

in tennis. Persons with such poisonous minds would be on the look out of the time for opportunities to cause harm to the opponents and it would more often be a matter of accident or chance as to who may have the next opportunity to spit poison or harm at the other. We, therefore, find it hard to agree with the learned defence counsel that on the facts proved, the initiative for the murder could not have come from the side of the appellant.

(21) For all the foregoing reasons, we dismiss this appeal and maintain the conviction of the appellant and the sentences awarded to him. We, however, order that the fine if realised whole of it shall be paid to the heirs of the deceased.

Bhopinder Singh Dhillon, J.—I agree.

N.K.S.

Before S. S. Sidhu, J.

DARSAN SINGH, AND OTHERS.—*Petitioners.*

versus

STATE OF PUNJAB—*Respondent.*

Criminal Misc. No. 3080 of 1978.

October 27, 1978.

Dowry Prohibition Act (XXVIII of 1961)—Sections 4 and 7—Code of Criminal Procedure (II of 1974)—Sections 2(d), 173 and 482—Accused charge sheeted under section 4 on the basis of a police report submitted under section 173 of the Code—No complaint filed by any competent person under section 7(2)—Magistrate—Whether could take cognizance of the offence in the absence of any such complaint—Proceedings—Whether stand vitiated.

Held, that a perusal of section 7(2) of the Dowry Prohibition Act, 1961 including its both provisos, shows that only the aggrieved person and some other person on his or her behalf as mentioned therein can file a complaint under section 4 of the Act but no such complaint can be filed by a police officer on behalf of any of them. Although the report under section 173 of the Code of Criminal Procedure, 1973 submitted by the police to the trial Magistrate can also be treated as a complaint in accordance with the Explanation to the definition of 'complaint' as given in section 2(d) of the

Darshan Singh etc. v. State of Punjab (S. S. Sidhu, J.)

Code, yet that report cannot be treated as a complaint either by the aggrieved party or by any other person on its behalf as mentioned in provisos (a) and (b) to sub-section 2 of Section 7 of the Act. There appears to be an absolute bar against the Court taking cognizance of the complaint under section 4 of the Act except in the manner as provided by section 7. If the Magistrate has taken cognizance of the offence under section 4 on the basis of the report submitted by the police under section 173 of the Code, then the trial by the Magistrate without the presentation of a complaint in writing by the competent complainant is without jurisdiction. All the proceedings, therefore, taken by the Magistrate on that police report stand vitiated. (Para 4).

Petition under Section 482 of the Code of Criminal Procedure, 1973 praying that after the acceptance of this petition, the orders dated, 22nd March, 1978 charge-sheeting the petitioners and the proceedings pending in the Court of Judicial Magistrate Ist Class, Sunam be quashed and the learned Magistrate be directed not to proceed in the matter.

It is further prayed that the further proceedings pending before the learned Magistrate may kindly be stayed till the final disposal of the petition.

A. N. Mittal, Advocate with Viney Mittal, Advocate, for the petitioner.

D. S. Boparai, A.A.G., Punjab, for the Respondent.

P. K. Aggarwal, Advocate, for the complainant.

S. S. Sidhu, J.—

(1) Darshan Singh, Jagdev Singh, Bhag Singh and Ram Piari petitioners who are the husband, brother of the husband, father-in-law and mother-in-law of Smt. Nirmala Devi, have filed this petition under section 482, Code of Criminal Procedure, 1973, praying therein that the order dated 22nd March, 1978, of the Court of Judicial Magistrate 1st Class, Sunam (Shri Charanjit Jawa), by which they were directed to be charge-sheeted under section 4 of the Dowry Prohibition Act, 1961, as amended by the Dowry Prohibition (Punjab Amendment) Act, 1976, hereinafter referred to as the Act, and the proceedings initiated in pursuance of that order,

including framing of a charge-sheet etc. which were pending against them in that Court may be quashed.

