

(1997) 04 AHC CK 0018

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 471 of 1994

Nishant Pandey and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 30-04-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 482
Hindu Marriage Act, 1955 — Section 13, 9
Penal Code, 1860 (IPC) — Section 406, 498A

Citation : (1997) 21 ACR 757

Hon'ble Judges : A.N. Gupta, J

Bench : Single Bench

Advocate : Ravi Prakash Mehrotra, for the Appellant; G.A.G.N. Misra and A. Siddiqui, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Gupta, J.—Smt. Sunita Pandey opposite party No. 2 is the wife of Petitioner No. 1 Nishant Pandey. Petitioners No. 2 and 3 are father-in-law and mother-in-law of Smt. Sunita Pandey. Smt. Sunita Pandey and Nishant Pandey were married on 21.1.1992 at Lucknow in accordance with Hindu Rites. At that time, Nishant Pandey was working in the Merchant Navy and, therefore, he used to remain mostly on the High Seas during the better part of the year. During this time Smt. Sunita Pandey was putting up with her-in-laws who are also residents of Lucknow. Sri. M. P. B. Tripathi, the father of Smt. Sunita Pandey is residing at Lucknow. He is a retired Commissioned Officer of the Army.

2. On 25.3.1994, Nishant Pandey had filed a case for restitution of conjugal rights in family court at Lucknow against Smt. Sunita Pandey u/s 9 of the Hindu Marriage Act which continued for about two years without decision and ultimately Nishant Pandey withdrew the said case. Sometime in the year 1996, he filed a petition for divorce u/s 13 of the Hindu Marriage Act which is pending now before the family court at Lucknow.

3. On 17.5.1994, Smt. Sunita Pandey filed a criminal complaint u/s 406, I. P. C. against the Petitioners alleging that at the time of marriage her parents, relations and friends gave several ornaments and other articles which were "Stri Dhan" properties. The list of such articles was given in Schedule A of the complaint. It includes several gold ornaments namely four Churiyans weighing 50 grams, one gold set weighing 40 grams, Chain set weighing 20 grams, Mang Teeka weighing 6 grams, five rings and several items of furniture including cushion, mattress, dinner set, gown, sarees and other clothes and Rs. 1,70,000 in cash at the time of Tilak". Rs. 10,001 at the time of "Vidai" Scooter, T.V. and Rs. 7,000 in cash, etc. According to the complaint, all these articles which were her "Stri Dhan" properties were taken by the Petitioner at the time of "Vidai". Her-in-laws had also presented to her some ornaments, a list of which was given in Schedule B to the complaint which included neckles, ear rings and three rings (all which are of gold). It was further alleged that on 28.1.1994 Smt. Sunita Pandey was turned out from her matrimonial house. She had to reside with her parents. The Petitioners kept "Stri Dhan" properties of the complainant with them and did not return to her and they wanted to usurp the same and are trying to disappear the same. When she was turned out from her matrimonial home, her "Stri Dhan" properties were not given to her. The parents of the complainant and their relations demanded several time to return of the "Stri Dhan" properties of the complainant but due to dishonest intention of the Petitioners, they did not return the same. On 20.3.1994, the husband of the complainant along with his brothers, etc., came to the house of the parents of the complainant and demanded further dowry regarding which complainant's father had lodged an F. I. R. on 22.3.1994. It is further alleged in the complaint that inspite of complainant's repeated demands, they have not returned her aforesaid "Stri Dhan" and they are misusing it for their benefits and as such they had committed breach of trust.

4. The complainant was examined on 4.8.1994 u/s 200, Code of Criminal Procedure in which she repeated the allegations on oath as contained in the complaint. Kailash Nath Misra who had participated in the marriage was examined u/s 202, Code of Criminal Procedure and he testified to the fact that the properties mentioned in Schedule "A" and "B" were given to the complainant at the time or before marriage in his presence. Similar statement was made by Pandit Rakesh Kumar Chaturvedi (Purohit) u/s 202, Code of Criminal Procedure who got performed all the ceremonies connected with the marriage including Tilak ceremony.

