



Crl.R.C.(MD) No.325 of 2018

IN THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.09.2023

PRONOUNCED ON : 23.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl. R.C. (MD) No.325 of 2018

Rajanidevi D/o. Rathinam

... Petitioner

Vs.

1. State represented by:
The Inspector of Police,
All Women Police Station,
Srivilliputhur,
Virudhunagar District.
(Crime No.17/2014)

2. Ganesh Kumar S/o. Muthuvel @ Muthuvelu,
3. Muthuvel @ Muthuvelu S/o. Subbiah
4. Parasakthi W/o. Muthuvel @ Muthuvelu
5. Jeyanthi W/o. Alagendran
6. Alagendran S/o. Sadatcharam
7. Subbulakshmi W/o. Kalimuthu
8. Kalimuthu S/o. Subbiah
9. Niranjanadevi W/o. Navarathinam and
10. Navarathinam S/o. Rajagopal

... Respondents

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w
401 of Criminal Procedure Code, praying to call for the records pertaining
to the judgment in Crl. A. No.55 of 2016 dated 13.03.2018 on the file of the



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learned Principal District and Sessions Judge, Virudhunagar at Srivilliputhur confirming the judgment dated 22.04.2016 made in C.C. No. 167 of 2014 by the learned Judicial Magistrate No.2, Srivilliputhur and set aside the same.

For Petitioner	: Mr. R. Gandhi, Senior Counsel for Mr. J. Karthikeyan
For Respondents	: Mr. M. Sakthi Kumar, Government Advocate (Criminal Side) [for R1] Mr. K.K. Kannan [for R2 to R8] No appearance [for R9 & R10]

ORDER

This Criminal Revision in Crl. R.C. (MD) No.325 of 2018 has been preferred by the petitioner as against the Judgment passed in Crl.A. No.55 of 2016 by the learned Principal District and Sessions Judge, Virudhunagar at Srivilliputhur dated 13.03.2018 wherein the Appellate Court has confirmed the judgment dated 22.04.2016 passed in C.C. No.167 of 2014 on the file of the learned Judicial Magistrate No.2, Srivilliputhur wherein the Trial Court has acquitted the accused

(i) A1, A8 and A9 from the charges for the offences punishable under



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Sections 498-A, 406, 506(i) r/w 34 of IPC and Section 4 of Dowry

Prohibition Act

(ii) A3 from the charges for the offences punishable under Sections 341, 294(b), 406, 498(A), 506(i) r/w 34 of IPC and Section 4 of Dowry Prohibition Act and

(iii) A2, A4 to A9 from the charges for the offences punishable under Sections 341, 406, 498(A), 506(i) r/w 34 of IPC and Section 4 of Dowry Prohibition Act.

2. As against the judgment and acquittal passed by the Trial Court, the defacto complainant has preferred an appeal before the Principal District and Sessions Judge, Virudhunagar at Srivilliputhur in Crl. A. No.55 of 2016 and the same was dismissed by confirming the judgment of the Trial Court passed in C.C. No.167 of 2014 by the learned Judicial Magistrate No.2, Srivilliputhur.

3. For the sake of convenience, the revision petitioner and the respondents 2 to 10 will be referred to as the defacto complainant and the



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accused No.1 to 9 respectively.

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3.1. The case of the prosecution in brief is as under:

3.2. The 1st accused is the husband of the defacto complainant. The accused 2 to 9 are the in-laws and relatives of the 1st accused. The marriage between the 1st accused and the defacto complainant was solemnized on 05.06.2011 at Rajapalayam, Sree Mayuranathaswamy Temple. At the time of marriage, 100 sovereigns of gold jewels were presented to the bride and 11 sovereigns of gold jewels were presented to the bridegroom and household articles worth about Rs.3 lakhs were presented to them. After the marriage, when the defacto complainant/victim was living along with the accused 1 to 3 as joint family, the 1st accused received the gold ornaments of the defacto complainant and kept in the locker through the 2nd accused. On 05.06.2012, a female child was born to the defacto complainant and the 1st accused. On 08.12.2012, the victim was taken to the house of the 1st accused along with her child. At that time, the accused 2 to 9 joined together and induced the 1st accused to ask defacto complainant to present 50 sovereigns of gold jewels and Rs.5 lakhs from her parents, since the defacto complainant gave birth to a female child. Accordingly, the 1st accused had also demanded the 50 sovereigns of gold jewels and Rs.5 lakhs



