

proved or inferred. Moreover, due to natural or unforeseen circumstances, the birth of a child alive cannot be taken for granted. Thus, due to such like contingencies the filing of application on behalf of the child still in the womb of the mother would introduce vagueness in such like proceedings and such was not the intention of the legislature in enacting this provision providing for speedy maintenance allowance in order to save the wives, children or parents from becoming destitute. No doubt, it will result in hardship to the minor child if the order of cancellation of his maintenance allowance is upheld, yet all the same there is no option but to do so because the application on his behalf was not maintainable till he was born, although the mother had claimed maintenance allowance on behalf of the unborn child in the original application. Moreover, the mother can file a fresh application on behalf of the minor child.

(5) For the reasons recorded above, there is no option but to dismiss this petition. I order accordingly.

S.C.K.

Before : Jai Singh Sekhon, J.

KARTAR KAUR AND OTHERS,—*Petitioners.*

versus

THE STATE OF HARYANA AND ANOTHER,—*Respondents.*

Criminal Misc. No. 4262-M of 1988.

6th December, 1990.

Code of Criminal Procedure, 1973 (II of 1974)—Ss. 156(3) & 482—Criminal complaint filed before Magistrate—Magistrate ordering the registration of case—Under S. 156(3), Magistrate can only direct investigation and cannot direct police to register case—However, such irregularity does not vitiate the entire proceedings—Allegations in complaint found to be specific—F.I.R. not liable to be quashed.

Held, that a bare glance through S. 156 leaves no doubt that these provisions deal with the powers of the Police Officer to investigate cases involving cognizance of offence without the order of the Magistrate. Sub-section (3) of this section empowers the Magistrate competent to receive a complaint under S. 190 of the Code of Criminal Procedure to order such an investigation, that is, investigation under

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sub-section (1) of this section. S. 190 of the Code deals with the powers of the Magistrate to take cognizance of any offence upon receipt of a complaint or police report or upon information received from any other source, person etc. Thus it can be well said that the order of the Magistrate regarding the registration of the case is certainly not legally well-founded. The case is still under investigation. There is no indication so far from the investigation conducted by the police that no case for cognizance offence is made out for registration of the F.I.R. under S. 154 of the Code and that the case was registered only due to the above referred order of the Magistrate. Thus at this premature stage, it appears to be a simple irregularity on the part of the Magistrate which will not in itself result in vitiating the entire proceedings. The allegations regarding maltreatment and cruelty are specific. The matter is still under investigation. Thus it is premature to state at this stage that the allegations in this regard are vague in nature. The impugned F.I.R. is, therefore, not liable to be quashed.

(Paras 6, 7, 8 & 10)

Petition under section 482, Cr.P.C. praying that the petition may kindly be accepted and F.I.R. No. 428 of 1987 Police Station Ambala, under section 406, 498-A IPC may be quashed.

It is further prayed that the further proceedings may kindly be stayed during the pendency of the petition.

Malkeet Singh, Advocate, for the Petitioner.

Raghubir Chaudhry, Advocate, for the Respondent-State.

R. K. Aggarwal, Advocate, for Respondent No. 2.

JUDGMENT

Jai Singh Sekhon, J. (Oral)

(1) The accused-petitioners through this petition under section 482 of the Code of Criminal Procedure, 1973, seek the quashment of the first information report No. 428, dated 26th November, 1987 of Police Station, Ambala City for offences under section 498-A and 406 of the Indian Penal Code and further proceedings resulting therefrom. *inter alia*, on the ground that the Magistrate under section 156(3) of the Code of Criminal Procedure cannot direct the police to register a case and can only order investigation into the matter. It is also averred that there are not specific allegations regarding the entrustment of the *Stri Dhan* or dowry and maltreatment and cruelty.

(2) The brief resume of facts relevant for the disposal of this petition is that Mst. Bakhshish Kaur, complainant, filed a complaint, copy Annexure P-1, before the Chief Judicial Magistrate, Ambala, which reads as under :

