

GAHC010139182023



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

Crl.Pet./631/2023

1. Mangal Chauhan,
S/o Sikandar Chauhan,
R/o House No. 114, Gandhi Basti Main
Road, Near Masjid Gali,
P.S. Paltan Bazar, Guwahati-781003,
Dist. Kamrup (M), Assam

2. Nisha Chauhan,
D/o Sikandar Chauhan,
R/o House No. 114,
Gandhi Basti Main Road,
Near Masjid Gali, P.S. Paltan Bazar
Guwahati-781003, Dist. Kamrup (M)
Assam

3. Poonam Chauhan,
D/O Sikandar Chauhan,
R/O House No. 114,
Gandhi Basti Main Road
Near Masjid Gali, P.S. Paltan Bazar
Guwahati-781003, Dist. Kamrup (M)
Assam

Petitioners

-Versus-

1. Rina Rai Chauhan
W/O Mangal Chauhan

R/O House No. 9, H.M. Das Road,
Rehabari, P.S. Paltan Bazar,
Guwahati-08, Dist. Kamrup (M), Assam

Respondents

For Petitioner(s) : Mr. S. C. Biswas, Advocate

For Respondent(s) : Mr. A. Tiwari, Advocate

Date of Judgment : 24.06.2024

**BEFORE
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
JUDGMENT**

24.06.2024

(M.K.Kalita, J)

- 1)** Heard Mr. S. C. Biswas, learned counsel for the petitioner. Also heard Mr. A. Tiwari, learned counsel for the sole respondent.
- 2)** This Criminal Petition has been registered on filing of an application under Section 482 of the Code of Criminal Procedure, 1973, filed by the petitioners, namely, (1) Mangal Chauhan, (2) Nisha Chauhan and, (3) Poonam Chauhan, praying for quashing of C.R. Case No. 195^C/2023, which was instituted by the sole respondent on filing of a criminal complaint and same is pending before the Court of learned Judicial Magistrate First Class, Kamrup (M).
- 3)** The facts relevant for consideration of the instant criminal petition, in brief, are as follows:
 - i.** The respondent, namely, Smt. Rina Rai Chauhan who is the wife of the petitioner No.1, Shri Mangal Chauhan had lodged a complaint before the Court of learned Chief

Judicial Magistrate, Kamrup (M) under Section 406 of the Indian Penal Code against the above named petitioners on 06.05.2023, *inter-alia*, alleging that she was married to the petitioner No.1 Shri Mangal Chauhan on 25.11.2022 as per Hindu Rites.

- ii. It is also alleged in the complaint that the petitioners also demanded dowry from the respondent and started subjecting her to cruelty for such demand.
- iii. It is also stated in the complaint by the respondent that in the meanwhile on several occasions, unable to bear the torture of the petitioners, the respondent left her matrimonial home and came to her maternal home, however, on several occasions on persuasion, she came with a hope of leading a peaceful matrimonial life but each time the situation worsened. Ultimately, unable to bear the torture perpetrated by the petitioners the respondent came to her parental home on 22.03.2023 and started residing there.
- iv. It is also alleged in the complaint that thereafter, on several occasions, the complainant demanded back her *stri dhan* which was kept in her matrimonial home. However, the petitioners refused to return back the said articles. Hence, having no other option, she had to file the complaint petition wherein she had also prayed for issuance of a search warrant under Section 93 of the Code of Criminal Procedure, 1973, for recovery of her *stri dhan*.

- v. After filing of the aforesaid complaint the respondent was examined under Section 200 of the Code of Criminal Procedure, 1973. By order dated 06.06.2023, the learned Judicial Magistrate First Class, Kamrup (M) had taken cognizance of offence under Section 406 of the Indian Penal Code and also issued processes to the above named petitioners as to why the search warrant under Section 93 of the Code of Criminal Procedure, 1973 as prayed for by the respondent complaining for recovery of her *stri dhan* should not be issued.
- 4) The learned counsel for the petitioners has submitted that in the complaint case filed by the respondent no ingredients of an offence under Sections 406 of the Indian Penal Code has been made out. He has also submitted that in a case for recovery of *stri dhan*, there cannot be a case under Section 406 of the Indian Penal Code. He has submitted that at best it can be a case under appropriate provision of the Prohibition of Dowry Act, 1961. He has submitted that the respondent has abused the process of the Court by launching the criminal proceedings against the petitioners only with a view to harass them.
- 5) The learned counsel for the petitioner has also submitted that there is no element of any criminal breach of trust and has submitted that even if the allegation made against the present petitioners in the complaint case is assumed to be true, it would be a case under special legislation contained in the Dowry Prohibition Act, 1961 and in case of any article which was given by way of dowry to the respondent the question of

