2024 INSC 639

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO……. OF 2024
(Arising out of Special Leave Petition (Crl.) No.3981/2023)

MULAKALA MALLESHWARA RAO & ANR. ..APPELLANT(S)

Versus

STATE OF TELANGANA & ANR. ..RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

Leave Granted.

2. The present appeal is directed against an order of the High Court for the State of Telangana at Hyderabad dated 22nd December, 2022 passed in Criminal Petition No.11528 of 2022, whereby the High Court refused to quash proceedings arising out of C.C.No.1369 of 2022 on the file of XXVIth Metropolitan Magistrate, Cyberabad at Hayathnagar, under

Section 406 of the Indian Penal Code, 1860[1] and Section 6 of the Dowry Prohibition Act, 1961.

3. Brief facts giving rise to the present appeal are as follows :

3.1 The complaint, which set in motion the Criminal Law, was at the instance of one Padala Veerabhadra Rao (Respondent No.2 referred to as the complainant herein), who filed the same against the former in-laws of his elder daughter, namely, Padala Sujana Sheela Kumar (referred to as the daughter) for not returning the ornaments (gold) which he had given at the time of her marriage with their son. The marriage was solemnized on 22nd December, 1999.

3.2 Undisputably, the marriage was unsuccessful and after a period of approximately 16 years, the complainant's daughter on 14th August, 2015 filed for divorce in the United States of America. The decree of divorce was granted by mutual consent by the Circuit Court of St. Louis County, Missouri, on 3rd February, 2016. At that time, all possessions, material and financial, were settled between the parties by way of the Separation Agreement. Hence, all issues arising out of matrimony stood closed as the daughter got remarried in the U.S.A. in May, 2018.

[1] 'IPC' for brevity

3.3 Much thereafter, the complainant lodged FIR No.32 of 2021 dated 15th January, 2021, under Section 406 IPC pertaining to the return of the jewellery which he had given to his daughter at the time of her marriage as '*stridhan*', but entrusted it to her-in laws (present-appellants)

3.4 It is necessary to record the complainant's version of events. At the time of getting his daughter married in the year 1999, he had given 40 *Kasula* gold and other articles. Thereafter, the newly married couple migrated to the U.S.A where the complainant's daughter was continually tortured, due to which the complainant's wife was severely disturbed and eventually passed away on 6th June, 2008. His daughter and son-in-law got their divorce in the year 2016, after 16 years of marriage. Such articles given to his daughter during the marriage were entrusted at that time to the in-laws i.e., the appellant Nos.1 and 2.

3.5 Whereafter, the complainant's daughter got remarried in the year 2018 for which purpose the complainant had travelled to the U.S.A. Upon returning therefrom, allegedly he made requests to the former in-laws of his daughter (appellants herein) to return the articles entrusted to them. Such requests remained unheeded with the articles yet to be recovered.

3.6 In the course of investigation, notice dated 16th June, 2022, under Section 41(a) of the Code of Criminal Procedure, 1973[2] was sent to Mulakala Malleshwara Rao (Appellant No.1, the father-in-law of the complainant's daughter). He denied all allegations and contended that the complaint has been filed with an intent to cause harassment.

3.7 Upon completion of the investigation, the final report under Section 173 Cr.P.C. was filed under the Sections noted above.

3.8 The appellant No.1, aggrieved thereby filed a petition for quashing of the charges, under Section 482 Cr.P.C.

4. The High Court found the allegations made in the charge-sheet, *prima facie* to be triable. As such, the prayer to exercise such powers was rejected.

5. In the above context, the short point for consideration is whether the father i.e., the complainant herein, had any *locus* to file the First Information Report which has led to the present proceedings keeping in view that the same was affected by delay and laches, thereby expressly being non-maintainable? Contingent to the answer to this question would be, whether the High Court was correct in refusing to exercise its inherent power in quashing the proceedings under the Cr.P.C.

