

Reshima Rani v. Ravinder Pahwa and others (M. M. Punchhi, J.)

winnings from lotteries, would still continue to have the character as receipts of a casual and non-recurring nature. Accordingly, we hold that the Tribunal committed error of law in holding that the assessee's winnings from lottery in Sikkim (foreign country at the relevant time) were of a casual and non-recurring nature and did not constitute his income chargeable under section 5(1)(c) read with sections 10(3), 56(2)(ib) and 2(24)(ix) of the Act. Accordingly, we answer the first question in the negative, i.e., in favour of the Revenue and against the assessee.

(10) In view of our answer to question No. 1 and because of the fact that detailed arguments were not addressed on question No. 2, question No. 2 is left unanswered.

(11) The reference stands disposed off with no order as to costs.

N.K.S.

Before M. M. Punchhi, J.

RESHIMA RANI,—Petitioner

versus

RAVINDER PAHWA AND OTHERS,—Respondents.

Criminal Revision No. 1864 of 1984.

July 16, 1985.

*Dowry Prohibition Act (XXVIII of 1961)—Sections 6 and 7—Interpretation of—Complaint under section 6 when could be filed.*

Held, that a joint reading of sections 6 and 7 of the Dowry Prohibition Act, 1961, makes it clear that the intention of the legislature was that for one year from the date of marriage there shall be no criminal complaint under the Act. The legislature in its wisdom thought that the post marriage period was a sensitive time for the spouses and no element of criminality should be allowed to surcharge the atmosphere. It is after the expiry of one year from the date of the marriage that a complaint is competent and within that period of one year, as is clear from section 6(1)(a), (b) and (c), the dowry, if received before marriage, is ordinarily returnable, the dowry, if received at the time or after the marriage, is returnable within one year of the date of its receipt and the dowry when received for a woman who was a minor, within the year after she attained the age of majority. The legislature thus conceived the dowry would change hands in the rightful direction within a period

of one year from the date of the marriage or within one year from the date of attainment of majority by the woman, as the case may be. Even if during this period an element of criminality did creep in for a time, atonement thereof could be done within the specified period of one year from the date of marriage.

(Para 4)

*PETITION for revision under Section 401 of Cr. P. C. for the revision of the order of the Court of Shri M. L. Sharma, HCS, Chief Judicial Magistrate, Karnal, dated 12th September, 1984, dismissing the complaint, under section 6 of the Dowry Prohibition Act and Sections 323, 506 and 392/34 of the Indian Penal Code.*

R. S. Cheema, Advocate, for the Petitioner.

D. S. Bali, Advocate, for the Respondent.

#### JUDGMENT

M. M. Punchhi, J. (Oral)—

(1) Smt. Reshima Rani, the petitioner, was married to Ravinder Pahwa, respondent on 10th May, 1982 at Nilokheri, district Karnal, according to Hindu rites. Some articles of dowry are said to have been given to Ravinder Pahwa and his family members at the time of the marriage. Subsequently, in the month of May, 1983, a television set was given to Ravinder Pahwa as originally it was conceived to be given at the time of marriage but its presentation was delayed. On 23rd July, 1983, some unpleasantness took place between the parties, with the result that the marriage between the spouses was put to strain. The petitioner then filed a criminal complaint on 9th May, 1984, before the Chief Judicial Magistrate, Karnal, complaining of offences under section 6 of the Dowry Prohibition Act, as applicable to Haryana, and sections 323/506/392/34 of the Indian Penal Code. Complaint under section 6 of the Dowry Prohibition Act, as applicable to Haryana, was filed, after obtaining sanction from the District Magistrate, Karnal,—*vide* this order dated 9th May, 1984.

(2) The learned Magistrate dismissed the complaint under section 6 of the Dowry Prohibition Act, holding that it was clearly barred by time. Regarding the remaining offences, he doubted the complainant's case. For these reasons, he dismissed the complaint. These orders were passed without summoning the accused-respondents. The complainant has approached this Court in revision.

