
(1989) 08 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 5686-M of 1987

Hakam Singh and Others

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision : 10-08-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 472, 482

Dowry Prohibition Act, 1961 — Section 2, 4, 6

Penal Code, 1860 (IPC) — Section 306, 34, 406

Citation : (1990) 1 DMC 343 : (1990) 97 PLR 21 : (1989) 2 RCR(Criminal) 442

Hon'ble Judges : A.P. Chowdhri, J

Bench : Single Bench

Advocate : N.B.S. Gujral, for the Appellant; Ajay Pal Singh and S.K. Sharma, A.A.G., for the Respondent

Judgement

A.P. Chowdhri, J.—The petitioners seek quashing of complaint, Annexure P-1 and summoning order, Annexure P-2, passed thereon by the learned Judicial Magistrate, 1st Class, Rajpura, u/s 482 of the Code of Criminal Procedure.

2. Unfortunately, the marriage between Smt. Narinder Kaur, Respondent No. 2 and Hakam Singh, petitioner No. 1 did not work. Narinder Kaur filed complaint, Annexure P-1 dated 4-5-1987. The material allegations for the present purpose made in the complaint are as under:

3. Narinder Kaur was married with Hakam Singh at village Hamayunpur, Police Station Lalru, Tehsil Rajpura, District Patiala, in May, 1981. The parents and other relations of the complainant gave articles detailed in paragraph 3 valued at Rs. 35,000/- as dowry to the complainant. These articles were entrusted to the accused persona. The said dowry items constituted Stridhan of the complainant and the accused persons had dominion over the same. The complainant was turned out of the house in April, 1984, in bare clothes. The accused persons kept her entire Stridhan and in fact converted the various items of dowry to their own use. They thereby committed an offence of criminal breach of trust punishable u/

s 406, read with Section 34, Indian Penal Code.

4. After recording preliminary evidence, the learned Magistrate summoned the accused u/s 406 read with Section 34, Indian Penal Code, by order dated 5-6-1987, Annexure P-2. The accused are the husband (petitioner No. 1); father-in-law, petitioner No. 2, mother-in-law, petitioner No. 3, grandmother of the husband, petitioner No. 4, brother of the husband, petitioner No. 5 and sister of the husband, petitioner No. 6. It may also be mentioned that Gurmit Kaur, petitioner No. 6 is even now a minor and she filed the present petition through her father Karnail Singh.

5. Learned counsel for the petitioners made two submissions. He contended that the complaint in question was barred by limitation u/s 468 of the Code of Criminal Procedure (hereinafter referred to as the Code). The Magistrate had no jurisdiction to take cognizance of the offence and the complaint deserved to be quashed on this ground. The other submission is that the complainant failed to make any specific allegation against the various accused and she had attempted to rope in all relations of the accused including grandmother of the husband on the one hand and a minor sister on the other hand.

6. I shall deal with both these contentions in the same order.

7. Learned counsel for the petitioners referred to Section 468 of the Code, which lays down a limitation of three years where the offence involved is punishable with imprisonment for a term exceeding one year but not exceeding three years. The offence u/s 406, Indian Penal Code, is punishable with imprisonment upto three years. Reference was also made to *Gurcharan Singh v. Lakhwinder Kaur* 1988 (2) RC.R. 621. The above case related to an offence u/s 406, Indian Penal Code, and Sections 4 and 6 of the Dowry Prohibition Act, 1961. It was not disputed before the learned Single Judge in the above case that the period of limitation was three years from the date when the offence was committed. It was held that the learned Magistrate was not competent to take cognizance of the offence and the complaint was, therefore, quashed u/s 482 of the Code. Learned counsel also referred to *State of Punjab v. Sarwan Singh* 1982(1) CLR 63, in which the Supreme Court dismissed SLP against the order of this Court, whereby this Court had set aside the conviction on the ground that the prosecution had been launched after the expiry of limitation prescribed in the Code.

