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Krishna Deka Vs. Bichitra Deka @ Lahkar

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Court : Guwahati

Decided On : May-23-2003

Judge : I.A. Ansari, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 406

Appeal No. : Criminal Revision No. 333 of 2001

Appellant : Krishna Deka

Respondent : Bichitra Deka @ Lahkar

Advocate for Def. : J. Ahmed and B. Rajkhowa, Advs.

Advocate for Pet/Ap. : S. Medhi, Adv.

Prior history : I.A. Ansari, J. 1. The judgment and order under challenge in the present revision was passed by learned Sessions Judge, Marigaon, on 19.6.2001, in Cri. Appeal No. 7/2001, upholding the judgment and order, dated 26.2.2001, passed by the learned Sub-Divisional Judicial Magistrate, Marigaon, in CR case No. 2466/99 convicting the accused-petitioner under Section 406 IPC and sentencing him to undergo rigorous imprisonment for a period of 6 (six) months. 2. Briefly stated, the materials facts leadi

Judgement :

I.A. Ansari, J.

1. The judgment and order under challenge in the present revision was passed by learned Sessions Judge, Marigaon, on 19.6.2001, in Cri. Appeal No. 7/2001, upholding the judgment and order, dated 26.2.2001, passed by the learned Sub-Divisional Judicial Magistrate, Marigaon, in CR case No. 2466/99 convicting the accused-petitioner under Section 406 IPC and sentencing him to undergo rigorous imprisonment for a period of 6 (six) months.

2. Briefly stated, the materials facts leading to the present revision may be stated as follows :

(i) One Smt. Bichitra Lakhar instituted CR case No. 2466/99 in the Court of learned S.D.J.M., Marigaon, her case being, briefly stated, thus : The complainant and the accused-petitioner, namely, Sri Krishna Deka are legally wedded husband and wife. After their marriage, the complainant started living with the accused at her matrimonial house and out of their wedlock, a female child was born to them. During her conjugal life with the complainant at her matrimonial house, she was subjected to torture and cruelty by the accused persons inasmuch as they used to assault her and torture her off and on and, lastly, on 19.11.1998, she was beaten by the accused persons and driven out of her matrimonial house by them and she was not allowed to take her 'stridhan' (i.e., her properties) and her daughter. On the strength of a search warrant issued by the learned trial Court, some properties were recovered and seized from the house of the accused and the same were handed over to the complainant. Along with the properties aforementioned, the female child was also recovered and was given in custody of the complainant. The original complaint was instituted by the complainant against her husband, Krishna Deka and Miss Deepa Deka.

(ii) During trial, charges under Sections 406 and 323 IPC read with Section 34 IPC were framed against the accused, but the accused pleaded not guilty thereto. The complainant examined altogether three witnesses. The two accused aforementioned were, then, examined under Section 313 Cr.PC and in their examination aforementioned, they denied that they had committed the offences alleged to have been committed by them, the case of the defence being that of total denial and of the complainant having left her matrimonial house on her own

free will. No evidence was, however, adduced by the defence.

(iii) The trial ended with the conviction of the present accused-petitioner under Section 406 IPC and the other co-accused, namely, Miss Deepa Deka was acquitted. Aggrieved by this judgment and order of conviction and sentence, the petitioner preferred Crl. Appeal No. 7/2001 aforementioned and upon hearing, learned Sessions Judge, Marigaon, vide the impugned judgment and order dated 19.6.2001, dismissed the appeal as indicated hereinabove. The accused petitioner has, now, approached this Court by way of the present revision application.

3. I have perused the materials on record including the impugned, judgments and orders. I have heard Mr. S. Medhi, learned counsel for the accused-petitioner, and Mr. J. Ahmed, learned counsel for the complainant-opp. party. I have also heard Mr. B. Rajkhowa, learned Addl. P. P. for the State.

4. The main thrust of the submissions of Mr. Medhi is that the accused petitioner is the husband of the complainant and the properties as claimed by the complainant had already been recovered and taken possession of by the complainant and in this view of the matter, no case under Section 406 IPC can be made out against the accused-petitioner. Mr. Medhi also submits that the properties, which the complainant brought to her matrimonial house, were not entirely her properties and that the accused-petitioner, as husband, cannot be described as a trustee in respect of these properties. Mr. Medhi further submits that the complainant never demanded return of her properties and since the accused-petitioner never refused to part with any property, which the complainant had brought to her matrimonial house as stridhan, no offence against the accused-petitioner was legally made out, but the learned trial Court, on complete misappreciation of evidence, wrongly held the accused-petitioner guilty of the offence under Section 406 IPC and illegally convicted him. It is contended by Mr. Medhi that the learned Sessions Judge could not effectively appreciate the case of the petitioner and, on a misconceived perception of Section 406 IPC, upheld the conyiction of the accused-petitioner. Mr. Medhi further points out that since the petitioner is not shown to have converted the properties, in question, to his own use nor is he shown to have misappropriated the same in any manner, the learned Courts below

ought to have held that no offence under Section 406 IPC could be made out by the complainant against the accused-petitioner.