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(3) The primary question is whether the view of the learned Magistrate in dismissing the complaint as time barred under section 6 of the Dowry Prohibition Act is unsustainable. Now, section 6 of the Dowry Prohibition Act reads as under:—

**“6. DOWRY TO BE FOR THE BENEFIT OF THE WIFE OR HER HEIRS.**

- (1) Where any dowry is received by any person other than the women in connection with whose marriage it is given that person shall transfer it to the woman—
  - (a) If the dowry was received before marriage, within three months after the date of marriage; or
  - (b) if the dowry was received at the time of or after the marriage, within one year after the date of its receipt; or
  - (c) if the dowry was received when the woman was minor within one year after she has attained the age of eighteen years and pending such transfer, shall hold it in trust for the benefit of the woman.
- (2) If any person, fails to transfer any property as required by sub-section (1) within the time limit specified therefor, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years or with fine which may extend to ten thousand rupees or with both.
- (3) Where the woman entitled to any property under sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being.
- (4) Nothing contained in this section shall affect the provisions of section 3 or section 4.

The relevant portion of section 7, as applicable to the State of Haryana, is as follows:—

**“7. COGNIZANCE OF OFFENCES.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—**

- (a) \* \* \* \* \*

(b) no court shall take cognizance of an offence under this Act except upon—

(i) its own knowledge or a police report of the facts which constitute such offence; or

(ii) a complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognized welfare institution or organisation;"

(4) A joint reading of the aforesaid provisions makes it clear that the intention of the legislature was that for one year from the date of the marriage there shall be criminal complaint under the Dowry Prohibition Act, 1961. The legislature in its wisdom perhaps thought that the post marriage period was a sensitive time for the spouses and no element of criminality should be allowed to surcharge the atmosphere. It is after the expiry of one year from the date of the marriage that a complaint is competent. And within that period of one year, as is clear from section 6(1)(a), (b) and (c), the dowry, if received before marriage, is ordinarily returnable, the dowry, if received at the time or after the marriage, is returnable within one year of the date of its receipt and the dowry, when received for a woman who was a minor, within one year after she attained the age of majority. The legislature thus conceived that dowry would change hands in the rightful direction within a period of one year from the date of the marriage or within one year from the date of attainment of majority by the woman, as the case may be. Even if during this period an element of criminality did creep in for a time, atonement thereof could be done within the specified period of one year from the date of the marriage, etc.

(5) In the instant case, the period of one year plainly expired on 9th May, 1983, and the complaint was filed on 9th May, 1984 at a time when the bar of section 7 did not come into play. With regard to the television set, the allegation in the complaint is somewhat vague, for, no date specifically has been put as to when it was given. It could well be before 9th May, 1983, and if that be so the complaint was certainly competent and the bar of section 7 could not be attracted. But if it was given after 9th May, 1983, then obviously the complaint would attract the bar of section 7. In any case, it is a matter of evidence. The period being somewhat marginal, the Court could, with effect from June, 1984 onwards, treat the complaint to have surpassed the bar of section 7(b). In either

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case, the view of the learned Chief Judicial Magistrate in holding that when the marriage had taken place on 10th May, 1982, and the present complaint was filed on 9th May, 1984, not within one year, and was clearly barred by time, is unsustainable in law. For these reasons, the impugned order deserves to be and is hereby quashed. Since the view of the learned Magistrate expressed in the regard is inter-twined with the view which he has taken regarding other offences complained of in the complaint, the entire order needs to be and is hereby quashed, leaving it open to the learned Magistrate to apply his mind afresh and take proceedings therefore, in accordance with law. The complainant through her counsel is directed to put in appearance before the Court on August 12, 1985.

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N.K.S.

*Before M. M. Punchhi, J.*

JAWALI, WD/O TEJA SIGH,—*Petitioner*

*versus*

STATE OF PUNJAB AND OTHERS,—*Respondents.*

*Criminal Misc. No. 2338-M of 1985.*

July 23, 1985.

*Code of Criminal Procedure (II of 1974)—Section 145—Proceedings under Section 145 taken in respect of a certain property—Magistrate directing the receiver to take possession of the said property—Receiver reporting that dispute between the parties in respect of the property pending in Civil Court—Magistrate vacating section 145 proceedings in view of the pending suit—Order of Magistrate—Whether valid—Jurisdiction of the Magistrate under Section 145 whether ceases on account of the pending civil suit.*

*Held*, that no universal principle can be spelled out that in every case when a matter has gone to the civil court criminal proceedings must automatically end. For if this were to happen it would be putting premium over civil courts than criminal courts. That is an undesirable result. Multiplicity of litigation is not to be encouraged and there should be no public wastage of time over meaningless and parallel litigation. It is thus the essence of the matter which is to be seen and not the form. As such the order