(2) The facts of the case which are necessary for the disposal of this petition may briefly be stated as follows. Smt. Nirmala Devi moved an application, dated 18th October, 1977, under section 8-A of the Act before the District Magistrate, Sangrur, praying therein that the necessary sanction for prosecution of the four accused who are the petitioners, mentioned above, in the present petition, under sections 3, 44-B and 6 of the Act, and also under sections 323 and 406, Indian Penal Code, in respect of which a complaint duly drafted along with the list of articles viz., ornaments, clothes, furniture, utensils, etc., given as dowry at the time of her marriage with Darshan Singh petitioner on 23rd November, 1976 was attached, be granted. The District Magistrate,—*vide* his memo, dated 31st October, 1977, sent that application along with its enclosures to the Deputy Superintendent of Police Sunam, for investigation and making report to him, thereafter. The said Deputy Superintendent of Police got the First Information Report No. 332, dated 16th November, 1977, registered against the petitioners at Police Station, Sunam, and thereafter conducted investigation in the case and ultimately submitted his report to the District Magistrate, Sangrur, to the effect that a *Prima facie* case under section 4-A of the act was made out against all the four accused, the petitioners in the present petition. On this, the District Magistrate, Sangrur,—*vide* his order, dated 17th February, 1978, granted sanction for prosecution of the accused and sent a copy of that order to Smt. Nirmala Devi complainant also. On receiving that copy, Smt. Nirmala Devi did not file any complaint as required under section 7 of the Act. Rather, the police presented a Challan under section 4-A of the Act in the Court of the Judicial Magistrate 1st Class, Sunam, against all the four accused. The learned Judicial Magistrate,—*vide* his detailed order, dated 22nd March, 1978, rejected the objection raised by the accused-petitioners that the prosecution had not been launched within one year from the date of the marriage of Nirmala Devi with Darshan Singh and as such, the same was time-barred and found that the perusal of the documents and statements of the prosecution witnesses recorded during investigation and also other material placed on the file *prima facie* showed that the four accused had committed an offence under section 4 of the Act and, therefore, directed that they be charged accordingly. In

Darshan Singh etc. v. State of Punjab (S. S. Sidhu, J.)

pursuance of that order, all the four accused were charged by that Court on 7th April, 1978, as under :—

“That you all the accused demanded directly a dowry in the form of Rs 5,000 in March, 1977, as the price of the scooter from the parents of Smt. Nirmala Devi, wife of Darshan Singh accused and thereby committed an offence punishable under section 4 of the Dowry Prohibition Act, 1961, as amended by the Punjab Act and within my cognizance.

AND I hereby direct that you all be tried by me on the said charge.”

(3) It is alleged by the petitioners in their petition that the only way in which the learned Magistrate could take cognizance of an offence under section 4 of the Act against the four respondents was on the basis of a complaint filed by Smt. Nirmala Devi, the aggrieved person, or by any other person as mentioned in section 7(2), including both the provisos attached to it. After the presentation of complaint, the Magistrate was required to record the statement of Nirmala Devi or other complainant, as the case was, and also to record the preliminary evidence produced, if any, in support of the allegations constituting offence under section 4 of the Act, before summoning the accused for being tried for commission of that offence. But since it was not so done in this case, and rather the learned Magistrate chose to proceed in the matter on a notice on a police report submitted under section 173, Code of Criminal Procedure, and charge-sheeted the petitioners after summoning them as accused, all those entire proceedings stood vitiated and, as such, those were liable to be quashed as already stated in the beginning of the petition.

(4) I have heard the arguments of the learned counsel for the parties and have fully appreciated the same in the light of the record of the trial Court. It has been argued by the learned counsel for the petitioners that since a *prima facie* offence made out against the accused after the conclusion of investigation conducted by the Deputy Superintendent of Police was under section 4 and not under section 4-A of the Act, as reported by the Deputy Superintendent Police, the learned Magistrate could take cognizance of that offence

only on a complaint filed by a competent person as laid down in section 7(2) of the Act and that as no complaint was filed by any such competent person and only a police report under section 173, Code of Criminal Procedure, was presented on which the learned Magistrate took cognizance of the offence under section 4 of the Act, the entire proceedings taken by him, including summoning of the accused making order directing for framing of a charge under section 4 of the Act against them and also his act of framing a charge under section 4 of the Act, stand vitiated. I find a good deal of force in the above argument of the learned counsel for the petitioners. Section 7 of the Act reads as under :—

