
(2023) 02 GAU CK 0007
In the Gauhati High Court
Case No : Tr.P.(Crl.) No. 39 Of 2019

Ganesh Biswas And 4 Ors.

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 09-02-2023

Acts Referred:

Indian Penal Code, 1860 — Section 406, 498A, 506
Code Of Criminal Procedure, 1973 — Section 178, 181, 181(4), 407

Citation : (2023) 02 GAU CK 0007

Hon'ble Judges : Parthivjyoti Saikia, J

Bench : Single Bench

Advocate : P K Roychoudhury, J. Roy,

Final Decision : Allowed

Judgement

1. Heard the learned counsel Mr. PK Roychoudhury appearing for the petitioners. Also heard Mr. J. Roy, the learned senior counsel representing the respondent(s).
2. This is an application under Section 407 of the CrPC seeking a transfer of the Complaint Case No.170 of 2019 under Section 406 and 506 of the Indian Penal Code pending in the court of the Chief Judicial Magistrate at Jorhat to the court of the Chief Judicial Magistrate, Kamrup(Metro) at Guwahati.
3. The sole respondent was married to the petitioner no.1 on 17.01.2019. It was an arranged marriage. Very soon, the couple fell from cloud nine. Marital disputes started to arise. She left her matrimonial home at Guwahati and started to reside with her parents at Jorhat. Her stridhan properties are still in her matrimonial house at Guwahati. For recovery of those items, she filed a case being CR No.170/2019 under Section 406/506 of the Indian Penal Code in the court of the Chief Judicial Magistrate, Jorhat.
4. In support of their cases, the petitioners have relied the provision of law as laid down in Section 181(4) of the CrPC. It reads as under:

"181(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."

5. In order to buttress his points, Mr. Roychoudhury has relied upon a decision of this Court that was delivered in *Dilip Kr. Sengupta and Ors. Vs. Shiuli Sen*, reported in (2014) 3 GLR 555.

6. Paragraph 22 of the said judgment is quoted as under:

"22. When the stridhan articles were received at Lumding within the territorial jurisdiction of the Court at Hojai and when the allegation of criminal breach of trust is made, in the considered opinion of the Court, the Court at Hojai, Sankardev Nagar will have territorial jurisdiction to proceed with the matter in terms of section 181(4), Cr.PC."

7. Per contra, Mr. J. Roy has relied upon a decision of the Supreme Court that was delivered in *Rupali Devi vs. State of Uttar Pradesh and Ors.*, reported in (2019) 5 SCC 384. Paragraph 16 of the judgment reads as under:

"16. We, therefore, hold that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498-A of the Penal Code."

8. I have considered the submissions made by the learned counsel of both sides.

9. In *Rupali Devi's* case (*supra*), the married woman was driven out of her matrimonial home and the question arose in which of the places her case under Section 498-A would lie. After analysing the provision of Section 178 of the CrPC, the Supreme Court has held that a case under Section 498-A of the Penal Code would lie in the place where the woman has taken shelter after leaving or driven away from the matrimonial house.

10. In *Dilip Kr. Sengupta's* case (*supra*), this Court has clarified that where the stridhan articles are received, there only the case would lie, according to the provisions of Section 181(4) of the CrPC.

11. According to Section 181(4) CrPC, any offence of criminal misappropriation or criminal breach of trust may enquired into or tried by 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.

12. An offence under Section 498-A of the IPC and an offence under Section 406 of the IPC are two distinct offences. They are not similar offences. Unlike Section 498-A of the Indian Penal Code, the Section 181 of the CrPC has laid

down the guideline as to where the trial for an offence of criminal breach of trust should be held.

13. In the case in hand, the stridhan properties were received at Guwahati within territorial jurisdiction of the court at Guwahati and the alleged criminal breach of trust or criminal misappropriation is committed at Guwahati. Therefore, the court at Guwahati shall have the territorial jurisdiction to proceed with the matter in terms of Section 181(4) of the CrPC.

14. With the aforesaid premised reasons, the transfer petition is allowed. The Complaint Case No.170/2019 under Sections 406/506 of the Indian Penal Code, pending in the court of the Chief Judicial Magistrate, Jorhat shall be transferred to the court of the Chief Judicial, Kamrup (Metro) at Guwahati.

The Transfer petition is disposed of accordingly.