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Crl.O.P.No.26912 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.04.2023

Pronounced on : 10.05.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.No.26912 of 2019

and

Crl.M.P.No.14354 of 2019

S.Sowmya

...Petitioner/Accused

-Vs-

T.Mukundan

... Respondent / Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to CC.No.47 of 2019 on the file of Judicial Magistrate, Alandur so as to quash the same.

For Petitioner : Mr.N.Jothi
Senior Advocate for
Mr.S.Vinod

For Respondent : No Appearance



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ORDER

The petition is to quash the private complaint in C.C.No.47 of 2019 filed by the husband/respondent/complainant against the wife/petitioner/accused for the alleged offences under Sections 406, 420 & 506 (ii) IPC.

2. It is alleged in the complaint that the petitioner and the respondent got married on 23.03.1992 were joint owners of certain immovable properties and movable properties in the form of Insurance Policies from Life Insurance Corporation, cash in Bank Accounts, Car and Jewellery; that the respondent obtained employment in Uganda, East Africa in the Year 2005; that on 07.06.2006, he had registered a Power of Attorney in favour of the petitioner to represent the respondent with respect to jointly owned properties; that he left for Africa on 07.06.2006 and stayed there till 2008; that in the Year 2008, he returned from Africa and when he enquired the petitioner about the status of his properties, the petitioner threatened him of dire consequences and hence, the respondent left the house and thereafter, approached the SRO Alandur for a copy of the Power of Attorney executed by him; that he obtained a copy and found that the General Power of Attorney



was widely worded authorising the respondent to dispose of the properties jointly owned; that he never intended to execute such a Power of attorney; that he cancelled the General Power of Attorney on 25.03.2009 by registered document bearing No.265 of 2009; that he informed the same to the petitioner; that however, the petitioner by misusing the Power of Attorney thereafter had obtained the maturity amount from the LIC and also obtained the original property documents which were mortgaged with Canara Bank, Nanganallur Branch; that the petitioner was a Panel Lawyer for the Canara Bank and taking advantage of the same withdrew all the cash from the Bank Account; that he had given a complaint to the Commissioner of Police on 07.09.2015, which was referred to the Sub Inspector of Police, Central Crime Branch, Vepery; that the Police closed the complaint on 15.09.2015 stating that the allegation revealed only a matrimonial dispute and advised the respondent to seek remedy before the Court of Law. Hence, the complaint.

3. Mr.N. Jothi, the learned Senior Counsel for the petitioner, would submit that:

(a) admittedly the properties were in the joint names of the



petitioner and the respondent; that a petition for divorce in H.M.O.P.No.62 of 2013 was filed by the petitioner against the respondent on the file of Sub Court, Tambaram; that the said H.M.O.P was dismissed on 16.12.2016; that the petitioner preferred C.M.A.No.14 of 2017 on the file of learned Principal District Judge, Kancheepuram at Chengalpattu and the same was allowed on 03.06.2019; that the respondent made several allegations against the petitioner before the Family Court and also pleaded that the properties were illegally taken by the petitioner which is the subject matter of the impugned complaint.

(b) The learned Senior Counsel further submitted that the very same issue is now sought to be raised in the impugned complaint. The respondent ought to have addressed his grievance with respect to properties before the Matrimonial Court in view of Section 27 of the Hindu Marriage Act, 1955 and Section 7 (1) (c) of the Family Courts Act, 1984. He would further submit that the list of documents filed before the Family Court and the documents filed along with the impugned complaint are the same.



(c) The learned sSenior Counsel further submitted that the police complaint is said to have been lodged by the respondent in the Year 2015. However, the impugned complaint was numbered only in the Year 2019. Though the respondent claimed that the respondent filed a complaint dated 09.11.2016, he had not proceeded with the complaint for a very long time for reasons best known to him and the same was numbered only in the Year 2019.

(d) The learned Senior Counsel further submitted that in view of the peculiar nature of the matrimonial relationship and the communications between the husband and wife are mostly confidential and the properties are in joint possession whether it is owned exclusively by either one of his spouses, the offence of breach of trust can never be made out against one of the spouses; and that the parties have to only approach the Family Court.

