

(1963) 02 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 849 of 1962

Jaswant Rai and others

APPELLANT

Vs

Shrimati Kanwal Rani

RESPONDENT

Date of Decision : 12-02-1963

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 155, 156, 156(3), 156(b), 190
Penal Code, 1860 (IPC) — Section 400, 403, 406

Citation : (1963) 02 P&H CK 0008

Hon'ble Judges : H.R. Kahnna, J

Bench : Single Bench

Advocate : M.R. Mahajan and R. Sachar, for the Appellant; K.S. Chhachi and Gur Rattan Pal Singh and Messrs L.D Kaushal, D.A.G. and Satish Sibal, for the Respondent

Judgement

H.R. Khanna, J.—This is an application u/s 561-A of Code of Criminal Procedure filed by Jaswant Rai and six other Petitioners for quashing the proceedings against the Petitioners in the Court of Magistrate 1st Class, Chandigarh u/s 406, Indian Penal Code.

2, The facts giving rise to the present petition are that on 25th August, 1962 Kamal Kumari Jain filed a complaint u/s 406, Indian Penal Code, against the seven Petitioners on the allegations that she was married to Karnal Kant Petitioner No. 2, on 18th April, 1961 at her parents' residence at 4, Hailey Road, New Delhi, Jaswant Rai Petitioner No. 1 is the elder brother of Karnal Kant and Uma Rani Petitioner No. 6 is the wife of Jaswant Rai. Daya Wanti Petitioner No 7 is the mother of Karnal Kant and Jawahar Lal Petitioner No. 3 is the younger brother of Karnal Kant. Subhash Wati and Nakshtra Devi Petitioners Nos. 4 and 5 are the younger sisters of Karnal Kant and are unmarried. It is stated that at the time of the marriage, the parents and relatives of Kamal Kumari gave gifts worth Rs. 42,000/-. A number of ornaments and clothes were also given to Karnal Kumari, as stridhan by her husband's relatives. Those articles were handed over to Karnal Kant, Jaswant Rai, Uma Rani, Jawahar Lal, Subash Wati and Nakshtra

Devi by the parents of Kamal Kumari at the vide ceremony for being handed over to Kamal Kumari at her husband's house at Chandigarh or Ludhiana. Immediately after her arrival at her husband's house. Kamal Kumari was subjected to harsh treatment by her husband and his relatives on the ground that the dowry brought by her was not enough. Kamal Kumari then wrote to her parents about her ill-treatment. The news otherwise also trickled out to her parents, where-upon Kamal Kumari's father Kanshi Ram Jain accompanied by Sagar Chand came to Chandigarh on 5th July, 1961. Kamal Kumari was then turned out by her husband and his relatives from the house and her demand for the return of her valuables was turned down contemptuously. It is further stated that the valuable articles and ornaments which were entrusted to Petitioners Nos. 1 to 6 at the time of the marriage were handed over on arrival at Chandigarh by those Petitioners to Daya Wanti Petitioner No. 7 who refused to part with those articles in spite of the demand of Kamal Kumari. The Petitioners were accordingly stated to have misappropriated those articles and committed a criminal breach of trust punishable u/s 406 of the Indian Penal Code.

3. The trial Magistrate to whom the above complaint was presented on 25th August, 1962 recorded the statement of the complainant on that very day. A copy of the complaint was then ordered to be sent to the Deputy Superintendent of Police, Chandigarh, for enquiry and report u/s 202, Criminal Procedure Code. The case was thereafter adjourned to 10th September, 1962 to await the report of the Deputy Superintendent of Police.

4. On 10th September, 1962, S. I. Gain Chand of police station Chandigarh, to whom it appears the matter was entrusted, made a report in which there was a reference to a refrigerator and Rs. 10,000/-having been given to Kamal Kant by the father of Kamal Kumari at or about the time of the betrothal ceremony. There was also reference to some clothes, furniture, radiogram, crockery and ornaments having been presented at the time of the marriage. These articles were handed over to Jaswant Rai, his wife, brother and sisters for safe custody at Chandigarh or Ludhiana where the new couple was to settle. The couple lived happily for some months, but thereafter their relations became strained because of taunts hurled at Kamal Kumari for not bringing sufficient dowry. She was ultimately turned out with three clothes. The version of Jaswant Rai was stated to be to the effect that the father of Kamal Kumari instigated Kamal Kant to separate from the other members of his family and settle in Delhi. When Kamal Kant refused, the father of Kamal Kumari took his daughter to Delhi along with the ornaments. Kamal Kant, husband of Kamal Kumari, was stated to have admitted that Rs. 10,000/- presented to him at the time of betrothal ceremony were with him and that the refrigerator and radiogram presented to him were lying at his house and his wife could come to him and make use of those articles. On 10th September, 1962, the trial Magistrate passed the following order-