[2] 'Cr.P.C.' for brevity

6. The sum and substance of the present dispute lie in the father's right over the gifts, i.e., *'stridhan'* given by him to his daughter at the time of marriage. The generally accepted rule, which has been judicially recognized, is that the woman exercises an absolute right over the property. We may refer to ***Pratibha Rani*** v. ***Suraj Kumar,***[3] wherein a Bench of three Judges observed :

> "6. To the same effect is Maine's Treatise on Hindu Law at p.728. The characteristics of Saudayika have also been spelt out by Mulla's Hindu Law at p. 168 (Section 113) which gives a complete list of the stridhan property of a woman both before and during coverture, which may be extracted thus:
>
> "113. Manu enumerates six kinds of stridhana :
>
> 1. Gifs made before the nuptial fire, explained by Katyayana to mean gifts made at the time of marriage before the fire which is the witness of the nuptial (adhyagni).
>
> 2. Gifts made at the bridal procession, that is, says Katyayana, while the bride is being led from the residence of her parents to that of her husband (adhyavanhanika).
>
> 3. Gifts made in token of love, that is, says Katyayana, those made through affection by her father-in-law and mother-in-law (pritidatta), and those made at the time of her making obeisance at the feet of elders (pada-vandanika).
>
> 4. Gifts made by father.
>
> 5. Gifts made by mother.
>
> 6. Gifts made by a brother.
>
> 7. It is, therefore, manifest that the position of stridhan of a Hindu married woman's property during coverture is absolutely clear and unambiguous; she is the absolute owner of such property and can deal with it in any manner she likes — she may spend the whole of it or give it away at her own pleasure by gift or will without any reference to her husband. Ordinarily, the husband has no right or

[3] (1985) 2 SCC 370

> interest in it with the sole exception that in times of extreme distress, as in famine, illness or the like, the husband can utilise it but he is morally bound to restore it or its value when he is able to do so. It may be further noted that this right is purely personal to the husband and the property so received by him in marriage cannot be proceeded against even in execution of a decree for debt."
>
> (Emphasis supplied)

The position of the wife or woman being the sole authority in respect of '*stridhan*' stands emphatically stated in ***Rashmi Kumar*** v. ***Mahesh Kumar Bhada***[4] in the following terms:

> "*9.* A woman's power of disposal, independent of her husband's control, is not confined to saudayika but extends to other properties as well. Devala says: 'A woman's maintenance (*vritti*), ornaments, perquisites (*sulka*), gains (*labha*), are her stridhana. She herself has the exclusive right to enjoy it. Her husband has no right to use it except in distress….' In N.R. Raghavachariar's *Hindu Law — Principles and Precedents* (8th Edn.), edited by Prof. S. Venkataraman, one of the renowned Professors of Hindu Law, at para 468 deals with 'Definition of Stridhana'. In para 469 dealing with 'Sources of acquisition' it is stated that the sources of acquisition of property in a woman's possession are: gifts before marriage, wedding gifts, gifts subsequent to marriage, etc. Para 470 deals with 'Gifts to a maiden'. Para 471 deals with 'Wedding gifts' and it is stated therein that properties gifted at the time of marriage to the bride, whether by relations or strangers, either Adhiyagni or Adhyavahanika, are the bride's stridhana. In para 481 at p. 426, it is stated that ornaments presented to the bride by her husband or father constitute her stridhana property. In para 487 dealing with 'powers during coverture' it is stated that saudayika meaning the gift of affectionate kindred, includes both Yautaka or gifts received at the time of marriage as well as its negative Ayautaka. In respect of such property, whether given by gift or will she is the absolute owner and can deal with it in any way she likes. She may spend, sell or give it away at her own pleasure.
>
> *10.* It is thus clear that the properties gifted to her before the marriage, at the time of marriage or at the time of giving farewell or thereafter are her stridhana properties. It is her absolute property with all rights to dispose at her own pleasure. He has no control over her stridhana property. Husband may use it during the time of his distress but nonetheless he has a moral obligation to restore the same or its value to his wife. Therefore, stridhana property does not become a joint property of the wife and the husband and the husband

[4] (1997) 2 SCC 397

> has no title or independent dominion over the property as owner thereof."
>
> (Emphasis supplied)

Pratibha Rani (supra) stands followed recently in ***Maya Gopinathan*** v. ***Anoop S.B.***[5].

Noticeably, the position of law has remained consistent throughout since 1985, till date, regarding the sole authority of the woman in respect of her *'stridhan'* as has also been held recently in ***Mala Kar*** v. ***State of Uttarakhand*** [6], wherein a decree of divorce stood passed *inter se* the parties on 18th October 2014, and FIR was filed on 6th April 2015, the appellant's request for the respondent to pay a sum of Rs.10 Lakhs in full and final settlement of all claims, including *'stridhan'* was accepted, and the former husband was directed to pay such amount.

