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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.560 of 2017

1. Mohd. Riaz Ahmad Khan, S/o Lal Khan, aged about 62 years,
2. Smt. Zahira Khan, W/o Mohd. Riaz Ahmad Khan, aged about 47 years, (Correct age is about 57 years)
3. Mohd. Imroze, S/o Mohd. Riaz Ahmad Khan, aged about 33 years,
4. Nazia Malik Khan, W/o Mohd. Shahnawaz Khan, aged about 37 years,

All R/o House No.356 K, Cross Street 3, Pragati Nagar, Risali, Bhilai, Tahsil and District Durg, Chhattisgarh

---- Applicants

versus

1. State of Chhattisgarh through the District Magistrate, District Durg, Chhattisgarh
2. Smt. Musarrat Afroz Khan, W/o Imroz Khan, aged about 26 years, R/o Near the Idgah, Kelabadi, Durg, District Durg, Chhattisgarh

--- Respondents

For Applicants	:	Shri Rohit Sharma, Advocate
For Respondent No.1	:	Shri U.K.S. Chandel, Panel Lawyer
For Respondent No.2	:	Shri Pallav Mishra, Advocate on behalf of Shri R.N. Pusty, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

27.6.2018

1. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.

2. The instant revision has been preferred against the order dated 27.2.2017 passed by the 3rd Additional Sessions Judge, Durg in Criminal Revision No.201 of 2016 arising out of the order dated 14.6.2016 passed by the Judicial Magistrate First Class, Durg in Criminal Case No.2686 of 2014.

3. The Complainant/Respondent No.2 Smt. Musarrat Afroz Khan, wife of Applicant No.3 Mohd. Imroz lodged a written report on 24.3.2013 against the Applicants regarding harassment given to her by them. On the basis of her report, Mahila Thana, Durg registered an offence punishable under Section 498A read with Section 34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. On completion of the investigation, a charge-sheet for offence punishable under Section 498A read with Section 34 and 406 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act has been filed against the Applicants in the Court of Judicial Magistrate First Class, Durg. On 14.6.2016, at the time of framing of charge, the Court has discharged the Applicants of the charge under Section 406 of the Indian Penal Code and framed charges against them only under Section 498A read with Section 34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act.

4. The State/Respondent No.1 filed a revision, being Criminal Revision No.201 of 2016 against the order dated 14.6.2016 before the 3rd Additional Sessions Judge, Durg. Vide the impugned order dated 27.2.2017, the Additional Sessions Judge has allowed the revision and has directed the Trial Court to frame charge against the Applicants under Section 406 of the Indian Penal Code also. Hence, this revision by the Applicants.

5. Shri Rohit Sharma, Learned Counsel appearing on behalf of the Applicants submits that there is no evidence to show that the property was entrusted with the Applicants. The Additional Sessions Judge ought to have considered that for commission of offence of criminal breach of trust, two distinct parts are involved, i.e., first, consisting of creation of an obligation in relation to the property over which dominion or control is acquired by the Applicants and secondly, misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created. No *prima facie* case is made out against the Applicants for dishonestly misappropriating the stridhan of the Complainant allegedly handed over to them. Therefore, the impugned order passed by the Additional Sessions Judge is erroneous and liable to be set aside.

6. Per contra, Shri U.K.S. Chandel, Learned Panel Lawyer appearing on behalf of the State/Respondent No.1 and Shri Pallav Mishra, Learned Counsel appearing on behalf of the Complainant/Respondent No.2 support the impugned order and submit that the Court below has rightly framed the charges. *Prima facie*, there is sufficient evidence regarding commission of offence under Section 406 of the Indian Penal Code. Therefore, the impugned order dated 27.2.2017 is in accordance with law.

7. I have heard Learned Counsel appearing for the parties and perused the material available with due care.

8. At this juncture, it is pertinent to refer to Section 405 of the Indian Penal Code which reads as under:

> "**405**. **Criminal breach of trust.—**Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".
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> *Explanation 1.*—A person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the

> time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.
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> *Explanation 2*.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid."

9. As per the definition quoted above, for the offence punishable under Section 406 of the Indian Penal Code, *prima facie* it should be established that the property has been entrusted in any manner, secondly, the person in whose favour the property has been entrusted has misappropriated the property or converted the same for his own use.

10. In the light of above, now, I shall examine the facts of the case in hand.

11. The only allegation made by he Complainant is that when the Complainant was sent to her maternal house, at that time, the Applicants kept her stridhan, key of almirah, key of bank locker and one two-wheeler with them. As alleged, Complainant's ornaments and other articles were kept in the bank locker and in the almirah. As per the allegation of the Complainant, she has an apprehension that the Applicants have misused her those articles. But, there is nothing on record from which it could *prima facie* be established that the Applicants dishonestly misappropriated the property or converted the same for their own use. Order of the Learned Additional Sessions Judge is based on presumption. Therefore, *prima facie* on the basis of the material available, I find that no offence under Section 406 of the Indian Penal Code is made out and, therefore, the finding of the Additional Sessions Judge is perverse.

12. Consequently, the revision is allowed. The impugned order dated 27.2.2017 is set aside.

Sd/-
(**Arvind Singh Chandel**)
Judge

Gopal