Present. Smt. Kamal Kumari complainant with her counsel Shri Gur Rattan Pal Singh Advocate. Heard. I have also gone through the report of S. I. Gian Chand

which has been received to-day from him through S. H. O. Police Station Chandigarh. It is, however, sent back to the S. H. O. police station, Chandigarh, for further enquiry u/s 202 of the Criminal Procedure Code. He should record some more evidence and if on the basis of that evidence he finds that there is sufficient ground for proceeding against the accused, he should register a case against them and investigate the case in a regular manner." A police report, it appears, was thereafter submitted and on 11th October, 1962, the trial Magistrate passed the following order-

Present. Smt. Kamal Kumari with her counsel Shri Gur Rattanpal Singh Advocate. The police report has been examined. Shri Gain Chand S. I. has reported vide his note dated 6th October 1962 on the file that the opinion of the Prosecuting Inspector. Rupa, which is also on the file, is not clear I am surprised at this report since the report of the P.I is quite unequivocal and does not involve any ambiguity whatsoever. He has clearly stated vide his report dated 29th September, 1962 that the complaint does disclose an offence u/s 406 of the Indian Penal Code. I agree with him since prima facie, a case u/s 406 of the Indian Penal Code appears to have been made out against the accused. A case should, therefore, be registered u/s 406 of the Indian Penal Code and then properly investigated. A copy of this order along with the enquiry file should be sent to S. H. O., P. S. Chandigarh for necessary action.

5. Mr. Mahajan learned Counsel for the Petitioners has challenged the legality of the above-mentioned two orders and has argued that the trial Magistrate having taken cognizance of the case could not have passed an order for registration of the case by the police and for its investigation. In my opinion, there is considerable force in the above contention. Sub-section (1) of Section 190 of the Criminal Procedure Code prescribes the modes in which a Magistrate empowered in that behalf, may take cognizance of an offence and which are to the following effect-

- (a) upon receiving a complaint of facts which constitute such offence:
- (b) upon a report in writing of such facts made by any police officer ;
- (c) upon information received from any person other than a police officer, or upon his own knowledge of suspicion, that such offence has been committed.

The mode mentioned in Clause (c) has no bearing in the present case and may be excluded from consideration. So far as the other two cases are concerned, that is, where a Magistrate takes cognizance upon receiving a complaint, and where a Magistrate does so upon a report made by a police officer, the procedure is essentially different in case the Magistrate takes cognizance of an offence upon receiving a complaint from the procedure to be adopted when the Magistrate takes cognizance upon a report in writing made by a police officer. Chapter XXI of the Code prescribes the procedure to be adopted in warrant cases by a Magistrate. The procedure to be adopted in warrant cases instituted on police reports is that given in Section 251-A of the Code, while that to be followed in

cases initiated otherwise than on police report is contained in Sections 262 to 258. A bare perusal of the above provisions of law goes to show that the procedure to be adopted in cases instituted on police reports differs in material particulars from that to be followed in cases instituted otherwise than on police reports. Question in the circumstances, arises whether the present is a case in which the procedure laid down in Section 251-A of the Code be adopted or that laid down in Sections 252 to 258. This in its turn would hinge upon the question as to whether the learned Magistrate can be held to have taken cognizance of the offence upon receiving a complaint as contemplated in Clause (a) of Sub-section (1) of Section 190 of the Code of Criminal Procedure. In my opinion the facts of the case, to which reference has already been made, clearly point to the conclusion that the learned Magistrate did take cognizance of the offence upon the complaint filed by Kamal Kumari. The question as to when a Magistrate can be said to have taken cognizance was discussed by their Lordships of the Supreme Court in *R.R. Chari Vs. The State of Uttar Pradesh*, . In that case, their Lordships approved the following observations made in *Supdt. & Remembrancer of Legal Affairs, Superintendent and Remembrancer of Legal Affairs Vs. Abani Kumar Banerjee*, , and observed that they embodied the correct approach to the question-

What is taking cognizance has not been defined in the Code of Criminal Procedure and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence u/s 190(1)(a), Criminal Procedure Code he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding, in a particular way as indicated in the subsequent provisions of this Chapter, proceeding u/s 200 and thereafter sending it for inquiry and report u/s 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind e. g. ordering investigation.....under Section 156(3), or issuing a search warrant for the purpose of the investigation he cannot be said to have taken cognizance of the offence.