5. On 22.3.1994, father of the complainant lodged an F. I. R., u/s 498A, I. P. C. against the Petitioners alleging that on 20.3.1994 Petitioner No. 1 Nishant Pandey and his brothers came to his house along with their cousin sisters, abused inmates of the house, threatened the complainant and her father with dire consequences and asked for Maruti Car in dowry.

6. Learned Magistrate by means of his order dated 22.8.1994 has summoned the

Petitioners u/s 406, I.P.C. mentioning therein that a persual of the evidence recorded by him under Sections 200 and 202, Code of Criminal Procedure and the F.I.R. dated 22.3.1994 lodged u/s 498A, I.P.C. by father of the complainant, he was satisfied that a prima facie case was made out against the Petitioners u/s 406, I.P.C. This order summoning the Petitioners u/s 406, I.P.C. has been challenged by filing this petition u/s 482, Code of Criminal Procedure

7. It was strenuously urged by the learned Counsel for the Petitioners that in the complaint, it was not mentioned as to on what date a demand for returning the "Stri Dhan" properties was made by the complainant and to whom it was entrusted and, therefore, in the absence of these particulars, the complaint was liable to be quashed and the Petitioners could not be subjected to a criminal trial. This argument has no substance because in the complaint, it was specifically averred that at the time of Vidai immediately after marriage, the Petitioners had taken with them the entire "Stri Dhan" properties which were given to the complainant before or at the time of marriage. It was also given out in the complaint that the marriage had taken place on 21.1.1992 which shows that Vidai must have taken place on 22.1.1992. It was also averred in the complaint that on 28.1.1994 the complainant was turned out of her matrimonial home they did not return her "Stri Dhari properties with dishonest intention of retaining the same for their use or for disappearing it or for usurping the same. Thus, that date, i.e., 28.1.1994 was also mentioned in the complaint. It is also true that in the complaint the date of demanding back the "Stri Dhari properties by the complainant from the Petitioners has not been given but that can be brought out during evidence either in the examination-in-chief or in the cross-examination or in reply to court question. in any case, just for lack of this one date, complaint cannot be thrown out when the complaint is otherwise perfectly in order.

8. Learned Counsel for the Petitioners placed reliance on a decision of Hon"ble the Supreme Court given in the case of Pratibha Rani v. Suraj Kumar and Anr. 1985 SCC 180 . This decision was given by a Bench of three Hon"ble Judges of the Supreme Court and the majority judgment is by two Hon"ble Judges. That decision was rendered on 12th March, 1985. In that case, wife had filed a complaint u/s 406, I.P.C. against her husband and other members of the family of her husband and it was pleaded that no case for trial of the accused was made out. This contention was repelled by the Hon"ble Supreme Court by a majority of judgment. Subsequently, a similar case came up before another Bench of Hon"ble two Judges and they felt that the decision in the case of Pratibha Rani had become more than a decade old and it required a fresh look and, therefore, they referred the matter to a Bench of Hon"ble three Judges of the Supreme Court and the decision is reported in the case of Rashmi Kumar (Smt) Vs. Mahesh Kumar Bhada, . The Hon"ble Supreme Court in the decision of Rashmi Kumar gave a fresh look to its earlier decision of Pratibha Rani and diluted the same to some extent. However, so far as the present case is concerned, the two decisions are similar. It has been held in these two judgments that if the complaint makes out a clear, specific and unambiguous case of criminal branch of

trust against the husband in respect of "Stri Dhari properties given at the time or before the marriage, the husband and other family members who commit criminal breach of trust can be prosecuted u/s 406 I. P. C.

9. As mentioned above, in the present case, complainant has perfectly made out a prima facie case against the Petitioners for being proceeded against u/s 406, I.P.C. It was also argued by the learned Counsel for the Petitioners that this complaint by the wife was instituted as a counter-blast to the application preferred by her husband for restitution of conjugal rights u/s 9 of the Hindu Marriage Act. Since the trial is to take place in this case, it is not appropriate to comment upon the merits of this argument which can be very well gone into by the trial court at the time of conclusion of the trial.

10. In the result, this petition u/s 482, Code of Criminal Procedure has no force. It is hereby dismissed. Interim order is hereby vacated. However, it is made clear that learned trial court shall not be influenced by any observations made in this order and it shall be free to draw its own conclusions on the basis of evidence which the parties might lead before it.