7. As evidenced from the above, the jurisprudence as has been developed by this Court is unequivocal with respect to the singular right of the female (wife or former wife) as the case may be, being the sole owner of '*stridhan*'. It has been held that a husband has no right, and it has to then be necessarily concluded that a father too, has no right when the daughter is alive, well, and entirely capable of making decisions such as pursuing the cause of the recovery of her '*stridhan*'.

[5] 2024 SCC OnLine SC 609
[6] 2024 SCC OnLine SC 1049

8. We also notice Section 14 of the Hindu Succession Act, 1956 which talks about a Hindu female being the absolute owner of property. It reads:

> **"14. Property of a female Hindu to be her absolute property.—** (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.
>
> *Explanation*.—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as *stridhana* immediately before the commencement of this Act. …"
>
> (Emphasis Supplied)

9. It is undisputed that action was initiated for securing possession of the articles and ornaments after a passage of more than 20 years since the date of marriage and five years after the settlement of all marital issues at the time of divorce and that too, not by the former wife, i.e., the complainant's daughter, but by the complainant himself. This coupled with the fact that there is no authorization on the part of the complainant's daughter in his favour to initiate proceedings for recovery of *'stridhan'* exclusively belonging to her, beckons the question on the basis of which the complainant has initiated the present proceedings.

10. We find that the law provides for a situation where a woman may, in law, grant a person of her choosing the authority to do any act which she may herself execute. Section 5 of the Power of Attorney Act, 1882, provides as under:-

> **"5. Power-of-attorney of married women**.—A married woman, of full age, shall, by virtue of this Act, have power, as if she were unmarried, by a non-testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non testamentary instrument or doing any other act which she might herself execute or do; and the provisions of this Act, relating to instruments creating powers-of-attorney shall apply thereto.
>
> This section applies only to instruments executed after this Act comes into force."

It cannot be disputed that no such power of attorney, within the meaning of this Act, stood executed by the complainant's daughter, in favour of her father, respondent No.2.

11. At this stage, it would be apposite to refer to the grounds under which the exercise of the power under Section 482 Cr.P.C. has been held to be justified. The *locus classicus* on this issue is ***State of Haryana*** v. ***Bhajan Lal***[7] which considers ***Madhavrao Jiwajirao Scindia*** v. ***Sambhajirao Chandrojirao Angre,***[8] and has been subsequently referred to and relied upon in ***Neeharika Infrastructure*** v. ***State of Maharashtra***[9]; and ***Peethambaran*** v. ***State of Kerala***[10]. The factors to be considered are well enumerated requiring no reiteration here.

12. In particular, the second factor enumerated in ***Bhajan Lal*** (supra) is that the FIR or any other document enclosed therewith does not disclose a cognizable offence; and the seventh factor, which stipulates that where

[7] (1992) Supp. 1 335
[8] (1988) 1 SCC 692
[9] (2021) 19 SCC 401
[10] 2023 SCC OnLine SC 553

a criminal proceeding is initiated with manifest *mala fides*, ulterior motives or with a view to spite, are important in the present facts.

13. As noted above, the FIR was registered under Section 406 IPC which prescribes a punishment for a criminal breach of trust. Section 405 defines the said offence and provides for the ingredients that are required to be fulfilled for the offence to be made out.

This Court in ***Prof. R.K. Vijayasarathy & Anr***. v. ***Sudha Seetharam & Anr.***[11] identified the ingredients required for a charge under Section 406 to be justified:

> "13. A careful reading of Section 405 shows that the ingredients of a criminal breach of trust are as follows:
>
> 13.1. A person should have been entrusted with property, or entrusted with dominion over property;
>
> 13.2. That person should dishonestly misappropriate or convert to their own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so; and
>
> 13.3. That such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust."

14. In view of the facts of this case, the very first ingredient itself is not made out, for there is no *iota* of proof on record to show that the complainant had entrusted the *'stridhan'* of his daughter to the appellants which allegedly was illegally kept by them.

[11] (2019) 16 SCC 739

That apart, the second ingredient, i.e., the dishonest misappropriation or conversion for own use, also stands unfulfilled, for there is nothing on record to substantiate that the complainant's daughter's former in-laws converted the *'stridhan'* allegedly kept in their custody, for their own use, more so, when the parties in matrimony had never ever raised *'stridhan'* as an issue either in the subsistence of the marriage or thereafter, especially during the time of settlement of all issues.