(e) The learned Senior Counsel further submitted that Section 27 of the Hindu Marriage Act, 1955, and Section 7 (1) (c) of the Family Courts Act, 1984 are comprehensive enough to deal with all kinds of properties belonging to the parties to the marriage and pass an order



relating to it. The learned Senior Counsel relied upon the following Judgments:

(i) The Judgment of High Court of Punjab and Haryana in ***Vinod Kumar Sethi and others vs. State of Punjab and others*** in ***CrI.Mis.NO.4022-M of 1981***, decided on 30.03.1982 – in support of his submission that parties to the marriage cannot be held liable for the offence under Section 406 IPC in view of their peculiar relationship.

(ii) The Judgment of High Court of Punjab and Haryana in ***Yash Pal Bhalla vs. State of Punjab and others*** in Criminal Misc. No.4452- of 1984.

(iii) The Judgment of Supreme Court in ***State of Haryana and others vs. Bhajan Lal and others*** reported in ***1992 Supp (1) SCC 335*** – elaborating the inherent powers of the Court to quash proceedings.

(iv) The Judgment of Bombay High Court in ***Sangeeta Balkrishna Kadam vs. Balkrishna Ramachandra Kadam*** reported in ***AIR 1994 Bombay 1*** – for the proposition that the Court and



the Hindu Marriage Act, 1955 can grant relief even in respect of the properties not covered under Section 27 of the Hindu Marriage Act, 1955 by invoking Section 151 of Civil Procedure Code.

(v) The Judgment of Kerala High Court in ***Shyni vs. George and others*** reported in ***AIR 1997 Kerala 231*** – on the point that Section 7 of the Family Courts Act, 1984 gives wide powers to even pass orders against relatives of the husband, if it is found that the husband had handed over the properties to relatives.

(vi) The Judgment of Andhra Pradesh High Court in ***Mrs.Mariamman Ninan vs. Mr.K.K.Ninan*** reported in ***1997 (1) A.P.L.J. 244 (HC)*** – to state that parties to a marriage can approach the Family Court under Section 7 (1) (c) of the Family Courts Act, 1984 in relation to the common properties held by them.

(vii) The Judgment of Kerala High Court in ***K.A.Abdul Jaleel vs. T.A.Sahida*** reported in ***AIR 1997 Kerala 269*** and the Judgment of the Karnataka High Court in ***Nagaraj and Another vs. Ammayamma*** reported in ***Indian Law Reports 2001 KAR 4004*** – to show that the



expression "parties to marriage" is not confined to parties to subsisting marriage and even a divorced husband or wife can approach the Family Court, under Section 7 of the Family Courts Act, 1984 for the resolution of any dispute, relating to properties purchased jointly or held jointly.

(viii) The Judgment of Hon'ble Supreme Court in ***Mohd. Aslam Vs. Union of India and others*** reported in ***(2003) 4 SCC 1*** in support of his submission that the Family Courts Act is applicable to all religions.

(ix) The Judgment of Hon'ble Supreme Court in ***Ajay Mitra vs. State of M.P., and others*** reported in ***(2003) 3 SCC 11*** – to submit that in order to attract the offence of cheating, there must be *mens rea* at the time of inducing or making the false representation.

(x) The Judgment of Hon'ble Supreme Court in ***K.A.Abdul Jaleel vs. T.A.Shahida*** reported in ***(2003) 4 SCC 166*** – in support of his submission that disputes relating to marriage and family affairs in Section 7 (i) (c) of the Family Courts Act, 1984 must be given a broad construction and it can extend to Muslims and also to parties whose marriage is not subsisting.



(xi) The Judgment of this Court in ***A.Sreedevi vs. Vicharapu Ramakrishna Gowd*** reported in ***2005 (5) CTC 748***, which reiterates the powers of the Family Court.

(xii) The Judgment of this Court in ***Hemalatha Ramesh vs. State by Inspector of Police (Crime)*** reported in ***2007 (1) MWN (Cr.)208*** relating to offences under Sections 406 and 420 IPC.

(xiii) The Judgment of Hon'ble Supreme Court in ***N.Devindrappa vs. State of Karnataka*** reported in ***(2007) 5 SCC 228*** - on the ingredients of Section 420 IPC.

