 1981 of the Bombay High Court in Criminal Appln. No. 283 of 1981.

Y. S. Chitale. V. N. Ganpule, Sirish Gupta and Mrs. V.D. Khanna for the Appellant.

V. S. Desai and G. B. Sathe for the Respondent. P. G. Gokhale and M. N. Shroff for the State of Maharashtra.

The Judgment of the Court was delivered by VARADARAJAN, J. This appeal by special leave is directed against the judgment of a Division Bench of the Bombay High Court in Criminal Application No. 283 of 1981, quashing the proceedings in Criminal Case No. 1634 of 1980 on the file of the Judicial Magistrate, First Class (Anti Corruption), Pune. The application in the High Court was filed by the respondents in this appeal, who are the two accused in that criminal case, for quashing the criminal proceedings as well as the order of the Judicial Magistrate, issuing processes against them in that case.

The appellant L. V. Jadhav was the first respondent while State of Maharashtra was the second respondent in the application before the High Court. The first respondent Shankarrao Abasaheb Pawar is the father of the second respondent Pradeep Shankarra Pawar. There was a proposal to get the appellant's daughter Anita, a Science Graduate, married to the second respondent, a double Graduate in Engineering, working in the United States. After Anita and the second respondent approved each other there was an engagement ceremony on 12.6.1978 at Pune and the marriage was performed at that place on 19.6.1979 after the first respondent came from the United States in May 1979.

According to the appellant's complaint, when the marriage ceremonies were in progress on 19.6.1979, both the respondents demanded a cash of Rs. 50,000 from the appellant in the presence of respectable persons under the pretext that the money was required for the transport of Anita and the second respondents to the United States. The respondent told the appellant that if he did not comply with that demand by way of dowry further ceremonies monies would not be completed. Some respectable persons who were present at that time persuade the respondents to complete the marriage ceremonies and formalities and thereafter the marriage ceremonies were over. The second

respondent alone went to the United States in July 1979 as the passport and visa for Anita had to be arranged which was done some time later while Anita was staying in the house of the first respondent. Anita was not sent to the United States and the respondents continued to persist in their demand for the money when she was staying in the first respondent's house. The appellant filed a complaint before the Judicial Magis- trate, First Class on 5.6.1980 against both the respondents, alleging that they had committed an offence under s. 4 of the Dowry Prohibition Act, 1961 by demanding the sum of Rs. 50,000 as mentioned above. This was done after the appellant had obtained the necessary sanction required by the proviso to s 4 of the Act. The Judicial Magistrate verified the complaint and issued processes to the respondents and sent summonses to the United States where the first respondent was staying with the second respondent at that time.

The respondents challenged the Magistrate's order issuing summonses to them by filing their application in the High Court. The learned Single Judge before whom the application originally came up for consideration referred to a Division Bench. The contention of the learned counsel for the respondents before the High Court was that even if the allegations made in the appellant's complaints were true no offence under s. 4 of the Act is disclosed, whereas for the appellant it was contended before the High Court that the aforesaid demand for Rs. 50,000 would constitute an offence under s. 4.

Reading the definition of "dowry" given in s. 2 of the Act into s. 4, the learned judges held that for bringing a case under s. 4 of the Act, there must be a demand for dowry as such, that is, for any property agreed to be given as consideration for the marriage, and that as there is no allegation in the complaint that the appellant had agreed to pay the sum of Rs. 50,000 and the respondents thereafter demanded the same no offence under s. 4 of the Act is disclosed in the complaint. In that view the learned judges allowed the respondent's application and quashed the proceedings in the appellants's complaint and the Magistrate's order issuing the processes to the respondents. Hence this appeal by special leave.

The question for consideration is whether the allegation made in the appellant's complaint that there was a demand by the respondents when the ceremonies of the marriage of Anita with the second respondent were in progress, for the payment of Rs. 50,000 to be made by the appellant on pain of the marriage ceremonies not being completed if the demand was not complied with under the pretext that the said amount was required for the passage of Anita and the second respondent to the United States discloses an offence under s. 4 of the Act. It would be necessary to extract the following relevant ss. 2 to 5 and 8 of the Act for easy reference in order to consider the question:

> "2. In this Act, "dowry means any property or valuable security given or agreed to be given either directly or indirectly-
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> (a) by one party to a marriage to the other party to the marriage; or
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> (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or after the marriage as consideration for the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation I-For the removel of doubts it is hereby declared that any presents made at the time of a marriage to either party to the marriage in the form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this section, unless they are made as consideration for the marriage of the said parties.

Explanation II- The expression "valuable security" has the same meaning as in section 30 of the Indian Penal Code.

3. 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 which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

4. If any person after the commencement of this Act, demands, directly or indirectly, from the parents or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment which may extend to six moths, or with fine which may extend to five thousand rupees, or with both;

Provided that no court shall take cognizance of any offence under this section except with the previous sanction of the State Government or of such officer as the State Government may, by general or special order, specify in this behalf.