15. Another ground on which the charge fails is that, apart from a statement of the complainant that the *'stridhan'* is with the former in-laws of his daughter, there is nothing on record to substantiate the factum of possession actually being with the appellants. In ***Bobbili Ramakrishna Raja Yadad & Ors.*** v. ***State of Andhra Pradesh***[12], this Court has held that giving dowry and traditional presents at the time of the wedding does not raise a presumption that such articles are thereby entrusted to the parents-in-law so as to attract the ingredients of Section 6 of the Dowry Prohibition Act, 1961.

16. As such, insofar as Section 406 IPC is concerned, the instant case would fall under the second factor enumerated in ***Bhajan Lal*** (supra), where no cognizable offence is visible on the face of the record. Furthermore, the action being initiated more than 5 years after the divorce

[12] (2016) 3 SCC 309

of the complainant's daughter and also 3 years after her second marriage had taken place, demonstrates the same to be hopelessly belated in time.

17. We may further observe that the object of criminal proceedings is to bring a wrongdoer to justice, and it is not a means to get revenge or seek a vendetta against persons with whom the complainant may have a grudge. The principle in law that delay in filing the FIR has to be satisfactorily explained and does not need any reiteration. In the present case, the record is entirely silent on that aspect. It is also to be noted, in the FIR the authorities are requested to take action against the appellant for not returning the gifts given by the complainant to his daughter at the time of the marriage, however, in the charge-sheet such a complaint turns into a demand of dowry and being pressured into incurring expenses for marriage related functions. The question that is to be answered is that when the point of genesis is separate and distinct, how does the end result turn into something that is entirely foreign to the point of genesis?

18. An additional aspect is to be taken note of. The FIR, which culminated in the present proceedings, was lodged in 2021, whereas the matrimonial relations between the complainant's daughter and her former husband ended in 2015. She subsequently got remarried in 2018. Then, on what grounds does the complaint file the subject FIR in the year 2021,

is entirely unexplained. It has been observed in ***Kishan Singh (Dead) through LRs***. v**. *Gurpal Singh & Ors.***[13] that:

> "…. Chagrined and frustrated litigants should not be permitted to give vent by cheaply invoking the jurisdiction of the criminal Court. The Court proceedings ought not to be permitted to degenerate into a weapon of harassment or prosecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of that case".

Kishan Singh (supra) was recently referred to and followed in ***Rohtash & Anr.*** v. ***State of Haryana.***[14]

19. That apart, these proceedings have been initiated in the face of the Separation Agreement entered into by the parties to the marriage at the time of dissolution, that too, as already recorded supra without any express authorization by the daughter of the complainant. It categorically records as under:

> "3. …
>
> e. Personal Belongings, Furniture & Household Goods:
>
> The parties have agreed upon a division of their furniture, furnishings, household goods, appliances, equipment, silverware, china, glassware, books, works of art and other household and personal property items presently held by one or both of the parties.
>
> Each party hereby relinquishes all right, title and interest in and to all household goods, furniture and personal properties awarded to the other party."

[13] (2010) 8 SCC 775
[14] (2019) 10 SCC 554

Clause 6 of the Separation Agreement is of import in the present controversy:

> "6. RELEASES
>
> Each of the parties hereto does hereby release and discharge the other from any and all other claims, causes of action whether at law or in equity, dower, both in real and personal property, both under the statutes and common law, and all other charges of every kind, character or nature which either of the parties does now or might have against the other arising in any manner whatsoever, except as are herein specifically reserved to the parties, or as may be derived by either party to effectuate and maintain the terms of this Agreement."

Further, clause 8 of the Separation Agreement records the full division of the property between the parties in the following terms:

> "8. FULL DIVISION OF PROPERTY
>
> The parties represent to the Court that this Agreement fully disposes and divides all the marital property of the parties and that there is no further property which this Court must divide. Further, the parties represent and warrant that they have each disclosed to the other all of their respective property interests in their respective Statement of Property filed in this cause."

20. In view of the above, we also hold that the charge under Section 6 of the Dowry Prohibition Act, is not made out and therefore, fails. Consequently, the only conclusion that can be drawn is that the proceedings initiated by the complainant (CC No.1369/2022) against the present appellants have to be quashed and set aside. Any action commenced as a result thereof is bad in law. The questions raised in this appeal are answered accordingly.

21. The appeal is allowed in the above terms. The impugned judgment dated 22nd December 2022 in Criminal Petition No. 11528 of 2022 between the self-same parties, the complaint stands quashed and set aside. Pending applications, if any, are also disposed of.

……J.
(J. K. MAHESHWARI)

……J.
(SANJAY KAROL)

Dated : August 29, 2024;
Place : New Delhi.