(xiv) The Judgment of this Court in ***Indrabaye vs. Doressamy Naiker*** reported in ***2010 (1) CTC 1*** – reiterating the Jurisdiction of the Family to decide property disputes even between divorced parties.

(xv) The Judgment of Hon'ble Supreme Court in ***Preeti Gupta and Another vs. State of Jharkhand and Another*** reported in ***(2010) 7 SCC 667*** - expressing concern with regard to false cases of dowry harassment and recommending suitable changes in existing provision of Section 498 A IPC.



(xvi) The Judgment of this Court in ***B.Gajendran vs. Adhilakshmi*** reported in **2013 (2) CTC 871** - on the scope of Section 7 of the Family Courts Act, 1984.

(xvii) The Judgment of the Hon'ble Supreme Court in ***Prof.R.K. Vijayasarathy and another vs. Sudha Seetharaman and another*** reported in **(2019) 16 SCC 739** - wherein the ingredients of offences under Sections 415 and 420 of IPC had been explained.

4. Though notice was sent to the respondent and he has been served, none has entered on behalf of the respondent.

5. This Court finds that the allegation is that the petitioner had misused the Power of attorney given by the respondent. The Power of attorney contains a Clause which states that it was drafted at the instance of the respondent. Broadly, the allegations are that the petitioner had sold certain properties jointly owned by both the petitioner and the respondent and had misappropriated his share of the property; that she obtained release of documents which had deposited in the Canara Bank, by wielding influence as a counsel for the said Bank; that she had also



obtained the maturity amount from LIC after the power was revoked by the respondent. The grievance appears to be that the Power of Attorney was widely worded, and the respondent was not aware of his implications. That cannot be said to be a deception by any stretch of the imagination. There is a valid Power of attorney, and the immovable properties were dealt with by the petitioner based on the said power. As to the understanding between the parties as to how the properties should be shared is not for the Criminal Court to consider. Admittedly, the parties were joint owners. In the case of joint ownership, even assuming that one joint owner had misappropriated the property, it cannot be the subject matter of the prosecution as held by the Hon'ble Supreme Court in ***Velji Raghavji Patel Vs. State of Maharashtra*** reported in ***AIR 1965 SC 1433***. The relevant observations are extracted hereunder:

"9.Mr. Chatterjee finally contends that the act of the appellant will at least amount to dishonest misappropriation of property even though it may not amount to criminal breach of trust and, therefore, his conviction could be altered from one under s.409 to that under s.403. Section 403 runs thus :



"Whoever dishonestly misappropriates or converts to his own use any moveable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

It is obvious that an owner of property, in whichever way he uses his property and with whatever intention will not be liable for misappropriation and that would be so even if he is not the exclusive owner thereof. As already stated, a partner has, undefined ownership along with the other partners over all the assets of the partnership. If he chooses to use any of them for his own purposes he may be accountable civilly to the other partners. But he does not thereby commit any misappropriation. Mr. Chatterjee's alternative contention must be rejected."

6. Therefore, the petitioner can only be made civilly liable to the respondent. The allegations do not suggest that any deception was practised by the petitioner. Firstly, because of the nature of the relationship between them. Secondly, even as per the complaint, at the time of execution of Power of Attorney, the petitioner and respondent



were in cordial terms, it remained cordial even thereafter for two years.

Therefore, there cannot be any deception at the inception in order to attract the offence of cheating. If the respondent is aggrieved by any breach of promise, it is for him to approach the Civil Court. As regards the offence under Section 506 (ii) IPC, the allegations would not attract the said offence. There is no real threat to invoke in Section 506 (ii) of IPC. Therefore, the impugned complaint is liable to be quashed.

7. As regards the submission of the learned Senior Counsel for the petitioner that this Court has to decide the larger question of whether Criminal breach of trust and Section 420 of IPC can be charged by one spouse as against the other in view of the peculiar nature of the matrimonial relationship. There is no doubt that an understanding between the husband and wife cannot be equated with a commercial contract. There is also no doubt that Section 27 of the Hindu Marriage Act, 1955 and Section 7 (1) (c) of the Family Courts Act, 1984 are very comprehensive, and the list of the authorities cited by the learned Senior Counsel would show that the parties can approach the Family Court not only with regard to disputes over properties which are mentioned in Section 27 of Hindu Marriage Act, 1955 but also with regard to other



properties by virtue of Section 151 Code of Civil Procedure. Even divorced parties can approach the Family Court for settlement of property disputes. This position is well settled. Therefore, that does not require any elaboration.