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cash and all the accused harassed the victim. Further, on 08.06.2014 at about 10 a.m., when the victim was proceeded near to her parents' house, the accused 2 to 9 had waylaid her and abused her using obscene words in filthy language and caused criminal intimidation and thereby, complaint (Ex.P.1) has been lodged by the victim/PW1. Based on the complaint, FIR (Ex.P.7) has been registered as against the accused. Thereafter, PW16, the Investigation Officer investigated the case and after completion of investigation, filed a final report for the offences under Sections 498(A), 406, 506(i) r/w 34 of IPC and Section 4 of Dowry Prohibition Act as against A1, A8 and A9, for the offences under Sections 498(A), 406, 341, 294(b), 506(i) r/w 34 of IPC and Section 4 of Dowry Prohibition Act as against A3 and for the offences under Sections 498(A), 406, 341, 506(i) r/w 34 of IPC and Section 4 of Dowry Prohibition Act as against A2, A4 to A7.

4. Thereafter, the Trial Court has taken cognizance for the above said offences and upon the appearance of the accused, copies of documents relied on by the prosecution, were furnished to the accused under Section 207 of Cr.P.C. After hearing both sides, the Trial Court has framed charges



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as against A1, A8 & A9 for the offences under Sections 498(A), 406, 506(i) r/w 34 of IPC and Section 4 of Dowry Prohibition Act, as against A3 for the offences under Sections 498(A), 406, 341, 294(b), 506(i) r/w 34 of IPC and Section 4 of Dowry Prohibition Act and as against A2, A4 to A7 for the offences under Sections 498(A), 406, 341, 506(i) r/w 34 of IPC and Section 4 of Dowry Prohibition Act. The above said charges were read over and explained to the accused and they denied the same. Thereafter, the prosecution, in order to prove the case, examined PW1 to PW16 and marked Ex.P.1 to Ex.P.8. No material objects were marked on the side of the prosecution. On the side of accused, no oral or documentary evidence were adduced.

5. After completion of prosecution side evidence, the accused were examined under Section 313(1)(b) of Cr.P.C. with regard to the incriminating evidence let in against them and they denied the same as false. The Trial Court, after hearing both sides and analysing the oral and documentary evidence, found the accused not guilty of the said offences and acquitted the accused from the charges levelled against them.



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6. As against the said judgment and acquittal passed by the Trial Court, the defacto complainant had preferred an appeal before the Principal District and Sessions Judge, Virudhunagar in Crl. A. No.55 of 2016. After hearing both sides, the Appellate Court also dismissed the appeal by confirming the judgment of the Trial Court.

7. Aggrieved over the said judgment of the Appellate Court, the complainant has preferred this Revision Petition on the following grounds:

7(i) The Trial Court, without considering the facts and circumstances of the case in a proper perspective manner, has acquitted the accused.

7(ii) The Courts below ought to have seen that the prosecution has clearly proved the demand of dowry through PW1 and PW2 supported by other prosecution witnesses and as such, the respondents/ accused ought to have been convicted under Section 4 of Dowry Prohibition Act.

7(iii) The Courts below failed to appreciate the fact that in a



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Domestic Violence Case filed by the defacto complainant in M.C. No.11 of 2014 was allowed with a direction to the respondents / accused to return the jewels as well as the household articles to the defacto complainant within 3 months and the said order was also confirmed in the appeal and as such, the prosecution has proved the offence under Section 406 of IPC as against the accused.

7(iv) The Courts below failed to appreciate the Ex.P.2, an agreement entered by the accused with the defacto complainant, given for the payment of dowry.

7(v) The Courts below ought to have considered that the cruelty committed by the accused cogently proved by the evidence of PW1 and PW2 supported by the other prosecution witnesses and as such, acquitting the accused is unjust.

7(vi) The Courts below ought to have considered that the defacto complainant gave birth to a female baby born in Moola



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Natchathiram, which resulted in driving out her with new born baby by demanding money and dowry and as such they are liable to be convicted.

