

## **Prabhakar Jha, Parmanand Jha and Indu Devi Vs The State of Jharkhand and Ashok Kumar**

**Court:** Jharkhand High Court

**Date of Decision:** Aug. 28, 2009

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 177, 181  
Penal Code, 1860 (IPC) â€” Section 204, 406

**Citation:** (2010) CriLJ 1547

**Hon'ble Judges:** Prashant Kumar, J

**Bench:** Single Bench

**Final Decision:** Allowed

### **Judgement**

Prashant Kumar, J.

This, is an application, for quashing the order dated 22.5.2004 passed by learned Sub Divisional Judicial Magistral,

Deoghar in P.C.R. Case No. 108 of 2002 corresponding to T.R. No. 49 of 2003/224 of 2004 whereby and-whejjeynder the application filed by

the petitioners for discharge has been rejected.

2 The facts of the case in brief is that the daughter of complainant (O.P. No. 2), namely Smt. Sweta Kashyap (Jha) was married to Prabhakar Jha

(Petitioner No. 1) on 8.2.2001 at Deoghar. It is further stated that in the marriage trie parents and other relative had given ornaments, musical

instruments, house hold appliances and furniture etc, as gift to Sweta Kashyap. It is further stated that the said property belongs to Sweta Kashyap

as her Stridhan. It is further stated that Sweta Kashyap took those properties to Kolkata and entrusted the same to the accused persons for

keeping them in safe custody. It is further alleged that after the lapse of some time the complainant"s daughter Sweta Kashyap found that her

husband, Prabhakar Jha was incapable to establish sexual relation with her due to impotency. It is further alleged that because of the said reason

there was strain relation between Sweta Kashyap and Prabhakar Jha. It is also alleged that because of the aforesaid reason Prabhakar Jha always

torture the said Sweta Kashyap and due. to the said torture, she was admitted in Intensive Care Unit of Appolo Hospital, Kolkata for treatment. It

is further alleged that the complainant after receiving information regarding the illness of his daughter went to Kolkata and she was brought to

Deoghar after being discharged from hospital. It is alleged that the marriage between Sweta Kashyap and Prabhakar Jha, broken due to the

impotency of petitioner No. 1. It is further stated that in view of break, of marriage, a notice was given to the petitioners for returning the Stridhan

of Sweta Kashyap, which she had entrusted to them for keeping in safe custody"but the accused persons did not give any heed to the request of

complainant and / or Sweta Kashyap and thereby they have committed an offence of criminal breach of trust punishable u/s 406 of the IPC.

3. It appears that on the basis of aforesaid complaint petition, P.C.R. Case No. 108 of 2002 was instituted by the CJM, Deoghar. It further

appears that the complainant was examined on S.A. and thereafter other witnesses were also examined during inquiry and thereafter the summons

were issued against the accused persons u/s 204 of the Cr.P.C. It appears that thereafter the accused persons appeared and filed a discharge

petition in the court below which was rejected by the impugned order against that the present application has been filed.

4. It is submitted by learned Counsel for the petitioner Sri. A.K. Kashyap that from perusal of complaint petition, statement of complainant on S.A.

as well as the statement of Sweta Kashyap, who has been examined in the court below at the time of inquiry, it is clear that there is no entrustment

of any property to the accused person at Deoghar. It is alleged that Sweta Kashyap had entrusted her Stridhan to petitioners in her Sasural

situated at Kolkata. The allegation of breach of trust"" is also at Kolkata. Accordingly, it is submitted that Deoghar court have no territorial

jurisdiction to try the offences, which has been committed at Kolkata. Accordingly, it is submitted that since the Deoghar court have no

jurisdiction"to try the same, the accused persons are entitled to be discharged. Thus the learned court below had committed serious illegality in

entertaining the complaint petition at Deoghar.