entrustment on behalf of the respondent to the petitioners would not arise.

- 6) In support of his submission, the learned counsel for the petitioners has cited a ruling of the Apex Court in the case of **"Harmanpreet Singh Ahluwalia and others versus State of Punjab and others"** reported in **(2009) 7 SCC 712**.
- 7) The learned counsel for the petitioners has also submitted that in the pending proceeding which has been initiated by the respondent under Section 406 of the Indian Penal Code, there is no probability of that it would lead to any conviction of the petitioners after trial, therefore, he submits that continuation of such a futile litigation would only be an abuse of the process of law.
- 8) He has also submitted that in such a case where dispute is over *stri dhan*, it becomes the duty of the Court to encourage genuine settlement between the parties rather than to proceed with a trial, which is unlikely to result in conviction.
- 9) The learned counsel for the petitioners has also submitted that the complaint petition filed by the respondent does not disclose any ingredient of offence under Section 406 of the Indian Penal Code.
- 10) The learned counsel for the petitioners has also cited ruling of Coordinate Bench of this Court in following cases in support of his submissions.
 - i. ***Ranjit Goswami Vs. Smt. Manika Devi (In Criminal Petition No.771/2021)***
 - ii. ***Pradeep Das Vs. Sangeeta Das (In Criminal Petition No. 635/2019)***

- 11)** On the other hand, Mr. A. Tiwari, learned counsel for the sole respondent has submitted that in the instant case learned counsel for the petitioners has failed to distinguish a distinction between dowry articles and *stri dhan* articles and there is a clear distinction between both the properties.
- 12)** He has submitted that the *stri dhan* property is the exclusive property of the wife which is given to her in her marriage and in paragraph No. 5 of the complaint petition filed by the respondent, she has categorically stated that after her marriage she had entrusted her *stri dhan* to the petitioners for keeping them in safe custody in her matrimonial home and presently same are in the power and possession of the petitioners.
- 13)** It is also submitted by learned counsel for the respondent that after the matrimonial dispute arose between the petitioners No. 1 and the respondent and after she left her matrimonial home, she demanded back her *stri dhan* from the petitioners which they squarely refused to give back and thus, they have committed the criminal breach of trust as defined under Section 405 of the Indian Penal Code.
- 14)** The learned counsel for the petitioners has submitted that the facts constituting the ingredients of Section 406 of the Indian Penal Code are categorically awarded in the complaint petition filed by the respondent and therefore, the contention of learned counsel for the petitioners that no ingredient of Section 406 of the Indian Penal Code is there in this case is not based on facts.

- 15)** The learned counsel for the respondent has also submitted that it is well settled that the powers under Section 482 of the Code of Criminal Procedure, 1973 should be sparingly exercised in rare cases and when the prosecution is at initial stage the test to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint *prima facie* establish the offence or not.
- 16)** It is submitted by learned counsel for the respondent that in the instant case the uncontroverted allegations made in the complaint petition clearly establish a *prima facie* offence under Section 406 of the Indian Penal Code and hence, has submitted that this is not a fit case where the extraordinary inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 should be exercised for quashing the complaint case filed by the respondent.
- 17)** In support of his submissions, learned counsel for the respondent has cited the following rulings
- i. K. Jagdish Vs. Udaya Kumar, G.S. & others reported in (2020) 14 SCC 552*
 - ii. Krishna Bhattacharjee Vs. Sarathi Choudhury, G.S. & others reported in (2016) 2 SCC 705*
 - iii. Bobili Ramkrishna Raju Yadav, G.S. & others Vs. State of Andhra Pradesh reported in (2016) 3 SCC 309*
 - iv. Pratibha Rani Vs. Suraj Kumar, G.S. & others reported in (1985) 2 SCC 370*
- 18)** I have considered the submissions made by learned counsel for both the sides and have perused the materials on record.
- 19)** I have also gone through the rulings cited by the rival parties in support of rival counsel in support of their submissions.