7(vii) The Courts below failed to appreciate the fact that even after the intervention of Court as well as the Police, the accused persons are adamant in retaining the jewels of the defacto complainant which would clearly establish that the accused have committed the offence and the prosecution proved the same.

8. The learned counsel appearing for the revision petitioner would contend that the marriage between the 1st accused and the defacto complainant was solemnized on 05.06.2011 at Sree Mayuranathaswamy Temple, Rajapalayam. At the time of marriage, the parents of the revision petitioner had presented 100 sovereigns of gold jewels to the bride, 11 sovereigns of gold jewels to the bridegroom and also presented household articles to the worth about Rs.3 lakhs to them. After marriage, the revision petitioner lived with A1 to A3 as joint family and the 1st accused collected



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gold jewels from his wife/revision petitioner and kept the same in the locker

of A2. On 05.06.2012, a female child was born to the revision petitioner.

When the revision petitioner went to the house of the accused along with her female baby on 08.12.2012, all the accused joined together and induced the 1st accused to demand dowry for a sum of Rs.5 lakhs and 50 sovereigns of gold jewels, since the revision petitioner gave birth to a female child, otherwise they would send the victim / revision petitioner to her parents' house. Thereafter, all the accused harassed the victim to bring the dowry. On 08.06.2014, at about 10.00 a.m., when the victim / revision petitioner was near in front of her parents' house, the accused 2 to 7 had abused the victim with obscene words and insisted to assault her and caused criminal intimidation by setting fire to her family within a week. Thereby, the defacto complainant lodged a complaint and hence the case.

8.1. In order to prove the case of the prosecution, PW1 to PW16 were examined and Ex.P.1 to Ex.P.8 were marked. In the complaint, the defacto complainant has narrated all the happenings and the PW1 in her evidence has categorically deposed about the occurrence caused by the accused and corroborated the contents of complaint and thereby the prosecution has



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proved the case against the accused. Further, the accused failed to return the sreeethana jewels presented by the parents of the petitioner during the marriage and also they caused criminal intimidation and demanded dowry and thereby, the prosecution has clearly proved the case against the accused, but the Trial Court failed to consider the same and erroneously acquitted the accused.

8.2. The learned counsel for the petitioner would further argue that while pending this revision petition, already this revision petitioner has filed an application to get return of jewels and the same went upto the Hon'ble Supreme Court and the Hon'ble Supreme Court in S.L.P. No.4310 of 2019 vide its order dated 08.07.2019 granted time for payment of the amount in lieu of 87 sovereigns of gold jewels ordered to be paid to the wife. Therefore, the matter has to be remitted back to the Trial Court for fresh consideration.

9. The learned Government Advocate (Criminal side) appearing for the 1st respondent has reiterated the arguments of the petitioner as prayed to allow the revision petition and to punish the accused in accordance with



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9.1. The learned counsel for the 2 to 10 respondents would contend that the 1st accused is the husband of the defacto complainant and due to the family dispute, the defacto complainant has given this false complaint as against her husband and in-laws and the prosecution evidences are not cogent and filled with doubts. In order to attract the offences charged against the accused, the prosecution has failed to adduce sufficient evidence and the complaint was lodged with ill-motive and thereby, the Trial Court has acquitted the accused from all the charges and the Appellate Court also after elaborate discussion, confirmed the judgment and acquittal passed by the Trial Court and dismissed the appeal. Now in order to harass the accused, she has filed this petition without any valid grounds and therefore, this petition is liable to be dismissed.

9.2. The learned counsel for the respondents would further contend that the proceedings with regard to the return of jewels are no way connected to this criminal revision case, that is arisen out of Domestic Violence Act and the Hon'ble Supreme Court has granted time to pay the amount in lieu of 87 sovereigns of gold jewels and that cannot be clubbed



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with this case.

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10. This Court, heard both sides and perused the entire materials available on record, the Judgments passed by the Courts below and the grounds of revision.

