(2006) 08 P&H CK 0546

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 50728-M of 2006

Samrat Kaushik and others		APPELLANT
	Vs	
State of Haryana and another		RESPONDENT

Date of Decision: Aug. 28, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 173
- Penal Code, 1860 (IPC) - Section 406

Citation: (2006) 19 CriminalCC 640 : (2007) 1 RCR(Criminal) 328

Hon'ble Judges: T.P.S. Mann, J

Bench: Single Bench

Advocate: Kamal Katyan, for the Appellant;

Final Decision: Dismissed

Judgement

T.P.S. Mann, J.
Learned counsel for the petitioners while seeking quashing of the FIR and setting aside of the final report u/s 173 Cr.P.C. has submitted that the Court at Faridabad had no jurisdiction to take cognizance of the offence.

2. It is the case of the prosecution that after being turned out of the matrimonial home, complainant-Disha was staying at Faridabad. A prayer was made by her in the FIR that her in-laws were using the dowry articles given in her marriage. Further that the dowry articles be recovered and handed-over to her.

3. In Pratibha Rani Vs. Suraj Kumar and Another, , it was held that the gifts given at the time of marriage of a Hindu woman are her Stridhan property and the husband though living together with his wife is not entitled to convert the property to his own use without her consent, if it was placed in his custody. Thus, if the accused dishonestly misappropriated or converted the same to their own use, they would expose themselves for liability u/s 405 IPC and punishable u/s 406 IPC.

In Dinesh Kumar and others v. Lalita Mor and another, 1995 (3) Cri 326 (Allahabad), the provisions of Section 181(4) Cr.P.C., which reads as under :-

Any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained, or was required to be returned or accounted for, by the accused person.

were interpreted so as to hold that the place where the wife demands return of her stridhan property, will also have the territorial jurisdiction to try the offence of criminal breach of trust. It was held therein as under :-

The legislature has enacted a specific provision regarding venue of the trial of an offence of criminal breach of trust. Sub-section (4) of Section 181 Cr.P.C. provides that any offence of criminal mis-appropriation or of criminal breach of trust may be enquired into or tried by a court within whose local jurisdiction the offence was committed or any part of property which is the subject-matter of offence was received or retained; or was required to be returned or accounted for, by the accused person. Shri Chaturvedi has submitted that the allegations made in the complaint show that entrustment of the property as well as retention of the property by the accused is alleged to have been done at Calcutta and, therefore, the Court at Calcutta alone had the jurisdiction to try the offence and not that of Allahabad. He has further submitted that last part of sub-section (4) of Section 181 namely - or was required to be returned or accounted for - would be applicable only where there is a prior agreement or contract which has come into existence either before or simultaneously at the time of the entrustment of the property to the effect that the same was to be returned or accounted for at a different place and the provision would not be applicable where subsequent to the entrustment of the property, it was required to be returned or accounted for at another place by the owner thereof. In support of his submission, learned counsel has placed reliance on the Report of Law Commission and also the objects and Reasons for enacting this sub-section in the Code of Criminal (Act No. 2 of 1974) which are as follows :-
..... In view of the conflicting decisions of various High Courts, we recommend that sub-section (2) of Section 181 (now sub-section (4) be amended thus.....) same as sub-section (4). We do not think it necessary to limit the additional alternative venue, namely, the local area where the property was required (by law or contract) to be returned or accounted for by the accused persons, to cases where there is no evidence of the offence other than the failure to return or account for the property.

Reference has also been made to a decision by a learned Single Judge of this Court in Hansraj Chaudhary v. Smt. Savita, 1992 All Cri. 265 in support of the submission that for the application of last part of this sub- section, there should be a prior

agreement of contract for returning the property at a particular place in order to clothe the court of that place with territorial jurisdiction to try the offence.

In the present case, we are concerned with criminal breach of trust of Stridhan-property. When articles are given by way of gifts to a bride at the time of marriage, no one can contemplate that a situation would arise in future when a demand for return of stridhan-property from the husband or his other relations would be made and in the event of articles not being returned, a criminal prosecution would be launched. In fact at the time of marriage every one wishes and prays that the new couple would lead a long and happy married life. Therefore, the existence or coming into being of a prior agreement or even understanding that in the event of break up of marriage or for some unforeseen circumstances, the articles given by way of gifts would be required to be returned at a particular place is an almost impossible situation. The relations and friends who give gifts to the bride would shudder at the very idea that contingency may arise from his husband or his other relations. Therefore, so far as an offence of criminal breach of trust regarding stridhan-property is concerned, there cannot be any prior agreement for return thereof at a particular place. If the last clause of sub-section is interpreted in the manner suggested by the learned counsel, it will become redundant in so far as the offence of criminal breach of trust of stridhan- property is concerned.