The above case was followed in *Narayandas Bhagwandas Madhavdas Vs. The State of West Bengal*, In the present case, the trial Magistrate after the filing of the complaint, recorded the statement of the complainant and referred the matter of enquiry and report to the police u/s 202 of the Criminal procedure Code. He also applied his mind to the case and in his order dated 11th October, 1962 observed that there was a prima facie case u/s 400, Indian Penal Code. In the circumstances, and keeping in view the dictum approved by the Supreme Court, the trial Magistrate should be taken to have taken cognizance of the offence under Clause (a) of Sub-section (1) of Section 190 of the Code of Criminal Procedure on the report made by Kamal Kumari. The procedure to be followed in the case consequently is that laid down in Sections 252 to 258 of the Criminal Procedure Code.

6. Question, however, arises whether the learned Magistrate having taken cognizance of the case on report of Kamal Kumari could have passed an order directing the police to register a case and investigate the same. In my opinion, such an order could not legally be made by the learned Magistrate after his having taken cognizance of the case upon the complaint made by Kamal Kumari. The only provision of law to which I have been referred at the hearing of the case under which a Magistrate can order investigation of a case, apart from investigation for report u/s 202, Criminal Procedure Code, is Sub-section (3) of Section 156 of the Code which reads as under-

156. (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered u/s 190 may order such an investigation as above-mentioned

Investigation under Sub-section (3) of Section 156, in my opinion, can be ordered by a Magistrate only before he has taken cognizance of the offence on a complaint made under Chapter XVI. Once the Magistrate takes cognizance, he can only take such action as is permitted to him u/s 200 and the subsequent sections of the Code. Section 200 prescribes for the examination of the complainant and the witnesses, if any, upon a Magistrate taking cognizance of a complaint. Section 201 relates to procedure to be adopted by a Magistrate not competent to take cognizance of the case. Section 202 provides that the Magistrate may if he thinks fit, for reasons to be recorded in writing postpone the issue of process against the accused, and enquire the case either himself or direct enquiry or investigation to be made by a Magistrate subordinate to him or a police officer or any other person for the purpose of ascertaining the truth or falsehood of the complaint. Section 203 provides for the dismissal of a complaint, if, after considering the statement of the complainant and the result of enquiry or investigation, there is no ground for proceeding. Section 204 provides for the issue of process by the Magistrate if he finds that there is ground for proceeding. The question as to whether a Magistrate after having taken cognizance of a case can direct the police to register a case and investigate the same has been the subject-matter of some authorities and it would be useful to refer to them. In a Division Bench case decided by Harries C. J. and Dass J., *Putin Behari v. The King*, (1948) 53 C W. N. 643 it was observed as under-

When a complaint is filed before a Magistrate he should either take cognizance of it u/s 200 of the Code and proceed under Chapter XVI or send the complaint to

the officer in charge of the police station directing him to proceed under Chapter XIV of the Code. He should not make a hybrid composite order, both u/s 156(3) and u/s 202 of the Code, as he made in the present case.

above mentioned case was followed by another Division Bench of the same Court i Bissen Singh Vs. Prameswari Singh and Another, , and it was held as under-

When a complaint is filed before a Magistrate he can adopt one of two courses. He can examine the complainant upon oath and then issue process. On the other hand he can u/s 202 of the Code postpone the issue of process and refer the complaint to a Magistrate or the police for further enquiry and then take action on receipt of their-report. The other course open to the Magistrate is to send the complaint to the police asking them to take action u/s 156(b) of the Code. In that case the Magistrate would not examine the complainant, but merely forward the complaint to the police for investigation and taking cognizance.

Similar view was taken in Asha Das v. The State, A. I. R. 1953 Ass 1.