11. Upon hearing both sides and perusing the entire materials on record, now the point for determination in this revision petition is ***whether the judgment passed by the Appellate Court made in C.A. No.55 of 2016 on the file of the Principal District and Sessions Judge, Virudhunagar dated 13.03.2018 is sustainable in law and on facts.***

12. **Points:-** The case of the prosecution is that the 1st accused is the husband of the defacto complainant. The accused 2 to 9 are the in-laws and relatives of the 1st accused. The marriage between the 1st accused and the defacto complainant was solemnized on 05.06.2011 at Rajapalayam, Sree Mayuranathaswamy Temple. At the time of marriage, 100 sovereigns of gold jewels were presented to the bride and 11 sovereigns of gold jewels were presented to the bridegroom and house-hold articles worth about Rs.3



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lakhs were presented to them. After the marriage, when the defacto complainant/victim was living along with the accused 1 to 3 as joint family, the 1st accused received the gold ornaments of the defacto complainant and kept in the locker through the 2nd accused. On 05.06.2012, a female child was born to the defacto complainant and the 1st accused. On 08.12.2012, the victim was taken to the house of the 1st accused along with her child. At that time, the accused 2 to 9 joined together and induced the 1st accused to ask defacto complainant to present 50 sovereigns of gold jewels and Rs.5 lakhs from her parents, since the defacto complainant gave birth to a female child. Accordingly, the 1st accused had also demanded the 50 sovereigns of gold jewels and Rs.5 lakhs cash and all the accused harassed the victim. Further, on 08.06.2014 at about 10 a.m., when the victim was proceeded near to her parents' house, the accused 2 to 9 had waylaid her and abused her using obscene words in filthy language and caused criminal intimidation and thereby, complaint (Ex.P.1) has been lodged by the victim/PW1.

13. In order to prove the case of the prosecution, PW1 to PW16 were examined and Ex.P.1 to Ex.P.8 were marked. On the side of defence, no witness was examined and no document was marked.



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14. The main contention of the petitioner is that at the time of marriage the petitioner / defacto complainant presented 100 sovereigns of gold jewels to the bride and 11 sovereigns of gold jewels to the bridegroom. The 1st accused, after marriage, collected the gold jewels from his wife/petitioner and kept it in a safety locker and thereafter due to birth of female child, they demanded another 50 sovereigns of gold jewels and cash of Rs.5 lakhs from the defacto complainant and further they harassed the defacto complainant and thereby, the accused A1, A8 and A9 have committed offences under Sections 498(A), 406, 506(i) r/w 34 of IPC and Section 4 of Dowry Prohibition Act, A3 has committed offences under Sections 498(A), 406, 341, 294(b), 506(i) r/w 34 of IPC and Section 4 of Dowry Prohibition Act and the accused A2, A4 to A7 have committed offences under Sections 498(A), 406, 341, 506(i) r/w 34 of IPC and Section 4 of Dowry Prohibition Act.

15. The PW1 in her evidence has stated that at the time of marriage, they presented jewels and house-hold articles worth about Rs.3 lakhs and the accused have failed to return the above said jewels and harassed her to



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get dowry of Rs.5 lakhs and 50 sovereigns of jewels and also the accused assaulted the petitioner/victim. Further on 08.06.2014, when she along with her child came to the house of her husband, her in laws assaulted and abused her and also caused criminal intimidation to her.

16. PW2 also in his evidence stated that the petitioner is the victim and he has stated about the presentation of jewels and the dowry demanded by the accused. PW2 to PW8 and PW10 to PW14 have also deposed about the marriage solemnized between the defacto complainant/PW1 and the 1st accused and about the jewels and sreedhana articles presented to the couple. PW9 has deposed about the registration of F.I.R. PW15 has deposed about the investigation and filing of final report. The prosecution witnesses have not stated the specific date on which the accused assaulted and demanded dowry.

17. The evidence of prosecution witnesses are not specific and it is vague with regard to the demand of alleged dowry and the harassment made by the accused. Further the prosecution has failed to examine the witnesses residing nearby the house of the accused where the victim was residing during the course of the occurrence.



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18. Further, as per the prosecution case, the accused collected all the jewels from his wife/petitioner and the same were placed in the locker of the 2nd accused. But the PW2 during his cross examination stated that two safety lockers were opened in HDFC Bank and in one locker, some of the jewels were placed and in another locker, both the 1st accused and the defacto complainant had jointly opened the lockers and placed jewels. Therefore, from the evidence of PW2, it is revealed that the jewels were placed in the locker opened in the name of the 1st accused as well as the defacto complainant. Further, there is no reference about the description of the jewels presented by the defacto complainant's parents to the accused at the time of marriage. There is no evidence that the accused, due to dishonest intention, had retained the jewels and converted the said jewels into his own use. Further as per the complaint, on 08.06.2014, when she was in front of her house, A2 to A7 accused abused the defacto complainant with obscene words and caused criminal intimidation. But there is no reference about the wrongful restraint by the accused.

