A RAN SINGH AND ANR.

v.

STATE OF HARYANA AND ANR.

(Criminal Appeal No. 222 of 2008)

JANUARY 30, 2008

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[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Penal Code, 1860 – ss. 498A, 406, 323, 506, 148 and 149 – Offences under – Complaint against husband his C *parents, brother and sister – Initiation of prosecution – In revision Sessions Judge directed prosecution of husband alone – High Court holding the parents of husband responsible for cruelty – On appeal, held: Order of High Court, so far as parents of the husband, is concerned is presumptuous and* D *without assigning any reasons – Hence set aside to that extent.*

Judgment – Recording of reasons in – requirement of – Discussed.

Words and Phrases – 'Dowry' – Meaning of in the context E *of Dowry Prohibition Act, 1961.*

Predecessor of respondent No. 2 filed a complaint u/ss. 498-A, 406, 323, 506, 148 and 149 IPC against husband, father-in-law, mother-in-law, brother-in-law and married sister-in-law of respondent No. 2. He alleged that F **they were responsible for harassing respondent No. 2 for dowry. Judicial Magistrate proceeded against all the accused. In Revision Petitions filed by the accused, Sessions Judge held that only husband could be proceeded against, as no case was made out against the** G **rest of the accused. High Court upheld the order of Sessions Judge, so far as husband, brother-in-law and sister-in-law were concerned. But regarding father-in-law and mother-in-law it held that they were to be prosecuted observing that they could misappropriate articles of**

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dowry and could practice cruelty. Hence the present appeal by father-in-law and mother-in-law. A

Partly allowing the appeal, the Court

HELD: 1. The High Court has fallen in grave error while observing that present appellants "could misappropriate" and "who can practice cruelty". The conclusions are presumptuous. Sessions Judge by a well reasoned order had held that there was no material to show that demand for any dowry was made and an attempt was made to rope in many persons. When the High Court was interfering with such conclusions arrived at on facts it ought to have indicated the reasons necessitating such interference. [Para 8] [221-F-G; 222-A] B C

2. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind. The absence of reasons has rendered the High Court's judgment not sustainable. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. [Paras 9 D E F G H

A **and 10] [222-B, D, E, F, G]**

Breen v. Amalgamated Engineering Union **1971 (1) All E.R. 1148;** *Alexander Machinery (Dudley) Ltd. v. Crabtree* **1974 LCR 120 – referred to.**

B **3. The word "dowry" is defined in Section 2 of Dowry Prohibition Act, 1961. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third "at any time" after the marriage. The third occasion may appear to be unending** C **period. But the crucial words are "in connection with the marriage of the said parties". Other payments which are customary payments e.g. given at the time of birth of a child or other ceremonies as are prevalent in different societies are not covered by the expression "dowry".** D **[Para 7] [221-D, E, F]**

Satvir Singh v. State of Punjab **2001 (8) SCC 633 – referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal E No. 222 of 2008.

From the Judgment and Order dated 29.11.2005 of the High Court of Punjab and Haryana at Chandigarh in Crl. R. No. 2468/2003.

F Rishi Malhotra and Prem Malhotra for the Appellants.

Rajeev Gaur 'Naseem', Rajesh Ranjan. T.V. George and Chander Shekhar Ashri for the Respondents.

The Judgment of the Court was delivered by

G **Dr. ARIJIT PASAYAT, J.** 1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Punjab and Haryana High Court allowing the Revision Petition filed under Section 401 of the Code of Criminal Procedure, 1973 (in short the 'Code') which H

was filed before it by Kurra Ram since deceased and represented by his daughter i.e. respondent No.2 in the present appeal. A

3. Background facts in a nutshell are as follows:

A complaint was filed by the aforesaid Kurra Ram alleging commission of offences punishable under Sections 498-A, 406, 323, 506, 148 and 149 of the Indian Penal Code, 1860 (in short the 'IPC') by Jaswant-son in law and husband of his daughter-Saroj, Ran Singh and Raj Bala, the present appellants who were father and mother of Jaswant and two others namely, Jai Singh and Suman, the brother and married sister of Jaswant. B C