5. Any agreement for the giving or taking of dowry shall be void.

6. Every offence under this Act shall be non- cognizable, bailable and non-compoundable." According to the appellant's complaint, when the marriage of his daughter Anita and the second respondent, the son of the first respondent, was in progress on 19.6.1979, both the respondents demanded from him cash of Rs. 50, 000 in the presence of respectable persons under the pretext that the amount was required for the passage or transport of Anita and the second respondent to the United States where the second respondent was employed at that time and they told him that if he did dot comply with their demand by way of dowry further ceremonies in the marriage would not be completed. It is further alleged that some respectable persons who were present at that time persuaded the respondents to complete the marriage ceremonies and formalities and thereafter the marriage ceremonies were completed and that subsequently the second respondent went to the United States in July 1979 alone because the passport and visa of Anita had to be arranged which was done some time later while Anita was staying in the house of the first respondent, and the respondents continued to persist in their demand for the money when Anita was saying in the house of the first respondent without being sent to the United States. Mr. V. S. Desai, Senior Advocate, appearing for the respondents invited our attention to the decision of a learned Single Judge of the Delhi High Court in Inder Sain and another v. The State(1) and also of another Single Judge of the Patna High Court in Kashi Prasad and others v. State of Bihar and others(2) and submitted that the demand for Rs. 50,000 alleged in the complaint would not constitute an offence under s. 4 of the

Act as there is no allegation in tile complaint that the appellant consented to pay the amount and that without consent to the payment the sum of Rs. 50,000 alleged to have been demanded does not become dowry within the meaning of s. 2 of the Act which defines "dowry" as meaning "any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or after the marriage as consideration for the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (shariat) applies."

Section 2 contains two explanations with which we are not concerned in this case. In the Delhi High Court's decision the question for consideration was what constituted "consideration" for marriage within the meaning of s. 2 of the Act, and Luthra, J, has observed:

"Thus the definition of the word "consideration" leads to the conclusion that the property or valuable security should be demanded or given whether in the past, present or future for bringing out solemnization of marriage. After the marriage, giving a property or valuable security by the parents of the bride cannot constitute a "consideration" for the marriage unless it was agreed at the time of or before the marriage that such property or valuable security would be given in future."

The complaint i n that case did not spell out that the articles mentioned in the same were given after the marriage as a result of some agreement for the purpose of the marriage. The allegations in the complaint jndicated that those articles were given after the marriage with a view to have smooth sailing and continuance of good material relations. The learned Judge, therefore, held that the articles given in those circumstances did not constitute dowry within the meaning of s. 2 of the Act. We think that the learned judge is right in holding so, and that it is desirable that even such a demand should be prohibited and made punishable in law.

We are concerned in the present case with a complaint in which it has been alleged that the demand for the sum of Rs. 50,000 as dowry was made when the marriage ceremonies between the appellant's daughter Anita and the second respondent were in progress, by both the respondents. under the pretext that it was required for the passage of the parties to the marriage to the United States with a threat that if the amount was not paid the marriage ceremonies would not be completed and that there was demand for payment of the amount even after the marriage ceremonies were over when Anita was staying in the house of the first respondent after the second respondent went away alone to the United States because the, passport and visa for Anita had not been obtained by then. The decision of even the Patna High Court relied upon by Mr. Desai relates only to what constitutes "consideration" for the marriage within the meaning of s 2 of the Act. On the other hand, Dr; Y.S. Chitale, Senior Advocate, appearing for the appellant invited our attention to a decision of a Division Bench of the Bombay High Court in Daulat Mansingh Aher v. C.R. Bansi and another(1) and submitted that a mere demand for money as dowry for completing the marriage

ceremonies on pain of not completing the ceremonies if the money was not given is sufficient to constitute an offence under s. 4 of the Act even though there was no consent on the part of the appellant to comply with that demand. What appeared from the record of the case out of which the decision of the Bombay High Court arose, was that the accused-petitioner filed an application on 6.10.1978 raising a contention that the Court of the Metropolitan Magistrate, Dadar, Bombay had no jurisdiction to entertain and try the case because the accused and the complainant were residing 'outside the jurisdiction of that Court. A contention was also raised that the complaint was barred by limitation and was, therefore, liable to be dismissed. However, during the arguments in the High Court it was conceded by the learned counsel for the accused-petitioner that the complaint was filed within the period prescribed. Therefore, the only question that arose for consideration by the learned Judges of the Division Bench was the one relating to the jurisdiction of the Metropolitan Magistrate, Dadar, Bombay to entertain and inquire into the complaint. However, the learned Judges have observed in the judgment after extracting s. 4 of the Act that "what is made punishable under that provision is the demand itself, whether direct or indirect, from the parents of a bride or bridegroom". The learned Judges have further observed thus:-