It is not a sound principle of construction to brush aside the words of statute as being inapposite surplusage, if they can have appropriate application in the circumstances conceivably within the contemplation of the statute. It is incumbent on the court to avoid a construction, if reasonably permissible on the language, which would render a part of statute devoid of any meaning or application (See Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, and Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, . The Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons (See The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, and State of Uttar Pradesh Ors. Vs. Radhey Shyam Nigam and Others, . Therefore, the last part of the sub-section namely - was required to be returned or accounted for - has to be given some meaning even where the territorial jurisdiction of a Court is to be ascertained with regard to an offence of criminal breach of trust of stridhan-property is concerned. Another settled principle is that in selecting out of different interpretations the Court will adopt that which is just, reasonable and sensible rather than that which is none of these things as it may be presumed that the Legislature has used the words in that sense which least offends or sense of justice. If the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity and inconsistency

(See Holmes v. Bradifield Rural District Council, 1994 (1) All E.R. 381 and Sri Nasiruddin Vs. State Transport Appellate Tribunal, . Therefore, in order to give full meaning and sense to the last part of sub-section (4) of Section 181, it will be proper to hold that without there being any prior agreement to that effect the Court at the place where the property is required to be returned will also have the territorial jurisdiction to try the offence.

Section 6 of Dowry Prohibition Act provides that where any dowry is received by any person other than the woman in connection with whose marriage it is given that person shall transfer it to the woman within a specified period and the failure to do so makes the person liable for punishment. In P.T.S. Saibaba and Another Vs. P. Mangatayaru and Another, , the Andhra Pradesh High Court held that a woman can file complaint u/s 6 of the Dowry Prohibition Act at the place where she is residing on the ground that it was the duty of her husband to return the dowry, after the specified period at the place where she was residing and the contention that the complaint can only be filed at the place where the dowry was given was repelled. Similarly in Bhim Singh v. State of Punjab, 1990 PLR 187 : 1990 (3) R.C.R.(Criminal) 221 and Surendra Kumar v. Suman Arora, 1991(2) RCR (Cri.) 245 (P&H) : 1991(2) RCR. 245, it has been held that the Court of the place where the woman was residing and had demanded return of her Stridhan-property would have territorial jurisdiction to try the offence of criminal breach of trust. Hansraj v. Smt. Savita, 1992 All. Cr.R. 265 cited by the petitioners has no bearing on the point in issue as challenge to the jurisdiction of the court to take cognizance of an offence u/s 406 IPC at the place where marriage was performed and dowry was given was repelled on the ground that entrustment of property had been done at that place.
Learned Counsel has urged that on the view taken the wife can demand return of the property any where in India and file a complaint there which would cause great harassment to the husband and his relations. In my opinion the difficulty posed is more imaginary than real. The wife is not likely to demand return of the property at a place where she is not residing as it will be equally inconvenient and difficult for her to prosecute a criminal case at a third place. In view of the reasons discussed earlier the irresistible conclusion is that the place where the wife demands return of her Stridhan- property will also have territorial jurisdiction to try the offence of criminal breach of trust.

4. In Ram Pal and another v. State of Haryana and another, 1991 (1) Cri 566, this Court found justification in the action of the police to register an FIR at the place, where complainant-wife resided and required the return of dowry articles at that place. The provisions of Section 181(4) Cr.P.C. were relied upon to clothe the police of Police Station, Kalanwali with jurisdiction to investigate the case, as at that place the wife was residing when the FIR was registered. It was held therein as under :-

On the point of jurisdiction, it transpires that the articles of dowry were entrusted at Kalanwali when the marriage took place and the petitioners are expected to return

these dowry articles to her at her parents house in village Kalanwali where she is at present residing. According to sub-section (4) of Section 181 of the Code of Criminal Procedure, offence of criminal misappropriation or of criminal breach of trust may be enquired into and tried by a Court within whose local jurisdiction the offence was committed or any part of the property was received or retained or was required to be returned or accounted for by the accused persons. Thus, at this stage it cannot be said that the property was not received at Kalanwali and that it was not required to be returned at village Kalanwali where the complainant at present resides. Thus, without completion of investigation, it cannot be said that the police P.S. Kalanwali had no jurisdiction to investigate the case. Moreover, at the most it would amount to an irregularity u/s 462 of the Code of Criminal Procedure as the petitioners had failed to show whether any prejudice had been caused to them due to the investigation or enquiry conducted by the police of Police Station, Kalanwali.