19. Further the main witness PW1 has not witnessed about the



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wrongful restraint made by the accused. Further, as per the complaint, the

1st accused demanded dowry of Rs.5 lakhs and 50 sovereigns of gold jewels.

But there is no specific date mentioned either in the complaint or in the evidence of PW1. The other witnesses also have not witnessed about the date on which the accused demanded the above said dowry. The other prosecution witnesses have also not stated any specific date. Therefore, there is no evidence to prove the charges levelled against the accused.

20. The learned counsel appearing for the petitioner has argued that the Hon'ble Supreme Court has directed the 1st accused to return the 87 sovereigns of gold jewels and also granted time to make payment in lieu of 87 sovereigns of gold jewels and thereby, it shows that the accused only had custody of jewels and the Trial Court failed to consider the same and thereby, the matter has to be remanded back to the Trial Court for fresh hearing.

21. In this context, the learned counsel for the respondents vehemently objected to remand back the case because the above said order passed in Domestic Violence petition and there is no nexus between this



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case and the above said domestic violence act case. This case has to be decided independently based on the evidence available in this particular case. Therefore this case cannot be remanded back to the Trial Court for fresh hearing.

22. On careful analysis of the above said aspect, as rightly pointed out by the learned counsel appearing for the respondents that this criminal revision case is arisen out of cruelty, criminal breach of trust, criminal intimidation and other IPC offences and under the provisions of Dowry Prohibition Act. But the above said proceedings are with regard to the domestic violence act. Therefore, both cannot be clubbed together and thereby, the contention raised by the learned counsel appearing for the revision petitioner is not an acceptable one with regard to the remanding of the case to the Trial Court. Further this case has to be decided independently based on the available evidence on record.

23. As far as the offence under Section 498(A) of IPC is concerned, there is no sufficient evidence adduced by the prosecution that the 1st accused being husband and relative of the husband have harassed the



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victim. The evidence of the prosecution witnesses are not specific and vague.

24. As far as the offence under Section 406 of IPC is concerned, there is no evidence that the accused had committed criminal breach of trust and to attract the ingredients of Section 406 of IPC, the witnesses have not stated anything to constitute offence under Section 406 of IPC. As far as Section 506(i) of IPC is concerned, the evidence of PW1 is vague and not specific and there is no evidence that the victim got fear due to the words uttered by the accused.

25. As far as the offence under Section 341 of IPC is concerned, no evidence that the accused have wrongfully restrained the victim and none of the witnesses have stated about the same, particularly PW1 has not stated either in the complaint or in the evidence with regard to the alleged wrongful restraint.

26. As far as the offence under Section 294(b) of IPC is concerned, PW1 in her evidence has not witnessed about the annoyance caused to her



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due to the obscene words uttered by the accused. In this context, the Trial Court also, after referring the judgment of this Court in ***K. Jayaramanuj*** ***vs. Janakaraj and others reported in 1997 CRI L.J. 1623***, acquitted the accused by holding that there is no evidence that somebody have annoyed due to the above said obscene words.

27. As far as the offence under Section 4 of Dowry Prohibition Act and Section 406 of IPC are concerned, the case of the prosecution is that the accused, after birth of female child, demanded 50 sovereigns of gold jewels and Rs.5 lakhs cash as dowry. But no sufficient evidence adduced to attract the provisions of Dowry Prohibition Act and the prosecution evidences are vague and not specific. Though the prosecution witnesses have deposed about the presentation of jewels at the time of marriage, there is no evidence that the accused misappropriated the jewels and there is no evidence that the defacto complainant had asked return of jewels from the accused and they refused to give the jewels. Further it is admitted by PW2 that there was a joint locker opened by the victim as well as the 1st accused and the jewels were also kept in the locker. While so, the reasonable doubt would arise about the prosecution case that the jewels were kept in the locker of A2.