> "On the averments made in the complaint the demand is made by the accused by writing a letter from Wadala, Bombay-31. This demand was made through his elder brother who is the son-in-law of the complainant and resides at Agartala. From Agartala the said letter of demand was forwarded by the son-in-law of the complainant to Andheri, Bombay where the complainant is residing. Therefore, the demand by accused was not made at Agartala. He had only used the good offices of his elder brother to forward the letter. Instead of writing a direct letter to complainant demanding dowry, the demand was made through the elder brother who is residing at Agartala. Still the demand is by accused and is made from Wadala at Bombay. The demand became complete when the complainant received the letter at Andheri, Bombay. Hence the dowry was demanded at Bombay. The offence was partly committed at Wadala, Bombay, from there the dowry was demanded. It was also committed at Andheri, Bombay, where the complainant received the demand letter. It is further alleged by the complainant in the complaint that the marriage of Alka which was almost settled, could not take place due to the demand of dowry made by the accused. This consequential result or consequence of the demand also took place at Bombay. Wadala is within the local jurisdiction of Metropolitan Magistrate, Dadar. Letter of demand was actually sent from Wadala, Bombay. Hence, in any case it can safely be said that offence as alleged is partly committed at Wadala also. Though a contention was raised before the trial court that neither accused nor complainant are residing within the jurisdic- tion of the Dadar Court, now it is an admitted position that accused resides at Wadala. Even if it is held that offence became complete when complainant received letter at Andheri, Bombay, still it will be triable by Bombay Court. Whether it is Dadar or Andheri Court will not make any difference. On tho other hand we are told that Dadar Court is nearer to the residence of accused. The point raised is too technical and no prejudice will be caused to the accused nor on that count it could be said that trial is vitiated; or will result in failure of justice. Hence there is no substance in this contention".

It appears from a reading of this judgment that it was either not disputed before the learned Judges or that it was presumed that a mere demand for property as consideration for the marriage taking place would constitute an offence under s. 4 of the Act.

The Dowry Prohibition Act, 1961 is intended to prohibit the giving or taking of dowry, and Parliament has made every offence under the Act non-compoundable by s. 8 of the Act. By s. 5 it has been enacted that any agreement for the giving or taking of dowry shall be void. Section 3 makes abetment of the giving or taking of dowry an offence. No doubt, according to s. 2 of the Act "dowry" is any property or valuable security given or agreed to be given either directly or indirectly at or before or after the marriage as consideration for the marriage but does not include dowar or mahr in the case of person to whom the Muslim Personal Law (Shariat) appear applies. It would appear from s. 2 that consent to comply with the demand for any property as consideration for the marriage would alone make the property or valuable security given or agreed to be given directly or indirectly, "dowry" within the meaning of the Act. But having regard to the dominant object of the Act which is to stemp out the practice of demanding dowry in any shape or form either before or after the marriage, we are of the opinion that the entire definition of word "dowry" should not be imported into s. 4 which lays down that "if any person after the commencement of this Act, demands directly or indirectly from the parents or guardian of a bride or bridegroom, as the case may be, any dowry, 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". According to Webester's New World Dictionary, 1962 edn. bride means a woman who has just been married or it about to be married, and bridegroom means a man who has just been married or is about to be married. If we give this strict meaning of a bride or a bridegroom to the word bride or bridegroom used in s. 4 of the Act property or valuable security demanded and consented to be given prior to the time when the woman had become a bride or the man had become a bridegroom, may not be "dowry" within the meaning of the Act, We are of the opinion that having regard to the object of the Act a liberal construction has to be given to the word "dowry" used in s. 4 of the Act to mean that any property or valuable security which if consented to be given on the demand being made would become dowry within the meaning of s. 2 of the Act. We are also of the opinion that the object of s. 4 of the Act is to discourage the very demand for property or valuable security as consideration for a marriage between the parties thereto. Section 4 prohibits the demand for 'giving' property or valuable security which demand, if satisfied, would constitute an offence under s. 3 read with s. 2 of the Act. There is no warrant for taking the view that the initial demand for giving of property or valuable security would not constitute an offence and that an offence would take place only when the demand was made again after the party on whom the demand was made agreed to comply with it. The learned Magistrate was, therefore, right in proceeding on the basis that the allegations in the complaint prima facie constitute an offence under s. 4 of the Act and issuing processes to the respondents. The High Court, we cannot refrain from observing, might well have refused to invoke its inherent powers at the very threshold in order to quash the proceedings, for these powers are meant to be exercised sparingly and with circumspection when there is reason to believe that the process of law is being misused to harass a citizen. The present was not such a case. We find that the complaint had been filed after obtaining the previous sanction of the State Government or of such officer as the State Government may by general or special order specify in this behalf as required by the proviso to s. 4 of the Act. Mr. P.G. Gokhale who appeared for the second respondent, State of Maharashtra, was not in a position to tell

us about what the exact stand of the State Government in this appeal is as to whether it supports or opposes the contention of the appellant that the allegation made in the complaint constitutes an offence under s. 4 of the Act. For the reasons stated above, we allow the appeal and direct the learned Judicial Magistrate, First Class to take further proceedings on the complaint and dispose of the case according to law.

P.B.R. Appeal allowed.