8. However, the question is whether when there is civil remedy a criminal prosecution is ruled out. The learned Senior Counsel relied upon the Judgment of the Full Bench of Punjab and Haryana High Court in ***Vinod Kumar Sethi and others vs. State of Punjab and others*** reported in ***AIR 1982 P&H 372*** in support of his submission that the offence of criminal breach of trust in respect of properties jointly possessed by the husband and wife would not be made out. However, this Court finds that this Judgment has been overruled by the Hon'ble Supreme Court in ***Prathibha Rani vs. Suraj Kumar and another*** reported in ***(1985) SCC 370***, the Hon'ble Supreme Court had held that:

“61. We, therefore, overrule the decisions of the Punjab and Haryana High Court in Vinod Kumar case and of the Allahabad High Court and other cases following Vinod Kumar case.



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"28. 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 iustification 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.

29. For these reasons, the custody or entrustment of stridhan with the husband does not amount to a partnership in any sense of the



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term and therefore, we are unable to agree with the view taken in Vinod Kumar case as also with the opinion expressed by our Brother on the points arising in the case.

30. Another serious consequence as a result of the ratio of the Full Bench decision in Vinod Kumar case would be to render the provisions of Section 406 IPC inapplicable and nugatory even if the husband has the audacity or the importunity of refusing to return the stridhan of his wife. Furthermore, we shall hereafter show that the view of the Full Bench is in direct contravention of a long course of decisions of this Court on the ingredients of Section 405 IPC. Before coming to this chapter, we would like to say a few things more about the judgment of the High Court which on deeper probe and careful scrutiny seems to be self-contradictory.

31. We are clearly of the opinion that the concept of stridhan property of a married woman becoming a joint property of both the spouses as soon as she enters her matrimonial home and continues to be so until she remains there or even if there is a break in the matrimonial alliance, is in direct contravention of Hindu law of



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Saudayika which has been administered since more than a century by High Courts, Privy Council as also this Court. By a pure and simple figment of the fertile imagination the Judges in Vinod Kumar case seem to have rewritten the law of criminal breach of trust contained in Sections 405 and 406 IPC so as to carve out an imaginary exception to the application of the Penal Code. A more tragic consequence of the view taken by the High Court is that even if there is a break in the matrimonial alliance and the wife wants her husband to return her exclusive property and he refuses to return, even then the provisions of Section 406 IPC would not apply. It is an extreme travesty of justice for a court to say that whenever a married woman demands her stridhan property from her husband she should be driven to the dilatory process of a civil court and her husband would be debarred from being prosecuted by a criminal court. By a strange and ingenious process of holding that such an act of a husband does not attract the provisions of the Penal Code, as the property being joint there is no question of the husband being a trustee or holding the same in a fiduciary capacity. Such a view, in our opinion, is not only contradictory but



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- what the High Court has said before regarding the applicability of Section 27 of the Hindu Marriage Act and the nature of stridhan as referred to above is also neither in consonance with logic and reason nor with the express provisions of the Penal Code and seems to us to be inspired by a spirit of male chauvinism so as to exclude the husband from criminal liability merely because his wife has refused to live in her matrimonial home. We are indeed surprised how could the High Court, functioning in a civilized and socialistic society such as ours, play havoc with judicial interpretation of an important branch of law."

9. In view of the above Judgment of the Hon'ble Supreme Court, the submission of the learned Senior Counsel that in all cases of dispute between the husband and wife, it has to be held that there cannot be a criminal breach of trust or cheating cannot be accepted. It all depends on the facts and circumstances of each case, and there cannot be any general proposition of law laid down as submitted by the learned Senior Counsel.



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10. With the above observation, Criminal Original Petition is allowed. Consequently, the Connected Miscellaneous Petition is Closed.

10.05.2023

Index : Yes/No

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To

The Judicial Magistrate,
Alandur.



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SUNDER MOHAN. J.
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