- 20)** In the case of “*Harmanpreet Singh Ahluwalia Vs. State of Punjab and Others*” (*Supra*), cited by learned counsel for the petitioners, the property in question was a property given in dowry and in the complaint case, clear allegations were made as regards dowry article, where as in the instant case, the complaint case filed by the respondent against the present petitioners is in respect of the property which she had claimed to be her *stri dhan* and not as dowry articles.
- 21)** The term dowry has been defined in Section 2 of the Dowry Prohibition Act, 1961, as any property or valuable security given or agreed to be given by one party to a marriage to the other party to the marriage and the taking or giving of such dowry has been made a penal offence under Section 3 of the said Act.
- 22)** However, in the instant case, the property, which the respondent is claiming, was given to her only by her relatives in her marriage and in paragraph No. 5 of the complaint petition, the respondent has made a categorical statement that when after her marriage she went to her matrimonial home at Gandhi Basti, Guwahati, her *stri dhan* was handed over to the possession of the aforesaid petitioners for keeping them in safe custody.
- 23)** It is also alleged in the complaint petition that when there was a matrimonial dispute between the petitioner No. 1 and the respondent and when the respondent had to leave her matrimonial house, she left all her *stri dhan* in the said house and thereafter, when she demanded back her *stri dhan*, the petitioner squarely denied to hand over the same back to her.

- 24)** Hence, in this case, there appears to be clear categorical statement alleging entrustment of *stri dhan* by the respondent to the petitioners and breach of the trust in refusing to hand over back the said *stri dhan* to the respondent.
- 25)** In the case of "***Pratibha Rani Vs. Suraj Kumar and Another***" (***Supra***), the Apex Court has observed 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 of the IPC.

21. After all how could any reasonable person expect a newly 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 not 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 life. 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.

- 26)** In the instant case also, as discussed herein before, the averments made in the complaint petition filed by the complainant as well as her examination under Section 200 of

the Code of Criminal Procedure, 1973 reveals that there are categorical allegations made against the petitioners of having committed offence under Section 406 of the Indian Penal Code and which if remain uncontroverted, *prima facie* establishes the offence alleged.

- 27) Hence, merely because the relationship, between the petitioner No. 1 and the respondent is that of husband and wife, it may not be a ground that no action against the husband can be taken under Section 406 of the Indian Penal Code. It would be against the spirit of the law to interfere in such criminal prosecution when the ingredients of the offence alleged against the petitioners are present in the complaint filed by the complainant.
- 28) The Apex Court in the case of "**Madhav Rao, Jivaji Rao, Sindhya and others versus Sambhaji Rao, Chandroji Rao, Angare and others**" reported in **(1988) 1 SCC 692** has observed that when a prosecution is at the initial stage and when there is a petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the same, the test to be applied by the Court as to whether the uncontroverted allegations made in the complaint *prima facie* establishes the offence.
- 29) In the instant case, this Court is of the considered opinion that the complaint filed by the respondent does establishes *prima facie* the offence alleged against the petitioners. Thus, this Court is of the view that this is not a fit case where the inherent powers of this Court may be exercised under Section 482 of the Code of Criminal Procedure, 1973 for quashing the

complaint filed by the respondent against the above-named petitioners.

- 30)** This Criminal Petition filed by the petitioners is, accordingly devoid of any merit and hence dismissed.
- 31)** Needless to say, that dismissal of this Criminal Petition would not be a bar for the parties to pursue an amicable settlement between them, if there arises any scope of such a settlement.
- 32)** With above observation, this Criminal Petition is, accordingly disposed of.

JUDGE

Comparing Assistant