

Notes by Vinayak : Of late some questions were asked about "quash WITHOUT the wife's consent." Some people had even expressed doubts of the success of such an endeavour. There are MANY such quashes without the wife's consent and almost every case adds weight to the argument IN FAVOUR of trying for a quash. It is **OF UTMOST IMPORTANCE to REMEMBER that there are NO thumb rules** for quash and each case has to be handled independently.

Please look at the way this Judge has analysed the issues thread bare.

This judgement **also talks of the NEED TO CHECK Income Tax returns of the wife's parents**, to ascertain the validity of their Dowry payment claims "...I consider time has come that courts should insist upon disclosing source of such funds and verification of income from tax returns and police should insist upon the compliance of the Rules under Dowry Prohibition Act and should not entertain any complaint, if the rules have not been complied with. Rule 2 of the Dowry Prohibition(Maintenance of List of Presents to the Bride and Bridegroom) Rules, 1985 ..."

===== judgement =====

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 12.02.2007

Date of Decision: February 23, 2007

CRL.M.C.7262/2006

23.02.2007

Smt. Neera Singh Petitioner

Through:Mr. L.B. Rai and Mr. V.K. Singh, Advocates

versus

THE STATE (GOVT. OF NCT OF DELHI)andORS.....Respondents

Through: Mr. Vikas Arora, Advocate for respondent Ms. Richa Kapoor with Ms. Sukriti Bhardwaj, Advocates for State.

CORAM: JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? YES.

2.To be referred to the Reporter or not? YES

3.Whether the judgment should be reported in the Digest? YES

SHIV NARAYAN DHINGRA, J

This judgement was collected from Judis and / or other websites of Govt. of India. Some notes are made by Vinayak. Vinayak is a member of SIF - Save Indian Family Foundation. SIF is committed to fighting FALSE dowry cases and elder abuse. SIF supports gender equality and a fair treatment of law abiding Indian men. Should you find the dictum in this judgement or the judgement itself repealed or amended or would like to make improvements or comments, please write to e _ vinayak @ yahoo . com (please remove spaces)

1. This petition under Section 482 of Cr.P.C. has been made on behalf of petitioner for quashing/setting aside the order dated 20th July, 2006 passed by learned Additional Sessions Judge, Delhi whereby the learned ASJ upheld the order of the Trial Court discharging appellants Bishan Pal Singh, Smt. Santosh Devi, Gajendar Singh and Toshan Singh. Bishan Pal Singh is the father-in-law of the complainant, Smt. Santosh Devi is the mother-in-law of complainant and Gajender Singh and Toshan Singh are the brothers-in-law (husband's brothers) of the complainant. The complainant made allegations involving almost every member of the family of her in laws. Learned Metropolitan Magistrate, after going through the evidence observed as under:

?Perusal of record shows that the allegations of the complainant are against the accused person except the accused husband with respect of taunting for bringing insufficient dowry. But there is not a single allegation that the accused persons made any subsequent demand for dowry and consequent harassment for not meeting with their demands. Admittedly the complainant and her husband and in laws of the complainant were staying at Ghaziabad. Whereas the complainant most of the time resided with her husband at Riwari. It was held in AIR 1996(Supreme Court) 67 that taunting for not bringing sufficient dowry is distinct from demand of dowry and should not be confused with. Though taunting for bringing insufficient dowry is also an uncivilized act but does not come within the purview of Section 498A, sufficient to constitute the offence i.e. the cruelty to the complainant with respect to not fulfillment of demand of of dowry. There is not a single allegation that except for the alleged taunting the complainant was ever harassed with respect to further demand of dowry. Hence the prima facie case under Section 498A is not made out against accused Bishan Pal, Santosh Devi, Gazender Singh and Kaushan Singh.?

2. Against this order, the petitioner preferred a revision petition before the Court of Sessions and the learned Sessions Judge after considering the entire material observed as under:

? In the present case, husband, Yashwant Singh, after marriage was residing separately from his parent and brothers. He was residing at Rewari, Haryana. The Ld. Trial Court found that allegation of the complainant are against the husband only. There were no specific allegations against the accused persons, namely, Bishan Pal Singh, Smt. Santosh Devi, Gajender Singh and Toshan Singh. The Ld. Trial Court was of the opinion that there was not even a single allegation that the accused persons made any subsequent demand of dowry and harassed the complainant for not fulfilling their demand. The complainant most of the time was residing with her husband at Rewari, Haryana. There might have been one or two instances of taunting for not bringing sufficient dowry but they are not sufficient enough to attract Section 498A. There are not specific allegations with respect to entrustment of dowry items to the accused persons. Since, the complainant stayed with her husband at Rewari, Haryana, the entrustment of dowry articles can be presumed to be to the husband. There were no specific allegations of entrustment to the accused person, namely, Bishan Pal Singh, Smt. Santosh Devi, Gajender Singh and Toshan Singh.?