It was stated in the complaint that Saroj got married to Jaswant on 14.4.1994 and that she was harassed for dowry by the aforesaid accused persons. Learned Additional Chief Judicial Magistrate, Hissar, after recording preliminary evidence of the complainant, decided to proceed against all the accused persons for the alleged offences. Separate Revision Petitions were filed by Jai Singh, Ran Singh and Suman taking the stand that there is no offence made out so far as they are concerned. Learned Additional Sessions Judge found that no case was made out against aforesaid accused persons and directed that proceedings would continue only against Jaswant. The order dated 4.11.2003 disposing of the revisions in the aforesaid manner was challenged by Kurra Ram in the Revision Petition before the High Court. It was held by High Court that *there is no* ground to proceed against Jai Singh and Suman who may just be living in the house, but may not be interfering in matrimonial problems of Saroj and Jaswant. Therefore, the order of the Additional Sessions Judge was upheld to that extent. But so far as the present appellants are concerned the High Court inter alia observed as follows: D E F G

"However, when articles of dowry are handed over to elder members in the family that will mean that those H

A were handed over to Ran Singh and Raj Bala i.e. father and mother of the husband *who could misappropriate*. It is they *who can practice* cruelty for less dowry or otherwise."

(Italics for emphasis)

B The High Court noted that police had earlier registered a case and had sent cancellation report and thereafter the complaint was filed by Kurra Ram who appeared as PW-1, as his son Rajesh appeared as PW-2 and Saroj as PW-3.

C 4. Learned counsel for the appellants submitted that the High Court failed to notice that some customary articles were given to relatives of the bridegroom. That cannot be covered by the expression 'dowry'. High Court noticed the fact that the complainant tried to rope even a married sister who was living D far away and the brother, which shows the tendency to falsely implicate them. Reference is also made to the following observations of the High Court:

"..They are close relatives but the fact remains that an effort is made by the complainant to implicate as many E persons as possible, in such matters."

5. Learned counsel for the respondent-State and the complainant submitted that it is not a case where the Additional Sessions Judge should have interfered and the High Court has therefore rightly set aside the order dated 4.11.2003 which was F impugned before it.

6. Section 2 of the Dowry Prohibition Act, 1961 (in short 'Dowry Act') defines "dowry" as under:-

Section 2. Definition of 'dowry' – In this Act, 'dowry' means G 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

H (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, A

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mehr in the case of persons to whom the Muslim personal law (Shariat) applies. B

Explanation I- For the removal 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 C 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 in Section 30 of the Indian Penal Code D (45 of 1860)."

7. The word "dowry" is defined in Section 2 of the Dowry Act. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third "at any time" after the marriage. The third occasion may E appear to be unending period. But the crucial words are "in connection with the marriage of the said parties". Other payments which are customary payments e.g. given at the time of birth of a child or other ceremonies as are prevalent in different societies are not covered by the expression "dowry". (See *Satvir* F *Singh v. State of Punjab* (2001 (8) SCC 633)) .

8. The High Court has fallen in grave error while observing that present appellants "could misappropriate" and "who can practice cruelty". The conclusions to say the least are G presumptuous. Learned Additional Sessions Judge by a well reasoned order had held that there was no material to show that demand for any dowry was made and an attempt was made to rope in many persons. When the High Court was interfering with such conclusions arrived at on facts it ought to have H

A indicated the reasons necessitating such interference. That has not been done and on the contrary on presumptuous conclusions the order of learned Additional Sessions Judge has been set aside.

B 9. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind. The absence of reasons has rendered the High Court's judgment not sustainable.

C 10. Even in respect of administrative orders Lord Denning M.R. in *Breen v. Amalgamated Engineering Union* (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". In *Alexander Machinery (Dudley) Ltd. v. Crabtree* (1974 LCR 120) it was observed: D "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the E "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to F indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" G is ordinarily incongruous with a judicial or quasi-judicial performance.

11. It is to be noted that the High Court itself has held that there was an attempt to rope in many persons and it did not find any merit or challenge to the discharge of the married sister

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and the brother. A

12. Above being the position, the impugned order of the High Court cannot be maintained and is set aside. We make it clear that we have not expressed any opinion on merits so far as husband Jaswant is concerned. B

13. The appeal is allowed to the aforesaid extent.

K.K.T. Appeal partly allowed.