
(2011) 01 CAL CK 0102
In the Calcutta High Court
Case No : C.R.R. No. 1456 of 2010

Pulak Kole and Another

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 177, 181, 181(4), 498(A)
Penal Code, 1860 (IPC) — Section 406

Citation : (2011) 01 CAL CK 0102

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Advocate : Shiladitya Sanyal, Arindam Jana and Sujan Chatterjee, for the Appellant; Uday Sankar Chattopadhyay, for the Respondent

Final Decision : Allowed

Judgement

Ashim Kumar Banerjee, J.—Salanpur Police Station initiated a proceeding u/s 406 of the Indian Penal Code as against the Petitioners in terms of an order, passed by the learned Additional Chief Judicial Magistrate Asansole u/s 156(3) of the Code of Criminal Procedure. On perusal of the petition filed u/s 156(3) of the Code of Criminal Procedure, the following facts revealed:

- i) Petitioner No. 2 married opposite party No. 2 after taking dowry of Rs. 2.51 lakh in cash apart from gold ornaments, furniture, utensils and other gifts.
- ii) The Respondent No. 2 went to her matrimonial home along with the dowry. Her in-laws took all the gold ornaments from her whereas the cash was taken by the husband.
- iii) There was constant pressure by the in-laws for money for purchasing a flat. On that score, there was discord between the couple.
- iv) As a result, she left her matrimonial home.
- v) She prayed for return of the Stridhan properties and punishment u/s 406 of

the Indian Penal Code.

2. The learned Magistrate perused the petition and observed that there was no prima facie evidence of ownership regarding the listed articles and refused to issue search warrant at that stage.

3. Being aggrieved, the Respondent No. 2 approached the learned Sessions Judge for revision. The Additional Sessions Judge, Third Court, Asansole considered the prayer and allowed the application on contest by setting aside the order of the Court below. He allowed prayer for search and seizure, hence, the applications for revision by the Petitioners.

4. In course of hearing I adjourned the matter from time to time so that the matter could be resolved. However, I was unsuccessful. The matter was then heard.

5. Mr. Shiladitya Sanyal, learned Counsel appearing for the Petitioners, contended before me that very initiation of the proceeding u/s 406 was bad and illegal and nonest in the eye of law as the learned Magistrate was without jurisdiction to entertain the same. Mr. Sanyal contended that the proceeding was initiated u/s 406 for issuance of the search warrant for the Stridhan properties, which, according to the Respondent, were taken away by her in-laws at her matrimonial home. The Petitioners were residents of Hooghly within the jurisdiction of Chinsurah Police Station. The learned Magistrate did not have territorial jurisdiction to entertain any application pertaining to an offence allegedly committed within the territorial limits of Chinsurah Police Station.

6. To support his contentions, Mr. Sanyal cited the following three decisions:

i) 2004 SCC 2134 Y. Abraham Ajith and Ors. v. Inspector of Police, Chennai and Anr..

ii) 2007 1 CLR 800 Shipra Raj Ray v. The State of West Bengal and Anr.

iii) 2010 1 CLR 595 Shree Binod Kumar Sil and Ors. v. the State of West Bengal and Anr.

7. Opposing the application, Mr. Uday Sankar Chattopadhyay, learned Counsel, appearing on behalf of the Respondent No. 2, being the wife contended that the entrustment of the dowry articles was made in Asansole. Hence, the Asansole Court was competent to try the offence. In this regard, he relied on Section 181(4) of the Code of Criminal Procedure. He also contended that initially the case was initiated u/s 406, later on Section 498A was added.

8. To support his contentions, Mr. Chattopadhyay relied on the decision itself which are follows:

i) Rajaram Pattnaik Vs. Indian Metal and Ferro Alloys Limited, .

ii) 2007 2 CLR 46 Manish Ratan and Ors. v. State of Madhya Pradesh and Anr.

iii) 2007 2 CLR 231 Smt. Ranu Chowdhury Nee Guha Thakurta v. Sri. Satyajit Guha Thakurta and Anr.

8. On a combined consideration of the rival contentions, the controversy narrows down to one single issue as to whether the Asansole Court was competent to entertain the application u/s 156(3) and if not, whether the proceeding initiated in terms of the order passed therein was maintainable or not.

9. To decide the issue let me first consider the law of this subject. Section 181 of the Code of Criminal Procedure inter alia provides that any offence of Criminal mis-appropriation or criminal breach of trust may be enquired into by the Court within whose local jurisdiction the offence was committed. It is also provided that the place of occurrence would mean as to where the goods were received or returned or were required to be returned or accounted for by the accused persons. Perusal of the petition would depict that the Stridhan properties were taken by her in-laws at the marital home. The entrustment, if any, was thus made at marital home. Hence, breach of such entrustment, if any, was done at the said place. It was not the case of the Petitioners that entrustment was made to her in-laws at her parental home or that those were supposed to be returned at the said place, hence, place of occurrence, in my view, was at Hooghly and not Asansole. In this regard, I may rely on the latest decision of our Court in the case of Binod Kumar Sil (Supra) where the learned Judge while deciding similar case held, "though the marriage between the husband and the wife was solemnized at Durgapur, the offences were however, committed at Halisahar. Here such offences were not committed wholly or partly within Durgapur. So in view of Section 177 of the Code of Criminal Procedure, 1973 stipulating that every offence should ordinarily be inquired into and tried by the Court within whose local jurisdiction it was committed, the case instituted in the Court of Additional Chief Judicial Magistrate, Durgapur was transferred to the Court of Barachpore for the interest of justice."

10. Mr. Chakraborty relied on the decision in the case of Raja Ram Pattnaik (Supra). In the said decision learned Single Judge of Orissa High Court observed that the proceeding could be initiated at any of the places mentioned in Sub-Section 4 of Section 181. I have carefully perused the said decision. The learned Judge accurately interpreted Section 181(4). On that score, there could be no disagreement.

11. In the instant case, the entire cause of action arose at Hooghly as would appear from the application made by wife before the Learned Magistrate.

12. Moreover, in view of subsequent incorporation of Section 498A it would strengthen the contention raised by the Petitioners. Section 498A relates to torture of the Bride at her marital place. It was not the case of the wife that her in-laws tortured her at her parental home. Hence, the Durgapur Court could not have jurisdiction to entertain and try the offence committed u/s 406 read with Section 498A.

13. The application succeeds and is allowed. Impugned order dated April 24th 2010 passed by the learned Additional Sessions Judge in GR case No. 375 of 2009 pending before the Court of learned Additional Chief Judicial Magistrate, Asansole be transferred to the court of Learned Chief Judicial Magistrate, Hooghly at Chinsurah. CRR 1456 of 2010 along with CRAN 2843 and 2095 of 2010 is disposed of. Urgent xerox certified copy will be given to the parties, if applied for.