3. A perusal of the complaint would show that as per allegations dowry demand was made even before marriage i.e. at the time of engagement and an AC was demanded from her father by her in-laws and her father had assured that AC would be given at the time of marriage. However, she told her father "You have given car and AC at the demand of in laws, what will happen if they demand a flat tomorrow?". Despite her this conversation with her father and despite her knowing that dowry demand had already been made, she married in the same family irrespective of the fact that she was well-educated lady and was an engineer and her brother was in police. In fact, these kinds of allegations made after breakdown of the marriage show the mentality of the complainant. I consider where these kinds of allegations are made, the police should simultaneously register a case under Dowry Prohibition Act (in short "the Act") against the parents of the complainant as well, who married their daughter despite demand of dowry. Section 3 of the Act prohibits giving and taking of dowry. If a woman of grown up age and well educated gets married to a person despite dowry demand, she and her family becomes accomplice in the crime under Dowry Prohibition Act.

4. Now-a-days, exorbitant claims are made about the amount spent on marriage and other ceremonies and on dowry and gifts. In some cases claim is made of spending crores of rupees on dowry without disclosing the source of income and how funds flowed. I consider time has come that courts should insist upon disclosing source of such funds and verification of income from tax returns and police should insist upon the compliance of the Rules under Dowry Prohibition Act and should not entertain any complaint, if the rules have not been complied with. Rule 2 of the Dowry Prohibition(Maintenance of List of Presents to the Bride and Bridegroom) Rules, 1985 reads as under:

2. RULES IN ACCORDANCE WITH WHICH LISTS OF PRESENTS ARE TO BE MAINTAINED.-

(1) The list of presents which are given at the time of the marriage to the bride shall be maintained by the bride.

(2)The list of presents which are given at the time of the marriage to the bridegroom shall be maintained by the bridegroom.

(3)Every list of presents referred to in Sub-rule(1) or Sub-rule(2)-

(a) shall be prepared at the time of the marriage or as soon as possible after the marriage;

(b) shall be in writing;

(c) shall contain:-

(i) a brief description of each present;

- (ii) the approximate value of the present;
 - (iii) the name of the person who has given the present; and
 - (iv) where the person giving the present is related to the bride or bridegroom, a description of such relationship.
- (d) shall be signed by both the bride and the bridegroom.

5. The Metropolitan Magistrates should take cognizance of the offence under the Act in respect of the offence of giving dowry whenever allegations are made that dowry was given as a consideration of marriage, after demand. Courts should also insist upon compliance with the rules framed under the Act and if rules are not complied with, an adverse inference should be drawn. If huge cash amounts are alleged to be given at the time of marriage which are not accounted anywhere, such cash transactions should be brought to the notice of the Income Tax Department by the Court so that source of income is verified and the person is brought to law. It is only because the Courts are not insisting upon compliance with the relevant provisions of law while entertaining such complaints and action is taken merely on the statement of the complainant, without any verification that a large number of false complaints are pouring in.

6. I consider that the kinds of vague allegations as made in the complaint by the petitioner against every member of the family of husband cannot be accepted by any court at their face value and the allegations have to be scrutinized carefully by the Court before framing charge. A perusal of the complaint of the petitioner would show that she made all kinds of allegations against her husband regarding beating, that her husband was having illicit relationship with 35 girls; he forced her to write suicide note, abused her, taunted her, threatened and told her that he was getting another bride of more richer family while she was in Rewari with her husband and she made telephone call to her parents who came to Rewari and took her to parental home. She had also given phone to one of her friends Jigyasa. A perusal of the statement of Jigyasa would show that she told Jigyasa that it was her husband who was torturing her and behaving with cruelty. However, in her complaint, she made vague and omnibus allegations against every other family members. The statement made by her and other witnesses have been scrutinized by me, except vague allegations and allegations of taunting, there are no allegations of perpetuating cruelty on her by any of the four respondents in order to compel her to bring more dowry or any particular items.

7. In view of my foregoing discussion, I find no reason to disagree with the order of two Courts below. The petition is hereby dismissed being devoid of merits.

February 23, 2007 SHIV NARAYAN DHINGRA, J.

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===== end of Judgement =====