5. On the other hand Sri Kalyan Roy, learned Counsel for the O.P. No. 2 submits that the property was gifted to Sweta Kashyap at Deoghar,

therefore part of the cause of action arose at Deoghar. He further submits"that as per section 181(4), of the Criminal Procedure Code the offence

of breach of trust can be tried by a court within whose local jurisdiction the offence was committed or any part of the property which is the subject

matter of offence was received or retained or was required to be returned or accounted for by the accused persons. It is submitted that after the

break of marital tie in between Sweta Kashyap and petitioner No. 1, Sweta Kashyap is residing at Deoghar. She requested the petitioners for

returning the Stridhan at Deoghar. Therefore, as per section 181(4) of Cr.P.C., Deoghar court have jurisdiction to try the case. It is submitted that

from perusal of complaint petition, statement of complainant on S.A. as well as the Statement of Sweta Kashyap, it is clear that the said Sweta

Kashyap had entrusted her Stridhan to the petitioners for keeping it in safe custody, which they are not returning even on demand made by her,

therefore, prima facie offence u/s 406 of the IPC is made out. Hence the learned court below had rightly rejected the discharge petition filed by the

petitioners.

6. Having heard the submission, I have gone through the record of the case. It is an admitted position that the daughter of complainant Sweta

Kashyap married with the petitioner No. 1 at Deoghar on 8.2.2001. It is stated at paragraph No. 3 of the complaint petition that after the

marriage, the aforesaid Sweta Kashyap went to her Sasural situated at Kolkata. It is further stated in the complaint petition that during the marriage

the complainant and his other relatives gave ornaments, furniture and other house hold articles to Sweta relates to offences of criminal

misappropriation or criminal breach of trust. Section 181(4) of the Cr.P.C. runs as follows:

(4) 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.

From the plain reading of section 181(4) of the Cr.P.C. it appears that the offence of criminal breach of trust can be tried by a court within whose

jurisdiction the offence was committed or any part of the property was received or retained or was required to be returned or accounted by the

accused persons.

9. As noticed above, in the instant case, it is admitted by daughter of complainant that she entrusted all her Stridhan i.e. gift received by her during

the marriage, to the accused persons at Kolkata. The complainant had also stated on S.A. that in presence of witnesses he had given all the articles

to his daughter during the marriage. Thus in the instant case the entrustment of property is at Kolkata and the properties were also retained at

Kolkata.

10. Now the question arose as to whether after dissolution of marriage if the daughter of complainant resides at her parental house at Deoghar then

the accused persons are required to return the said articles at Deoghar? Their Lordships of Supreme Court Asit Bhattacharjee Vs. Hanuman

Prasad Ojha and Others, has held that as per section 181 subsection 4, offence of criminal breach of trust may be inquired or tried by the court

within whose jurisdiction the accused was bound by law or by contract to return or accounts the entrusted property.  
There is absolutely no law

which bounds the husband or his family members to return the Stridhan property of his ex-wife at her parental house.  
Thus, the petitioners are not

bound under the law to return the Stridhan of Sweta Kashyap at Deoghar. Likewise in the instant case the complainant has not brought on record

any evidence to show that at the time of entrustment of the said property there was a contract and/or agreement between Sweta Kashyap and

petitioners that they will return her properties at Deoghar. Thus, in my view, the aforesaid law laid down by their Lordships of Supreme Court, the

Deoghar court have no jurisdiction to entertain the complaint petition filed by the O.P. No. 2 and try the same. A similar view was taken by

Harjeet Singh Ahluwalia Vs. State of Punjab and Another, . In that case the marriage between the parties solemnized at Delhi, the dowry items

were also entrusted to them at Delhi and it is alleged that the said property were handed over at Delhi. Thus, it has been held by their Lordship;

that FIR for criminal breach of trust cannot be filed at Amritsar.

11. Thus, even if the allegations made by the complainant is taken to be true on its face value then also the Deoghar Court have no territorial

jurisdiction to try the said case in view of section 177 and 181(4) Cr.P.C. Thus entire criminal proceeding against the petitioners in connection with

PCR Case No. 108 of 2002 pending in the court of Sub Divisional Judicial Magistrate, Deoghar is without jurisdiction.

12. In the result, this application is allowed. Entire criminal proceeding relating to PCR Case No. 108 of 2002 corresponding to T.R. No. 49 of

2003/224 of 2004 is hereby quashed. It is however, made clear that if the complainant and/or Sweta Kashyap if so desires, may file separate

complaint at Kolkata.