- “(1) That the complainant was married to accused No. 1 on 12th December, 1985 according to Hindu rites at Ambala City and out of the wed-lock 3 female child was born to the accused on 10th November, 1986.
- (2) That accused No. 1 is the husband of the complainant and accused No. 2 is the father-in-law and accused No. 3 is the mother-in-law and accused Nos. 4 and 5 are the brother-in-law (viz Jeth and Dewar respectively of the complainant).
- (3) That at the time of the celebration of the marriage articles detailed in the list Annexure ‘A’ were given by the mother of the complainant and her relations in the form of gifts and presents for the use of the complainant which included costly items of jewellery golden.
- (4) That at the time of marriage the complainant was employed as a Staff Nurse and was serving at Medical College, Rohtak and drawing a handsome salary of Rs. 1,200 per month.
- (5) That immediately after the marriage, the complainant found her husband and other relation mentioned in the heading of the complaint to be greedy person who started looking the complainant to bring more money and other articles as they were not satisfied with the dowry (gifts and presents) given by the relation of the complainant in her marriage. The complainant was not (sick) and also whenever she came on leave with the result that the complainant was charge-sheeted by the Hospital authorities which resulted in stoppage of several increments which caused untold pecuniary lapses to the complainant and thus the harassment of the complainant started even within one of her marriage and ultimately the complainant was forced to leave the job at Rohtak and was asked to join at Balla near Karnal by her in-laws.
- (6) That the complainant joined at Bhalla PH near Karnal on 10th April, 1987. Even there the cruelty perpetrated by

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her husband and her relative suffered in the heading of the complaint never stopped and they coersing the complainant to bring more dowry and they demanded Rs. 25,000 in cash and also a colour T.V. and since the complainant has no father, thus she was unable to meet the unlawful demands made by her husband and relations referred above and on her refusal to do so she was physically belaboured by her brother-in-law viz Jeth and Dewar and also by her husband and after 29th April, 1987 the husband of the complainant and also her relations have not allowed the complainant to enter her matrimonial house unless she brings more dowry items viz Rs. 25,000 in cash and a colour T.V. and other articles viz dining table with 8 chairs.

- (7) That the articles referred to in Annexure 'A' annexed with the complaint were entrusted to accused No. 1 to 5 at the time of marriage which they have misappropriated to their own use after 29th April, 1987 when the complainant has been turned out of her matrimonial house after maltreatment and physical beating which the accused persons were adverting to during the period which the complainant stayed in her matrimonial home.
- (8) That after joining at Balla PHC near Karnal the accused persons have been sending various self raps to her and have been wielding threats to her that she would be done to death or raped if she overstayed in village Balla and on account of the threats the complainant took initially a leave for 23 days and thereafter a leave for 1½ months and joined on 26th October, 1987.
- (9) That during the period of her stay in her matrimonial home the complainant was subjected to various type of cruelty viz including physical beating and also taunts and questions/coercion by relative of her husband referred above for bringing insufficient dowry and also to meet their unlawful demands and all possible efforts made by the brotherhood to rehabilitate the complainant in her matrimonial home to prove futile. The accused and her relations have not dissuaded themselves from committing cruelty. Hence this complaint.
- (10) That during the period of her stay in her matrimonial home the complainant was accused by her husband and

her relations to be elderly in age to her husband and accused persons have been threatening the complainant that they would marry her husband over again and openly stated that they had absolutely no liking for the complainant. The complainant was bearing above referred heaps of cruelties by the accused persons with the conviction that her husband would turn out some time and will also persuade his relation to keep the complainant cordially at her matrimonial home but all hopes belied when she was not allowed to enter the matrimonial home after 29th April, 1987 and the dowry items detailed in Annexure 'A' were not returned by the accused persons when they were so demanded by her and her relations in the Panchayat. The Panchayat included Shri Dharamvir, the brother-in-law (Jeeja), Harmohinder, elder sister of the complainant, Jasbir an elder sister of the complainant and Shri Joginder Singh brother of the complainant who repeatedly made persuasion to the accused persons to rehabilitate the complainant but they every time demanded Rs. 25,000 in cash, a colour T.V., a dining table etc. and the members of the Panchayat also demanded that since the complainant has been turned down from her matrimonial home the accused persons should return the articles detailed in Annexure 'A' which was her Stri Dhan but accused persons failed to oblige the complainant and her relations.

- (11) That the accused persons have committed offences punishable under sections 498-A and 406 I.P.C. within the cognizance of this Hon'ble Court. It is, therefore, prayed that the complaint may kindly be made over to the police for registration of a case and for investigation or any other appropriate order may kindly be passed and the accused persons be dealt with according to law."

(3) The Chief Judicial Magistrate without taking cognizance of the offence on this complaint,—*vide* order, copy Annexure P-2, forwarded the complaint to Police Station Ambala City for registration of a case and investigation.

(4) I have heard the learned counsel for the parties besides perusing the record.

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(5) The provisions of Section 156 of the Code of Criminal Procedure read as under :

“Police officer’s power to investigate cognizable case.—(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned.”

(6) A bare glance through the above Section leaves no doubt that these provisions deal with the powers of the Police Officer to investigate cases involving cognizance of offence without the order of the Magistrate. Sub-section 3 of this Section empowers the Magistrate competent to receive a complaint under Section 190 of the Code of Criminal Procedure to order such an investigation, that is, investigation under sub-section 1 of this section. Section 190 of the Code of Criminal Procedure deals with the powers of the Magistrate to take cognizance of any offence upon receipt of a complaint or police report or upon information received from any other source, person etc.