8. The contention of learned counsel for the State is that the offence u/s 4015, Indian Penal Code, was a continuing offence and the relevant provision with regard to limitation is contained in Section 472 of the Code. It was also argued that in any case, the Court had ample powers u/s 473 to condone the delay or take cognizance of the offence even beyond the period of limitation in the interest of justice.

9. After hearing learned counsel for both the parties and on a careful examination of the question, I find merit in the contention of learned counsel for the State. The opening words of Section 468 relating to limitation for various

offences are "except as otherwise provided elsewhere in this Code". It follows that the provisions of Section 468 have to be read subject to other provisions relating to limitation in the Code. Section 472 is one such section. The question then arises whether the offence u/s 406, Indian Penal Code is a continuing offence. The expression "continuing offence" though used in several statutes including the Code has not been defined. In *Bhagirath Kanoria and Ors. v. State of M.P.* 1985 (1) CLR 112 the Supreme Court pointed out the difficulty in defining the expression "continuing offence" in precise terms. This was largely because certain expressions do not have a fixed connotation or a static import and it is therefore difficult to define them in a strait jacket. Their lordship recalled the observations in *State of Bihar Vs. Deokaran Nenshi and Another*, and extracted the following passage :

"A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offence which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

In the absence of a precise definition of the expression "continuing offence", their lordships in the aforesaid judgment in *Deokaran Nenshi's* case (supra) mentioned some illustrative cases. These were three cases from England, two from Bombay and one from Bihar. One of the English cases mentioned in this case was *Best v. Butler and Fitzgibbon* (1932) 2 K.B. 108. The English Trade Union Act, 1871 made it penal for an officer or a member of a Trade Union to wilfully withhold any money, books, etc. of the Trade Union. It was held in that case that the offence of withholding the money was a continuing offence, the basis of the decision evidently being that every day that the moneys were wilfully withheld, the offence was committed. This illustration throws a great deal of light in appreciating the meaning of the expression "continuing offence". In *Bhagirath Kanoria's* case, it was held by the Supreme Court that the offence u/s 14(2A) of the Employees Provident Fund and Family Pension Fund Act, 1952, i.e. failure on the part of the accused to pay employers' contribution to the provident fund in accordance with the provisions of the Act was a continuing offence. It was laid down that whether an offence was a continuing offence or not is to be determined by taking into consideration the language of the statute, the nature of the offence and the purpose intended to be achieved in creating the offence. This conclusion finds support from the definition of the expression "stolen property" which is defined u/s 410, Indian Penal Code, as under

"410. Stolen property--Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally-misappropriated or in respect of which criminal breach of trust has been committed, is, designated as "stolen property", whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property."

The above definition unmistakably shows that property which has been criminally misappropriated is included in the definition of the expression "stolen property" and significantly it continues to be stolen property till it comes into the possession of a person legally entitled to it. The irresistible conclusion is that once the offence of criminal misappropriation is committed, it will continue till the property criminally misappropriated is restored to the person entitled to the possession thereof. A perusal of the two judgments relied upon by learned counsel for the petitioners and referred to above shows that this aspect of the question was not brought to the notice of the learned Judges and therefore the said authorities are of no assistance in resolving the present controversy. It may further be pointed out that in Gurcharan Singh's case (*supra*), it was not disputed before the learned Judge that limitation in the case of an offence u/s 406, Indian Penal Code was three years. In the Supreme Court case as well, this question was never raised or gone into. It is settled law that rulings cited as precedents have not to be read as statutes.

10. Learned counsel for the State also relied on *Swaran Lal v. Smt. Bimla Devi* 1982 S.C C 6 . The question raised was whether the complaint under Sections 4 and 6 of the Dowry Prohibition Act, 1961, was time barred, *B.S. Yadav, J.* (as his lordship then was) referred to an earlier decision of this Court in Criminal Misc. No. 4982-M of 1977, in which a learned Single Judge of this Court had taken the view that non-return of dowry items is not an offence which can be said to have been committed on a particular date only. It was held that in fact it was a continuing offence and as long as the dowry items were not returned, the offence continued. The learned Judge also pointed out that u/s 472 of the Code, a fresh period of limitation begins to run at every moment of time during which the offence continues. The offence under Sections 4 and 6 of the Dowry Prohibition Act is analogous to the offence u/s 406 and for the reasons stated by the learned Judges in the aforesaid cases, there is no difficulty in concluding that the offence u/s 406 is a continuing offence.

