
(1985) 07 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 672 of 1983

Subhag Rani

APPELLANT

Vs

Dharam Pal

RESPONDENT

Date of Decision : 16-07-1985

Acts Referred:

Citation : (1985) 3 AICLR 230

Hon'ble Judges : B.S.Yadav, J

Advocate : V.P. Gandhi, M.S. Suller, Advocates for appearing Parties

Judgement

B.S. Yadav, J.

1. The facts leading to this revision petition are that the present petitioner Subhag Rani had filed a criminal complaint under sections 420, 406, 506 and 120B of the Indian Penal Code (briefly the Code) against her husband Sant Ram alias Ram alias Mam Chand alias Mamu, his brother and parents. According to the allegations in the complaint, Subhag Rani was married to Sant Ram on 16.4.1979 at village Sundran, district Patiala according to Hindu rites. After marriage, she was brought to village Shahpur, along with dowry articles mentioned in Annexure A and B attached to complaint. Sant Ram his parents and brothers were not satisfied with the dowry given by the parents complainant and so, they started maltreating her and ultimately, on 4.6.1979, she was given beating by the accuser about which she made a complaint with the police. However, the matter was compromised. In March 1981, the husband, his brother and parents again maltreating her in order to force her to bring a sum of Rs. 10,000/. On 4.4.1981, the said accused wanted to kill her by burning and also threatened her in that respect, but she saved her life by running away from the house and took shelter with one of her relatives. The accused came to the house of the said relative, with Dandas and threatened that relative to send her otherwise, they would kill him. Some other persons intervened and saved the complainant. It was further alleged in the complaint that the accused had misappropriated the articles of the complainant given in Annexures A and B and

had refused to return the same to her.

2. After recording preliminary evidence, the learned Additional Chief Judicial Magistrate, Ambala City, summoned all the accused to stand their trial under sections 406 and 506 of the Code.

3. Feeling aggrieved against that order, Dharam Pal one of the accused, filed revision petition which was heard by the learned Sessions Judge, Ambala. Placing reliance upon *Vinod Kumar Sethi & others v. State of Punjab & another*, 1982 PLR 337, he held that it could not be said that there had been misappropriation of articles of furniture, such as, sofas, dressing table, sewing machine etc. Consequently, he accepted the revision and set aside the order of the trial Court so far as Dharam Pal was concerned. Feeling aggrieved, Subhag Rani has filed this revision against that order.

4. The learned counsel for the petitioner argued that no revision petition lay against the order passed by the learned trial Court under Section 204 of the Code of Criminal Procedure ordering issuance of process against the accused, as it will be deemed to be an interlocutory order and revision against such an order is barred by section 397 of the Code of Criminal Procedure. In support of his contention, he has relied upon *Khacheru Singh v. State of U.P. & another*, AIR. 1982 SC 784(2) wherein it was remarked:

"We do not see any justification, though we are not expressing any opinion on the merits of the case, for the order passed by the learned Additional Sessions Judge, Meerut in Criminal Revision No. 83 of 1979, which was affirmed by the High Court of Allahabad By its order dated 7.5.1980. All that the learned Magistrate had done was to issue a summon to respondent No. 2 Satyavir Singh. If, eventually, the learned Magistrate comes to the conclusion that no offence was made out against Satyavir Singh, it will be open to him to discharge or acquit him, as the case may be. But it is difficult to appreciate why the order issuing summons...."

Their Lordships accordingly set aside the orders passed by the Sessions Court and the High Court and the order of the Magistrate was restored. Reliance was also placed upon *Sant Lal Nagrath v. Krishan Lal Suri and others*, 1976, Cri. L.J. 215 (Delhi). In that case, a criminal complaint was filed against the complainant and his witnesses, the Magistrate passed an order under section 204, Code of Criminal Procedure (Old) directing the issuance of summons for the appearance of the accused. The accused appeared in Court and filed an application for quashing the proceedings against him and for discharging him on the ground that the Magistrate had no jurisdiction to try the petition for an offence under section 500 of the Indian Penal Code. The Magistrate dismissed the application. Against that order, as well as against the order summoning him, the accused filed a revision petition in the High Court, but subsequently it was withdrawn with liberty to invoke any remedy open to him in (e.i. the accused). He then filed a petition under section 482 of the Code of Criminal Procedure 1973, praying that

the proceedings pending against him the Court of the Magistrate, including the order summoning him be quashed. A preliminary objection was taken by the other party against the Maintainability of that petition on the ground that the order of the Magistrate summoning the accused was in the nature of an interlocutory order, a revision against which did not lie by reason of subsection(2) of section 397 of the new Code. It was further urged that though the petition purported to be one under section 482 of the Code of Criminal Procedure, it was in substance a revision petition under section 397 of the new Code. The preliminary objection was upheld and the petition was dismissed.