5. In Mandeep Singh v. State of Punjab, 1997 (2) RCR (Cri) 154, this Court reiterated that in matrimonial cases, the Court at the bride''s residence had the jurisdiction to try the offence under Sections 406 and 498-A IPC, as the effect of physical cruelty in the shape of mental cruelty travelled to the said place. It was held in paras 11 and 12 as under:

11. The debtor must find its creditor is the basic law. Assuming for the sake of argument that this principle of contractual liability is not applicable to the matrimonial cases, still it is the husband who is to account for the dowry articles of his wife which were given in the shape of Istri Dhan. The case of the complainant is that right from the very beginning the family of the accused was not satisfied with the dowry articles. They made a demand of Rs. 5 lacs for the installation of a factory. The husband made false representation to the wife; so much so, threat was given to the wife for her liquidation and finally like a prudent lady, the complainant was left with no option but to say to her in-laws, the petitioner, her husband and her sister-in-law to return the dowry articles and this demand was made at Amritsar and once the demand has been made, it becomes obligatory on the part of the accused to account for those articles, and by not doing so, they prima facie committed an offence giving territorial jurisdiction to the Amritsar Courts and thus the finding of this Court is in consonance with the provisions of Section 181(4) of the Code of Criminal Procedure, which lays down that any offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is the subject to the offence was received or retained, or was required or accounted for by the accused person. The accused were bound to return the dowry articles/Istri Dhan of the complainant at Amritsar irrespective of the fact that they were residing outside Amritsar.

12. With the above discussion, now there is no difficulty to reply to both the questions formulated by this Court at the very outset that in matrimonial cases, the

matrimonial Courts at the bride''s residence have the jurisdiction to try the offences both under Sections 406 and 498-A, Indian Penal Code.

6. Learned counsel for the petitioners has contended that as no part of the offence was committed in the territory of Faridabad, the registration of FIR in Police Station, Sector 31, Faridabad by respondent No. 2 was with the sole purpose of harassing and torturing the petitioners. There was no allegation in the FIR that any demand of dowry was made in Faridabad or criminal breach of trust was committed there or that she was beaten. Merely because the complaint was given by respondent No. 2 before the police officials of Faridabad, would not per se authorize the police of Faridabad to register the FIR and investigate the same. In support of his argument, learned counsel has relied on Y. Abraham Ajith and others v. Inspector of Police, Chennai and another, 2004 (3) RCR (Cri.) 988 : 2004 (3) AC 455 (SC) : 2004 8 AD (SC) 288.

7. As per the FIR itself, the marriage of respondent No. 2 was solemnized with petitioner No. 1 at Faridabad. The parents of complainant gave gifts and dowry at the time of marriage. After the marriage ran into rough weather, the complainant was dropped by the accused at the gate of her parental home at Faridabad. She had mentioned in her complaint to the police that her in-laws were using her dowry articles, which had been given in her marriage and the said dowry articles be recovered and handed over to her. As the complainant was residing at Faridabad with her parents and she had demanded the return of the dowry articles, the accused by retaining the dowry articles which were meant for the use of the complainant, per se made themselves liable for an offence of criminal breach of trust, punishable u/s 406 IPC. As per the provisions of Section 181(4) of the Code, the offence of criminal breach of trust may be inquired into or tried by a Court within whose local jurisdiction any part of the property, which was the subject of the offence, was required to be returned or accounted for by the accused persons. On account of the accused committing offence u/s 406 IPC, FIR could be registered at Faridabad.

8. In Y. Abraham Ajith (supra), it appears that no specific plea was taken on behalf of the prosecution or the complainant in terms of Section 181(4) of the Code of Criminal Procedure. Accordingly, the attention of the Court was not drawn to the said provisions. What was pleaded on behalf of the complainant was that the offences under Sections 406 and 498-A IPC were continuing in terms of Section 178(c) of the Code of Criminal Procedure and therefore, the Court at Chennai had the jurisdiction to deal with the matter. Accordingly, the Court confined the discussion in respect of the interpretation of Section 178(c), as well as Section 177 of the Code and the discussion centered around "cause of action". Moreover, it was observed while referring to the provisions of Section 178(d) that where the offence consisted of several acts in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas. Finally, it was held that the

decision of the Hon''ble Supreme Court was based on the factual scenario disclosed by the complainant and on the said facts, it was held that no part of cause of action had arisen in Chennai and, therefore, the concerned Magistrate had no jurisdiction to deal with the matter.

In view of the above, there is no force in the present petition and the same is hereby dismissed.