

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 22nd March, 2018
Judgment delivered on: 02nd July, 2018

+ CRL.REV.P. 252/2015

HARISH MIRCHANDANI Petitioner

versus

MANISH DARIRA Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Narender Mukhi, Adv. with petitioner in person.

For the Respondents : Mr. R.P. Luthra, Mr. Vikas Chadha and Mr. Sourach Luthra, Advocates

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

CRL.REV.P. 252/2015, Crl. M.A. 14213/2015 (stay), Crl. M.A. 13546/2017 (for early hearing), Crl. M.A. 13547/2017 (stay), Crl. M.A. 4864/2108 (for early hearing) & Crl. M.A. 4865/2018 (stay)

1. The petitioner impugns order dated 30.03.2015 passed by the Revisional Court whereby the Revision Petition filed by the respondent has been allowed and the order of the Trial Court dismissing the complaint filed by the Respondent has been set aside and the petitioner has been directed to appear before the trial court to face trial for an offence under Section 406 of the Indian Penal Code (IPC).

2. The petitioner is the father-in-law of the respondent. The respondent was married to the daughter of the petitioner on 08.05.2009, however, within 12 days of the marriage the parties fell out and it is alleged that the respondent left the daughter of the petitioner to her parents' house and thereafter did not permit her to enter her matrimonial home.

3. It is alleged by the respondent that for the purpose of an amicable resolution, the petitioner approached the Sindhi Panchayat wherein a settlement was arrived at and all the items, gifts, electronic items, jewellery, etc. along a sum of Rs. 8 lakhs were returned by the respondent to the petitioner in full and final settlement of all claims of the petitioner, his family as well as the daughter of the petitioner. It is contended that despite the said settlement, the daughter of the petitioner filed a claim for maintenance. It is alleged by the respondent that because the daughter of the petitioner has filed a claim for maintenance, the petitioner has committed an offence under Section 406 of the IPC of criminal breach of trust and thus is liable to be punished.

4. Initially the complaint was filed against six persons including the Sindhi Panchayat, which was arrayed as proforma party. However, by application dated 01.08.2014, the respondent restricted the complaint only to the petitioner for the offence under Section 406 IPC.

5. The trial court, by order dated 28.05.2011, refused to issue directions under Section 156(3) of the Cr. P.C. and directed the petitioner to lead pre-summoning evidence.

6. Subsequently, by order dated 21.06.2014, after the pre-summoning evidence was led, the trial court dismissed the subject complaint, holding that no criminal offence was made out.

7. The basis of the complaint filed by the Respondent against the petitioner is that the petitioner has committed an offence under Section 406 of the IPC. The allegation of the respondent is that after disputes had arisen, the petitioner approached the Sindhi Panchayat and a settlement was arrived at and respondent/complainant returned all the articles, gold jewellery, gold coins received from the petitioner and his family and even paid a sum of Rs. 8 lakhs to the petitioner. It is alleged that the said amount of Rs. 8 lakhs was paid as full and final settlement of all claims of the petitioner, his family and his daughter i.e. wife of the complainant.

8. It is contended by the Respondent that despite having received the said amount, the petitioner failed to hand over the said amount to his daughter and his daughter filed an independent claim for maintenance and permanent alimony and thus the petitioner has committed the offence of breach of trust.

9. The contention of the petitioner, per contra, is that the petitioner had a claim not only of the jewellery articles and dowry items given to

the respondent and his family but also had a claim against the respondent for expenditure incurred by the petitioner on the marriage of his daughter. It is contended by the petitioner that the settlement was only qua the items given at the time of the marriage and the expenditure incurred and there was no settlement between daughter of the petitioner and the respondent. It is submitted that the receipt relied on by the respondent does not even mention that there was any settlement between the daughter of the petitioner and the respondent leave alone with regard to her claim for maintenance etc.

10. Further, it is contended that the ingredients of Section 406 of the IPC are not satisfied and ex-facie no offence under Section 406 IPC is made out.

11. As the Respondent has based his entire complaint on the receipt executed by the petitioner, it would be expedient to extract the same. Receipt dated 28.06.2009 reads as under:-

“I, Harish Kumar Mirchandani, father of Kanika Mirchandani R/o C-72, Ashok Vihar, Delhi – 52 have received all the 25 (Twenty Five) items of gifts including all the electronic items and all the jewellery items from Shri Manish Darira s/o Damodar Darira R/o M-3/C-11, Jhulelal Apartments, Pitampura, Delhi – 110034, during the week from Tuesday to Friday, the 25th June, 2009.

