

GAHC010235892022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1173/2022

MINAKSHI HIRA
D/O SRI AMRIT BORA
W/O SHRI BIJU KUMAR NATH,
RESIDENT OF JAJARI HIRAGAON, P.O. JAJARI, P.S. JAJARI IN THE
DISTRICT- NAGAON, ASSAM,
PIN-782001.

VERSUS

THE STATE OF ASSAM AND ANR
REP BY THE PP, ASSAM

2:SHRI BIJU KUMAR NATH
S/O SRI BHABEN CHANDRA NATH
R/O MADHUPUR
P.O. AND P.S. NAGAON (SADAR)
IN THE DIST. OF NAGAON
ASSAM
PIN- 782001

Advocate for the Petitioner : MR. M K BORAH
Advocate for the Respondent :

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI

:: O R D E R :

29.05.2023

Heard Mr. M.K. Bora, learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned Additional Public Prosecutor appearing for the

State/respondent No.1. None appears for the respondent No.2.

2. The petitioner has preferred an application under Section 482 Cr.P.C. for quashing the proceeding of Criminal Revision case No. 2(N)/2021 pending before the court of Addl. Sessions Judge, Nagaon.

3. The case of the petitioner is that the petitioner got married to the respondent No. 2 as per Hindu Rights and Rituals on 14.05.2019. After their marriage, the petitioner took a lot of goods and articles as stridhan property from her parental house to the house of the respondent No. 2 for their common use. After their marriage, they lived together as husband and wife peacefully for a period of 5/6 months subsequently, the respondent No. 2 started to torture her both physically as well as mentally and ultimately, the petitioner was compelled to leave the house of her husband and started to live with her parents.

4. It is further stated that there is no possibility of revival of the marriage and the marriage between the petitioner and the respondent No.2 had been irretrievably broken down. According to the petitioner, there is every possibility of misappropriation of her stridhan articles by her husband and his family members. The petitioner also stated that she is apprehending that her stridhan articles which belong to her may be misappropriated by the respondent No. 2.

5. It is also stated that several efforts were made by the petitioner and her relatives to settle the dispute amicably but due to aggressive nature of the respondent No.2, the matter has not been resolved between the parties. It is

also alleged that the respondent No. 2 refused to hand over the stridhan property to the petitioner when the petitioner and her family members visited the house of the respondent No. 2 to take back her stridhan properties. Thereafter, the petitioner filed the case before the court of CJM, Nagaon vide C.R. (DV) Case No. 401/2020. The case was subsequently transferred to the court of learned SDJM(S), Nagaon. Accordingly on receipt of the said record, the learned SDJM(S) recorded the statements of the petitioner and her witnesses under Section 200 and 202 Cr.P.C. respectively and on being satisfied with the statement of the witnesses, issued notice to the respondent No. 2.

6. Against the said order dated 01.12.2020, respondent No.2 has preferred a revision petition before the court of Sessions Judge but learned Additional Sessions Judge on 22.02.2021 has stayed the order of learned SDJM(S). Hence, this revision petition against the order of the Sessions Court dated 22.02.2021.

7. The learned counsel for the petitioner has submitted that the articles retained in the house of the respondent No.2 are the stridhan property of the petitioner. Wife is the sole owner of stridhan property. The husband has no right on it. When the petitioner approached before the respondent No. 2 to return her stridhan property, he refused to return the same. It is also submitted that the petitioner apprehends that there is every chance of misappropriation of her stridhan property. Under such backdrop, Section 406 IPC is attracted here in this case. The learned SDJM(S), has rightly issued the summons to the respondent No.2. Considering the background of the case,

the stay order passed by the learned Addl. Sessions Judge, Nagaon be vacated for the ends of justice.

8. In support of his submissions, the learned counsel for the petitioner has cited one case law-

2016 v.2 SCC 705 (Krishna Bhattacharjee v. Sarathi Choudhury & Anr).

9. It appears from the record that notice has been properly served to the respondent No. 2 by way of Dasti mode of service. It is reported by the process server that on 12.01.2023, he visited the house of the respondent No. 2 but he was found absent in his house but served the notice to his father Bhaben Chandra Nath living under the same roof. In spite of service of notice, the respondent No. 2 did not appear and he has not engaged any lawyer to represent him.

10. I have considered the submissions made by the learned counsel for the petitioner. I have also gone through the statement of the petitioner recorded under Section 200 Cr.P.C and her witnesses recorded by the learned trial court under Section 202 Cr.P.C.