5. Controverting the above submissions made on behalf of the accused-petitioner. Mr. Ahmed has submitted that the un-assailed evidence of the complainant is that she used to be tortured and assaulted by the accused-petitioner and eventually on 19.11.1999, she was forcibly driven out of her matrimonial house by the accused-petitioner and while so driving her out her stridhan and her female baby were not allowed to be taken by her and, eventually, she had to recover the same with the help of a search Warrant, but even then, all the stridhan, which were left at her matrimonial house, could not be recovered by the complainant. Such withholding of properties and not parting with the same until the search warrant was executed amount to, according to Mr. Ahmed, misappropriation of properties entrusted with the accused-husband and an offence under Section 406 IPC was, indeed, made out.

6. So far as the learned Addl. P.P. is concerned, she has submitted that the findings of the learned trial Court are consistent with the evidence on record and law relevant thereto and, hence, conviction and sentence passed against the accused-petitioner may please be maintained.

7. Before entering into the merit of the present revision, it is pertinent to note that in an Indian scenario, the presents/gifts, which a bride receives on the occasion of solemnization of her wedding, (which are normally described as dowry) fall into three broad categories - (a) properties, which are intended for exclusive use of the bride, for example, the gifts received by her in the form of ornaments, wearing apparels, etc. for her exclusive use and enjoyment, (b) Articles and the gifts, which are received by a bride for common use and enjoyment in the matrimonial home and (c) Articles given as presents/gifts to the husband or the members of the husband's family.

8. So far as properties falling in category-(c) are concerned, the wife can have no claim over such properties. As far as properties described in category-(b) are concerned, both the husband and wife remain in joint possession of the same, but so far as the properties described in category-(a) are concerned, such properties

are exclusive properties of the wife and can be safely termed as her stridhan on which she has exclusive right of use and enjoyment. In the case at hand, a minute scrutiny of the evidence on record shows that no specific assertion has been made by the complainant that she had entrusted any of her properties specifically with the accused. What is, however, clear from her evidence is that a number of valuable ornaments were brought by her from her parental house on the occasion of her marriage to her matrimonial house. It is also in the evidence of the complainant that she was beaten and driven out of her matrimonial house by the accused-petitioner retaining with himself the ornaments and their child. Evidence so given by the complainant has remained unshaken during the course of her cross-examination. The learned trial Court believed her evidence and assigned reasons therefor. The learned Sessions Judge, Marigaon, has also scrutinized the evidence on record and believed her evidence as well as the reasonings assigned by the learned trial Court for finding the accused-petitioner guilty of offence under Section 406 IPC.

9. Upon careful perusal of the materials on record, I find no reason to disbelieve the evidence given by the complainant. What transpires from the unshaken evidence of the complainant is that she brought a number of ornaments, on the occasion of her marriage, to her matrimonial house, but while driving her out of her matrimonial house, accused-petitioner retained those ornaments. The ornaments, which the complainant had brought as aforesaid, to the house of the accused remained at the house of the accused-petitioner in trust and the accused became a trustee thereof. While driving her out of the house, the accused-petitioner did not permit her to take the ornaments aforementioned. This retention was, undoubtedly, a wrongful retention of the property entrusted to the accused-petitioner and the same amounted to misappropriation, which, in turn, made out a case of criminal breach of trust. Reference made by the learned trial Court to the case of Madhu Sudan Malhotra v. Kishore Chand Bhandari and Ors. (1988) SC (Cri) 854 is, therefore, not misplaced.

10. Considering the matter in its entirety, I am firmly of the view that the conviction of the accused under Section 406 IPC is supported by the evidence on record and needs no interference.

11. However, turning to the sentence of R.I. for 6 (six) months imposed on the petitioner, the same, I find, is a little harsh and the same needs to be modified. I am of the view that R.L for a period of 2 (two) months will meet the ends of justice.

12. In the result while the conviction of the accused-petitioner under Section 406 IPC is upheld, his sentence is reduced to a period of 2 (two) months of rigorous imprisonment. With the modifications in the sentence, so directed, this revision stands disposed of. The accused-petitioner is hereby directed to surrender forthwith before the learned trial Court to serve out the sentence of imprisonment passed against him.

13. Send down the case records along with a copy of this judgment and order.

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