Today in presence of Sindhi Panchayat Kamla Nagar (Regd.) Delhi I have received Rs. 8,00,000/- (Eight Lakh) cash and 5 (five) guinnies of gold also from Mr. Manish Darira for the final settlement. After this, I have no claim of any kind of money or jewellery from Mr. Manish

Darira. This also includes that no member of my family will claim anything from Manish Darira & family. I have given back Manish Darira's all items including all jewellery."

12. It is an admitted position that the receipt does not bear the signatures of either the daughter of the petitioner or the respondent. Perusal of the receipt shows that there is no reference made in the receipt with regard to settlement of any claim of the daughter of the petitioner. The receipt acknowledges that on receipt of the said amount, the petitioner shall have no claim of any kind of money or jewellery from the respondent. Though the receipt records that the said amount includes that no member of the family of the petitioner would make any claim against the respondent and his family, the receipt specifically does not make a mention about any claim of the daughter of the petitioner, nor does it refer to any claim of Stridhan or maintenance.

13. The contention of the learned counsel for the respondent that as the petitioner has recorded that no family member of the petitioner would make any claim, it should be inferred that all claims of the daughter of the petitioner have also been settled and she shall not make any claim, is not sustainable. If there was any settlement between the Respondent with the daughter of the petitioner of any nature, the receipt would have specifically stated so. The receipt makes no reference to settlement of any dispute between the daughter of the petitioner and the respondent. It is not even signed by either of

them. If the amount of Rs.8,00,000/- given to the petitioner was for settling any claims of the daughter of the petitioner, the receipt would have specifically stated so. On the other hand, the receipt specifically records that the petitioner thereafter would have no claim for money or jewellery against the respondent.

14. Section 405 of the IPC 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”.

15. The prerequisite for an offence of Criminal breach of trust is entrustment with property or dominion over the same. There is nothing in the receipt to show that the said amount of Rs. 8,00,000/- was entrusted to the petitioner by the respondent with any specific direction (i.e. for payment to the daughter of the petitioner). In fact, the receipt records that the amount is paid to the petitioner and on payment of the same all his claims for money and jewellery would be satisfied.

16. The Revisional court has clearly erred in reversing the decision of the Trial Court. There is no basis for the Revisional court to even

prima facie come to the conclusion that the “*amount of Rs. 8,00,000/- was received by the petitioner on behalf of his daughter Kanika Darira*” and “*After receiving the amount of Rs. 8,00,000/- on behalf of Kanika Darira, the same was neither handed over by the Respondent (petitioner herein) to Ms Kanika Darira nor returned.....*”

As noticed above the receipt does not mention that the amount is received by the petitioner for or on behalf of his daughter, rather it records that his claims for money and jewellery are satisfied. There is no reference at all in the receipt to claims of the daughter of the petitioner for maintenance, alimony etc. The complaint clearly appears to be an attempt on the part of the respondent to force the daughter of the petitioner to give up her claims.

17. Learned counsel for the respondent further relied on correspondences of the Sindhi Panchayat, inter-alia, letter dated 06.07.2009 which is in the form of a certificate certifying that the Panchayat had got returned all articles which had been exchanged at the time of the marriage and that between the two parties all the disputes with regard to exchange of articles have been settled and further proceedings would be dependent on the decision of the court.

18. This communication was disputed by the petitioner who contended that admittedly it did not bear the signature of the petitioner or his daughter and had been signed by the relations of the petitioner on 07.02.2013 only as an acknowledgement of receiving a copy of the same. This communication does not support the case of the

respondent as it has no reference to the claim of the maintenance etc. of the daughter of the petitioner. Further correspondences, inter-alia, dated 31.07.2009 and 09.09.2009 relied on by learned counsel for the respondent, merely go on to show that the petitioner was being called upon to sign a settlement agreement. This further fortifies the contention of the petitioner that there was no full and final settlement between the parties.

19. It is further disputed by the petitioner that it was he who approached the Sindhi Panchayat, it is contended that it was respondent's father who had approached the Sindhi Panchayat. In my view, it does not make any difference as to whether the petitioner or respondent or his father approached the Sindhi Panchayat. What is germane is that the receipt, which is made the sole basis of the complaint, does not show that any claims of the daughter of the petitioner are settled.

20. In view of the above and keeping in view the totality of facts and circumstances, I am of the view that the Revisional court has clearly fallen in error in prima facie holding that an offence under section 406 IPC is made out. The impugned order dated 30.03.2015 is accordingly set aside. Petition is allowed. There shall be no orders as to costs.

SANJEEV SACHDEVA, J

JULY 02, 2018
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