5. However, in an earlier case, reported as *Smt. Naghawwa v. Veer anna Shivalingappa Konjalqui and others*, AIR 1976 SC 1947 their Lordships had enumerated some cases for the purpose of illustration in which the order of the Magistrate summoning the accused could be quashed. the relevant portion reads as follows:

"Thus it may be safely held that in the following cases and order of the Magistrate issuing process against the accused can be quashed or set aside:

"Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused."

6. The learned counsel for the respondent has relied upon *Amar Nath and others v. State of Haryana and others*, AIR 1977 SC 2185 and *Madhu Limaya v. State of Maharashtra*, AIR 1978 SC 47. However, it is not necessary to discuss those cases as the facts thereof are entirely different. Reliance was also placed upon *Raj Kapoor and others v. State & others*, 1981 CLR 226. The facts of that case are not applicable to the present case. In that case a petition under section 482 of the Code of Criminal Procedure was filed for quashing the order summoning the accused. It was dismissed by the High Court on the ground that the (no) revision under section 397 of the Code of Criminal Procedure lay against the order summoning the accused and therefore, the petitioner could not be entertained under the inherent powers of the Court. The accused filed Special Leave petition in the Supreme Court. It was held that there was no total ban on the exercise of the inherent powers and where abuse of the process of the Court or other extraordinary situation existed, the Court has jurisdiction and these powers were repelled by section 397 of the Code. However, in view of *Smt. Nagawwa's* case(supra), I hold that the revision petition was maintainable, because *Dharam Pal's* case was that no case was made out against him.

7. However, the order of the Sessions, Judge cannot be upheld, because *Vinod Kumar's* case(supra) was overruled in *Pratibha Rani v. Suraj Kumar* and another 1985(1) Recent Criminal Reports 539 : AIR 1985 SC 628 . After referring to some observations in *Vinod Kumar's* case (supra), their Lordships of Supreme Court remarked:

"The sheetanchor of the arguments of the counsel for the respondent which is based on the decision of the Punjab and Haryana High Court in Vinod Kumar's case is that the moment a woman after marriage enters her matrimonial home, her stridhan property becomes a joint property of both the spouses and the question of application of Section 406, of I.P.C. is completely eliminated. It is true that to a great extent this part of the argument of the learned counsel is supported by the aforesaid decision but, in our opinion, the decision, so far as this aspect of the matter is concerned, is wholly unsustainable. We should first extract the exact ratio held by the High Court in Vinod Kumar's case:

To conclude, it necessarily follows from the aforesaid discussion that the very concept of the matrimonial home connotes a jointness of possession and custody by the spouses even with regard to the movable properties exclusively owned by each of them. It is, therefore, inapt to view the same in view of the conjugal relationship as involving any entrustment or passing of dominion over property daytoday by the husband to the wife or vice versa. Consequently, barring a special written agreement to the contrary no question of any entrustment or dominion over property would normally arise during overture or its imminent breakup. Therefore, the very essential prerequisites and the core ingredients of the offence under Section 406 of the Penal Code would be lacking in a charge of criminal breach of trust of property by one spouse against the other.

"These observations no doubt support the contention of the learned counsel for the respondent but we find it impossible to agree with the aforesaid observations for the reasons that we shall give hereafter. We fail to understand the logic of the reasoning adopted by the High Court in investigating the pure and simple stridhan of wife with the character of a joint property. We are surprised that the High Court should have taken the view that a woman's absolute property though well recognised by law is interpreted by it as being shorn of its qualities and attributes once bride enters her matrimonial home."

8. The learned Sessions Judge has nowhere held that after marriage of Smt. Subhag Rani complainant, Dharam Pal respondent was not one of the persons who brought dowry articles to her matrimonial home. It is difficult to say that no offence under section 405 or 406 of the Indian Penal Code is made out against Dharam Pal.

9. Otherwise also, the allegations in the complaint made out a case under section 506 of the Code against Dharam Pal and his coaccused. The learned Sessions Judge has not dealt with that part of the case. The learned counsel for the respondent argued that the complaint was filed after about 4 days delay of the alleged commission of the offence under section 506 of the Code. Delay in filing the complaint was itself not sufficient for quashing the order summoning the respondent.

10. For the foregoing reasons. I accept the present revision petition and set aside the impugned order of the learned Sessions Judge and restore that of the

Magistrate. The Magistrate will expedite the proceedings as the case has already become quite old.