11. From the statement of the petitioner and her witnesses, prima facie a case is made out against the respondent No. 2 under Section 406 IPC and the Magistrate issued summons to the respondent No.2 for his appearance before the court. The learned Additional Sessions Judge while passing order on 22.02.2021 did not show any ground as to why the order dated 01.12.2020

passed by the learned SDJM(S), Nagaon was stayed. The order passed by the Addl. Sessions Judge, Nagaon which reads as follows-

“P.O. is transferred.

Seen petition U/S 397/399 Cr.P.C. against the impugned order dated 01-12-2020 passed by Sri Gautam Daimari, learned Sub-Divisional Judicial Magistrate, Nagaon in connection with CR Case No. 401/2020, u/s 406 of I.P.C.

Heard submission of Ld. Counsel for the petitioner on the point of admission of revision.

I have gone through the true copy of impugned order.

Petition is filed within the period of limitation as such same is admitted for hearing.

Call for the case record of C.R. Case No.401/2020 from the Court of Learned Sri Gautam Daimari, learned Sub-Divisional Judicial Magistrate, Nagaon.

Issue notice to opposite parties. Petitioner shall take necessary steps.

Considering the facts & Circumstances of the case the impugned order vide dated 01-12-2020 passed by the learned

SDJM, Nagaon shall remain stayed.

Fix 30-03-2021 for S/R/LCR.”

12. Admittedly the petitioner and the respondent are husband and wife. After their marriage, they lived together. It is also not in dispute that the petitioner after their marriage took some articles to the house of the respondent No.2 for their common use. It is alleged by the petitioner that she was brutally tortured and assaulted by the respondent No. 2 and his family members and her stridhan articles were held back and not returned in spite of request to the respondent No.2. It is alleged by the learned counsel for the petitioner that refusal of the stridhan articles from the custody of the respondent No. 2, in fact, supports the allegation of criminal breach of trust which falls under Section 406 IPC.

13. In the case of ***Pratibha Rani v. Suraj Kumar*** reported in ***1985 SCC (Cri) 180***, it was held by the Hon'ble Supreme Court that the exclusive ownership of a married woman to her streedhan properties is not diluted upon her entering a matrimonial home. It cannot be said that in the matrimonial home the wife and husband have joint ownership and possession over her streedhan articles. The Apex Court has held as follows-

“We are clearly of the opinion that the mere factum of the husband and wife living together does not entitle either of them to commit a breach of criminal law and if one does then he/she will be liable for all the consequences of such breach. Criminal law and matrimonial home are not strangers. Crimes committed

in matrimonial home are as much punishable as anywhere else. In the case of stridhan property also, the title of which always remains with the wife though possession of the same may sometimes be with the husband or other members of his family, if the husband or any other member of his family commits such an offence, they will be liable to punishment for the offence of criminal breach of trust under Sections 405 and 406, IPC.”

14. In the said case, the Hon'ble Apex Court concluded as follows-

“To sum up, the position seems to be that a pure and simple entrustment of stridhan without creating any rights in the husband excepting putting the articles in his possession does not entitle him to use the same to the detriment of his wife without her consent. The husband has no justification for not returning the said articles as and when demanded by the wife nor can he burden her with losses of business by using the said property which was never intended by her while entrusting possession of stridhan. On the allegations in the complaint, the husband is no more and no less than a pure and simple custodian acting on behalf of his wife and if he diverts the entrusted property elsewhere or for different purposes he takes a clear risk of prosecution under Section 406 of the IPC. On a parity of reasoning, it is manifest that the husband, being only a custodian of the stridhan of his wife, cannot be said to be in joint possession thereof and thus acquire a joint interest in the

property.”

15. In view of the aforesaid legal proposition, this Court is of the opinion that the order passed by the learned Additional Sessions Judge, Nagaon in Revision Case No. 02(N)/2021 dated 22.02.2021 is not sustainable in law on staying the issuance of process to the respondent no 2.

16. In the result, the prayer of the petitioner is allowed. Accordingly, the order passed by the learned Additional Sessions Judge, Nagaon in Revision Case No. 02(N)/2021 dated 22.02.2021 is hereby set aside. The learned SDJM(S), Nagaon is directed to proceed with the case being C.R. case No. 401/2020 in accordance with law.

17. The petitioner is directed to appear before the court of learned SDJM(S), Nagaon on 15/06/2023 to take further instruction(s) to proceed with the case.

18. In view of the above, the present petition stands disposed of accordingly.

JUDGE

Comparing Assistant