“7. Cognizance of offences.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973—

- (1) no Court inferior to that of a Judicial Magistrate of the first class shall try any offence under this Act;
- (2) no court shall take cognizance of any offence punishable under sections 3, 4 and 4-B except upon a complaint made within one year from the date of the offence, by some person aggrieved by the offence:

“Provided that—

- (a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the court, make a complaint on his or her behalf;
 - (b) where the person aggrieved by an offence is the wife, complaint may be made on her behalf by her father, mother, brother, sister or by her father's or mother's brother or sister; and
- (3) every offence under section 4-A shall be cognizable:

Provided that no police officer below the rank of a Deputy Superintendent of Police shall investigate any offence punishable under this Act or make any arrest therefor.”

Darshan Singh etc. v. State of Punjab (S. S. Sidhu, J.)

The perusal of section 7(2), including its both provisos, shows that only the aggrieved person and some other person on his or her behalf, as mentioned therein, can file a complaint under section 4 of the Act but no such complaint can be filed by a police officer on behalf of any one of them. In the present case, although the report under section 173, Code of Criminal Procedure, submitted by the Deputy Superintendent of Police to the learned trial Magistrate can also be treated as a complaint in accordance with the Explanation to the definition of 'complaint' as given in section 2(d) of the Code of Criminal Procedure, which reads as under :—

“‘Complaint’ means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.—A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.”.

Yet the fact remains that that report cannot be treated as a complaint either by the aggrieved party, who is Nirmala Devi in the present case, or by any other person on her behalf, as mentioned in provisos (a) and (b) to sub-section (2) of section 7 of the Act. There appears to be an absolute bar against the Court taking cognizance of the complaint under section 4 of the Act, except in the manner as provided by section 7 of the Act. Accordingly the trial under section 4 of the Act by the Magistrate without the presentation of a complaint, in writing, by the competent complainant, as mentioned in section 7 of the Act, is without jurisdiction. Therefore, all the proceedings taken by the learned Magistrate in this case on the police report which can also be treated as a complaint on behalf of the police officer stand vitiated and, as such, are liable to be quashed. This view finds support from *Daulat Ram v. State of Punjab* (1) in which it has been held

(1) A.I.R. 1962 S.C. 1206.

as under :—

“.. there is an absolute bar against the Court taking decision of the case (under section 182, I.P.C.) except in the manner provided by the section (i.e., section 195, Cr. P.C.)”

(5) For the reasons given above, I accept this petition and quash the report under section 173, Code of Criminal Procedure, filed by the investigating officer and also the proceedings taken on the basis of the same by the learned Magistrate, including summoning of the accused and framing of the charge-sheet, etc., and discharge the petitioners. The bail bonds furnished by them, if any, are cancelled.

FULL BENCH

Before S. S. Sandhawalia C.J., A. S. Bains and J. M. Tandon, JJ.

GENERAL MANAGER, NORTHERN RAILWAYS—*Petitioner*

versus

THE PRESIDING OFFICER and others—*Respondents*.

Civil Writ No. 4369 of 1973.

January 22, 1979.

Industrial Disputes Act (XIV of 1947)—Sections 2(s) and 33-C (1), (2) and (5)—Claim of a deceased workman—Application by an heir under section 33-C (2)—Such application—Whether maintainable.

Held, (per majority S. S. Sandhawalia C.J. and J. M. Tandon, J., A. S. Bains, J., contra.) that the proceedings under section 33-C (1) of the Industrial Disputes Act, 1947 are in the nature of execution proceedings and those under sub-section (2) involve adjudication. The scope of sub-section (2) is wider than that of sub-section (1) and the latter does not control the former. A workman alone could apply under sub-section (1) for a certificate before the amendment in 1964 and the assignee or heirs of a workman could not avail of