There is force in the ancillary argument of the learned counsel as-well. Admittedly, the learned Magistrate took cognizance of the offence and summoned the accused persons. In Section 473 of the Code, there is an overriding provision and the Court is entitled to take cognizance of an offence after the expiry of period of limitation if it is satisfied on the facts and circumstances of the case that the delay has been properly explained or that it is

necessary to do so in the interest of justice.

11. The facts and circumstances of the case are apparent and there is no reason to interfere with the exercise of that discretion u/s 482 of the Code. It has been repeatedly emphasised that powers u/s 482 of the Code are to be used sparingly and only in clearest of clear cases. Reference in this connection may be made to *Pratibha Rani v. Suraj Kumar and Anr.* 1985. (1) CLR 666 and *Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Ors.* (1976) Supp SCR 123.

12. The next contention of learned counsel for the petitioners is that the allegations made in the complaint were not specific with regard to entrustment of specified items of dowry to a certain accused. On behalf of the State my attention was drawn to items Nos. 5, 6, 13, 14, 15 and 17 in paragraph 3 of the complaint, Annexure P-I, specifying the particular accused with reference to the mentioned item of dowry. These items referred to accused Nos. 1, 2, 3 and 6. None of the items relates to either Manjit Singh, accused No. 5 or Jagir Kaur accused No. 4. In this connection, it may be pointed out that the concept of dowry as defined in Section 2 of the Dowry Prohibition Act, 1961 is wider than the concept of Stridhan. While dowry signifies presents given in connection with marriage to the bridal couple as well as others, Stridhan is confined to property given to or meant for the bride. A reference to *Pratibha Rani's* case (*supra*) and a number of decisions mentioned therein leaves no room for doubt that the concept of Stridhan necessarily implies property given or intended to be for the benefit of the bride. Thus presents given and intended to be given to others, say relations of the groom as in this case are not covered within the meaning of Stridhan. There can thus be no misappropriation in respect of such items which are not covered in Stridhan. It will be an insult to common sense to say that sister-in-law or mother-in-law i.e. sister or mother of the groom will be guilty of criminal misappropriation for failing to restore possession of a suit or set of clothes et cetera presented to them and meant to be used by them at the time marriage of her brother or son. Even otherwise, it is too well-known that normally, valuable items of dowry are entrusted to elderly people like parents and they are not entrusted to minor children or brother et cetera of the groom. In the complaint as well as in the statements recorded by the learned Magistrate, all that the complainant and the witnesses stated was that the dowry items were entrusted to the accused without specifying as to which item of dowry was entrusted to which accused. The case against the husband and his parents stands on a different footing.

13. The proper course for the petitioners was to have pressed for the discharge of the accused at the stage of framing the charge. The petitioners were not well-advised in rushing to the High Court for quashing the proceedings under the extraordinary jurisdiction of the High Court u/s 482. Since the petition has been pending in this Court for almost two years, it will be unfair to now direct them to have proper relief from the Court of the Magistrate at the time of framing charge. In the absence of exceptional circumstances to be brought out, this Court does

not interfere u/s 482 of the Code, where relief can be obtained under some other relevant provision of the Code in the Courts below.

14. For the reasons mentioned above, the complaint as also summoning order against Smt. Jagir Kaur, petitioner No. 4 Manjit Singh, petitioner No. 5 and Gurmit Kaur, petitioner No. 6 are hereby quashed. The case against the remaining accused shall be proceeded with according to law. It may be made clear that nothing said in this order shall prejudice the case against the remaining accused in respect of whom the present petition is being dismissed. The Court is expected to decide the case against the remaining accused according to law. The petition is allowed to the extent mentioned above.

15. Petitioners Nos. 1, 2 and 3 as also the respondents are directed through counsel to appear in the trial Court on 21-8-1989.