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28. PW1 to PW3 have deposed about the alleged demand of dowry by the accused, but the evidences are not specific and vague. The witnesses have not stated about the date, on which the accused had demanded the dowry and allegations are bald and general. Thereby, the offences under Sections 406 of IPC and Section 4 of Dowry Prohibition Act are not proved by the prosecution beyond all reasonable doubts.

29. The learned counsel appearing for the petitioner has relied upon the following judgments:

29(i) ***Rashmi Kumar v. Mahesh Kumar Bhada reported in (1997) 2***

Supreme Court Cases 397 - wherein the Hon'ble Supreme Court has held in Para 13 as follows:-

“13. Thus when the wife entrusts her stridhana property with the dominion over that property to her husband or any other member of the family and the husband or such other member of the family dishonestly misappropriates or converts to his own use that property or wilfully suffers any other person to do so, he commits criminal breach of trust. The essential ingredients for establishing an offence of criminal breach of trust as defined in Section 405 and punishable under Section 406 IPC with sentence for a period upto three years or with fine or with both, are: (i) entrusting any person with property or with any dominion over property; (ii) the person entrusted dishonestly misappropriating or converting to his own use that property; or



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dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract made touching the discharge of such trust. The expression “entrustment” carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Entrustment is not necessarily a term of law. It may have different implications in different contexts. In its most general significance, all it imports is handing over the possession for some purpose which may not imply the conferment of any proprietary right therein. The breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. In *Pratibha Rani case* the majority has extensively considered the words “entrustment” of and 'dominion' over the property. All the case-law in that behalf was exhaustively considered obviating the necessity to tread once over the same. In order to establish entrustment of dominion over the property, both the majority and minority relied on in particular the judgment of this Court in *Velji Raghavji Patel v. State of Maharashtra* wherein it was held that in order to establish entrustment of dominion over the property to an accused person, mere existence of that person's dominion over the property is not enough. It must be further shown that his dominion was the result of entrustment. The question therein pertained to the entrustment with the dominion over the partnership property by one partner to the other. It was held that the prosecution must establish that the dominion over the assets or particular assets of the partnership was by a special agreement between the parties. The property of the partnership being a partnership asset, every partner has a right to or a dominion over it. It was held that special agreement was necessary to constitute an offence of criminal breach of trust defined under Section 405 IPC. In view of the finding that stridhana property is the exclusive property of the wife on proof that she entrusted the property or dominion over the stridhana property to her



husband or any other member of the family, there is no need to establish any further special agreement to establish that the property was given to the husband or other member of the family. It is always a question of fact in each case as to how the property came to be entrusted to the husband or any other member of the family by the wife when she left the matrimonial home or was driven out therefrom. No absolute or fixed rule of universal application can be laid down in that behalf. It requires to be established by the complainant or the prosecution, depending upon the facts and circumstances of the case, as to how and in what manner the entrustment of the stridhana property or dominion over her stridhana came to be made to the husband or any other member of the family or the accused person, as the case may be. We are in respectful agreement with the majority view in *Pratibha Rani case* and consequently requires no reconsideration”.

29(ii) *Pratibha Rani v. Suraj Kumar and Another reported in 1985*

Supreme Court Cases (Cri) 180 – wherein the Hon'ble Supreme Court in

Para Nos.20 and 21 held as follows:-

“20. 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.

21. After all how could any reasonable person expect a newly



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married woman living in the same house and under the same roof to keep her personal property or belongings like jewellery, clothing etc., under her own lock and key, thus showing a spirit of distrust to the husband at the very behest. We are surprised how could the High Court permit the husband to cast his covetous eyes on the absolute and personal property of his wife merely because it is kept in his custody, thereby reducing the custody to a legal farce. On the other hand, it seems to us that even if the personal property of the wife is jointly kept, it would be deemed to be expressly or impliedly kept in the custody of the husband and if he dishonestly misappropriates or refuses to return the same, he is certainly guilty of criminal breach of trust, and there can be no escape from this legal consequence. The observations of the High Court at other places regarding the inapplicability of Section 406 do no appeal to us and are in fact not in consonance with the spirit and trend of the criminal law. There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his wife. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents etc., It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import. It is not at all intelligible to us to take the stand that if the husband dishonestly misappropriates the stridhan property of his wife, though kept in his custody, that would bar prosecution under Section 406 IPC or render the ingredients of Section 405 IPC nugatory or abortive. To say that because the stridhan of a married woman is kept in the custody of her husband, no action against him can be taken as no offence is committed is to override and distort the real intent of the law”.