7. The learned trial Magistrate in the present case not only took cognizance of the case on the complaint filed by Kamal Kumari, but he also passed an order directing the police to register a case and investigate the same. Such an order which, in the words of Dass J., (in Pulin Behari's case, (1948) 53 C W. N. 643, was a hybrid composite order was contrary to law and as such is liable to be quashed.

8. Mr. Kaushal, learned Advocate-General, has argued that even though the trial Magistrate could not direct the police to register a case and investigate the same under Sub-section (3) of S. 156 of the Code, there was nothing to prevent the police from acting independently under Sub-section (1) of S. 155 of the Code in registering the case, investigating the same, and submitting a charge-sheet. Reference in this connection has been made by Emperor Vs. Bhola Bhagat and Others, AIR 1932 579 (Lahore) and Emperor v. Bhika Moti, A. I. R. 1938 Sind. 113 (F. B.) These cases related to investigation having been made by the police independently of the directions of the Magistrate. In my opinion, the above authorities are not of much assistance in the present case because there is nothing to show that the police is acting independently of the order made by the trial Court. On the contrary, the order dated 11th October, 1962 made by the trial Magistrate which has been reproduced above goes to show that the learned Magistrate animadverted upon the attitude of S. I. Gian Cand, who apparently had not shown his keenness to register the case. Order was accordingly passed directing the police to register the case. The aforesaid order tends to show that the registration of the case was in pursuance of and not independently of the order of the learned Magistrate.

9. This Court would also not be justified in staying its hand when an illegality in the order of the trial Court is brought to its notice at an initial stage and to let the matters proceed in pursuance of the illegal order. On the contrary, the ends of justice demand that the illegality should be rectified to avoid the risk of all the

proceedings being set at naught after the entire evidence has been recorded. I would, therefore, quash the orders dated 10th September, 1962 and 11th October, 1962 made by the trial Magistrate and direct that he should proceed in the case as one in which cognizance is taken on a private complaint.

10. It has next been argued by Mr. Mahajan that the proceedings be quashed as the allegations made in the complaint do not disclose an offence u/s 406, Indian Penal Code. The principles which should guide the High Court in quashing proceedings on an application u/s 561-A, Criminal Procedure Code, having been laid down by their Lordships of the Supreme Court in R.P. Kapur Vs. The State of Punjab, and it has been stated therein as follows-

The inherent power of High Court u/s 561-A, Criminal Procedure Code, cannot be exercised in regard to matters specifically covered by the other provisions of the Code. The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily, criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction.

Their Lordships enunciated some of the categories of cases where the inherent jurisdiction to quash proceedings can and should be exercised. Category (ii), which has a bearing is to the following effect-

(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not constitute the offence alleged ; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

Keeping the above principle in view, we have to see whether a perusal of the complaint, and accepting the allegations made in their entirety, discloses an offence u/s 406 of the Indian Penal Code against the accused. So far as Jaswant Rai, Jawahar Lal, Subhash Wati, Nakshtra Devi and Uma Rani Petitioners are concerned, all that is alleged against them is that the articles presented at the time of the marriage of Kamal Kumari were entrusted to them and those Petitioners on arrival at the house of the bridegroom at Chandigarh made them over to the mother of the bridegroom. As the articles presented at the time of the marriage were not retained by the above-mentioned Petitioners with themselves, but were made over to the mother of the bridegroom presumably for safe custody on behalf of the bride, it cannot be said on a fair reading of the complaint that an offence u/s 403 of the Indian Penal Code is disclosed against them. The complainant no doubt reveals a story of maltreatment of the complaint by her husband and his other relatives and if those allegations are

correct one must have sympathy for the complainant and condemn the act of those responsible for her maltreatment, but this would not justify the involving of all the members of the husband's family including his younger brother and sisters, some of whom are stated to be students, in a criminal case for breach of trust. I would, therefore, to prevent abuse of the process of court and to secure the ends of justice, quash the proceedings so far as the case against Jaswant Rai, Jawahar Lal, Subash Wati, Nakshtra Devi and Uma Rani Petitioners is concerned. The case against Kamal Kant, husband of the complainant, and his mother Daya Wanti who is alleged to be retaining the ornaments in her custody, stands on a different footing and nothing has been shown to me justifying the quashing of proceedings against them. I accordingly decline to quash the proceedings against Kamal Kant and Daya Wanti Petitioners.