(7) The apex Court in *Devarapalli Lakshminarayana Reddy and others v. Narayana Reddy and others* (1), had dealt with the powers of a Magistrate to order investigation under Sections 202(1) and 156 of the Code of Criminal Procedure. After elaborate discussion, it was observed that the provisions of sub-section 3 of Section 156 of the Code of Criminal Procedure give powers to the Magistrate to order investigation by the concerned authority into the allegations in the complaint without taking cognizance of the offence but under Section 202, the Magistrate can order further investigation after taking cognizance of the offence upon such complaint but before issuing the process against the accused. Clause (b) of proviso to sub-section (1) of Section 202 of the Code of

(1) 1976 S.C. Cases (Criminal) 380.

Criminal Procedure places a specific embargo upon the Court not to order investigation unless the complainant and the witnesses present, if any, had been examined on oath under Section 200 of the Code of Criminal Procedure. Thus it can be well said that the order of the Magistrate regarding the registration of the case is certainly not legally well-founded. The case is still under investigation. There is no indication so far from the investigation conducted by the police that no case for cognizance offence is made out for registration of the first information report under Section 154 of the Code of Criminal Procedure and that the case was registered only due to the above referred order of the Magistrate. Thus at this premature stage, it appears to be a simple irregularity on the part of the Magistrate, which will not in itself result in vitiating the entire proceedings.

(8) The allegation in the complaint regarding the dowry having been entrusted to all the accused cannot be said to be that vague as would absolve the parents-in-law of the complainant of the legal responsibility as usually the bridegroom or husband being busy in the religious and social ceremonies at the time of the marriage, the parents of such bridegroom accept the dowry articles. Similar is the case of the brothers of the husband unless they happen to be of very tender age. Thus it cannot be said by any stretch of imagination that the allegations *qua* entrustment of dowry or *Stri Dhan* to the accused petitioners are vague especially when it is not specifically averred in the petition that the brothers were living separately from the husband at the time of this marriage. The allegations regarding maltreatment and cruelty are specific. The first incident relates to 10th April, 1987 and the second to 29th April, 1987. The matter is still under investigation. Thus it is premature to state at this stage that the allegations in this regard are vague in nature.

(9) During the course of arguments, the learned counsel for the petitioners also tried to build up an argument that the offence under Section 498-A of the Indian Penal Code having taken place in the territorial jurisdiction of district Karnal, the Court at Ambala had no jurisdiction to try the same although he has not taken any such ground in the petition. In this regard, he has relied upon the judgment of this Court in *Shori Lal and others v. Smt. Nishan and another* (2). The observations in that case were on the peculiar facts of that case and are not applicable to the facts of the case in

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hand as herein the acts of cruelty were committed for forcing the wife to fetch more dowry and the last act was committed in order to throw her out of her matrimonial home to misappropriate her Stri Dhan. Thus the allegations in this case are overlapping. Moreover, the final picture will emerge after the completion of investigation and submission of the challan before the Court concerned. The petitioner shall be at liberty to raise the point regarding the territorial jurisdiction of the Court *qua* the offence under Section 498-A of the Indian Penal Code at the time of framing the charge.

(10) For the reasons recorded above, there being no merit in this petition, it is hereby dismissed.

J.S.T.

Before : G. S. Chahal, J.

M. M. MALIK AND OTHERS,—*Petitioners.*

versus

PREM KUMAR GOYAL AND ANOTHER,—*Respondents.*

Criminal Misc. No. 11343-M of 1990.

14th February, 1991.

Negotiable Instruments Act, 1881—Ss. 30, 138, 142—Code of Criminal Procedure 1973 (II of 1974)—Scope of S. 138—Cheque issued by Company to the complainant—Bank dishonouring cheque with remarks 'refer to drawer'—Notice u/s 138 issued demanding amount—Company failing to discharge its liability—Debtors to trace creditor for payment—Creditor having office at Pehowa—Jurisdiction of Court to try the complaint.

Held, that S. 138 comes into play when the three provisos to the Section are also complied with. In fact, all the three provisos must be complied with before the dishonouring of a cheque issued in order to discharge the liability and dishonouring for want of funds can create an offence. S. 142 (b) provides a clincher. The cause of action will be complete when the drawer of the cheque fails to make the payment within 15 days of the receipt of notice contemplated by proviso (b). The offence shall be deemed to have been committed only from the date when the notice period expired.

(Para 5)