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29(iii) *Selvakumar and others v. The State, represented by*

Inspector of Police, W6 All Women Police Station, Chennai-600 021 and

another, wherein this Court in Para 10 to 12 has held as follows:-

“10. The Hon'ble Supreme Court has held in ***Pratibha Rani v. Suraj Kumar***, 1985(2) SCC 370, that conversion to own use the dowry articles constituting the stridhana property given by the parents of a Hindu woman to the husband would amount to criminal breach of trust.

11. In the very same judgment, it has been further held that the husband cannot claim exclusive right over the stridhana property entrusted to him at the time of marriage in as much as the ownership of wife continues even if she has started living with her husband after the marriage.

12. The second limb of the aforesaid ratio has been reiterated in the later judgment passed by the Hon'ble Supreme Court in ***Rashmi Kumar v. Mahesh Kumar Bhada***, 1997(2) SCC 397. The wife is the absolute owner of the stridhana property and the husband can not even become the joint owner of the said property, it has been declared”.

29(iv) On careful reading of the above said judgments, it is clear that in the case of sreedhana property also, the title of which always remains with the wife though the 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 be punished for the offence of criminal breach of trust under Section 406 of



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IPC and the husband cannot claim exclusive right over the sreedhana property entrusted to him at the time of marriage in as much as the ownership of the wife continues even if she had started living with her husband after the marriage.

29(v) In the case on hand also, the contention of the prosecution is that the accused got the sreedhana properties of the defacto complainant and kept the same in the safety locker of A2. But the evidence of the prosecution witnesses shows that already a common safety locker was opened in the name of the 1st accused and his wife, the defacto complainant and the jewels also kept in the locker, thereby the prosecution has failed to prove the entrustment of the jewels to the 1st accused and no ingredients to prove the offence under Section 406 of IPC and therefore, the above said cases laws will not be applicable to the present facts of the case.

30. The learned counsel appearing for the respondents has also relied upon the judgment in *Sanjaysingh Ramrao Chavan v. Dattaray Gulabrao Phalke and others reported in (2015) 3 Supreme Court Cases 123*, wherein the Hon'ble Supreme Court, in Para 14, has held as follows:-



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“14. In the case before us, the learned Magistrate went through the entire records of the case, not limiting to the report filed by the police and has passed a reasoned order holding that it is not a fit case to take cognizance for the purpose of issuing process to the appellant. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 Cr.P.C. is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction”.

30(i) On careful perusal of the above judgment, it is clear that revisional power of the Court under Section 397 to 401 Cr.P.C. is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional



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jurisdiction.

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In the case on hand also, there is no any perverse or untenable in law or is grossly erroneous or glaringly unreasonable, found on the judgments of Trial Court and Appellate Court, thereby the said case law is squarely applicable to the present facts of the case.

31. Therefore as discussed above, this Court is of the opinion that the prosecution has failed to prove the charges levelled against the accused and the accused are entitled for acquittal. The Trial Court as well as the Appellate Court have elaborately analysed the evidence adduced by the prosecution side and correctly acquitted the accused by giving reasons. Therefore there is no provision and infirmity found with the judgment of the Courts below. Hence this Court has no warrant to interfere with the judgments of the Courts below.

32. In view of the above said discussions, this Court is of the opinion that this Criminal Revision Petition has no merits and deserves to be



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dismissed. Accordingly this Criminal Revision Petition is dismissed.

Connected miscellaneous petitions, if any, are closed.

23.11.2023

Index : Yes / No

Internet : Yes / No

Neutral Citation Case :Yes/No

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To

1. The Principal District and Sessions Judge, Virudhunagar at Srivilliputhur.
2. The Judicial Magistrate No.2, Srivilliputhur .
3. The Inspector of Police,
All Women Police Station,
Srivilliputhur,
Virudhunagar District.



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P.DHANABAL., J.

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