

**Anil Bhardwaj and Others Vs. the State**

**Anil Bhardwaj and Others Vs. the State**

**SooperKanoon Citation :** [sooperkanoon.com/680265](http://sooperkanoon.com/680265)

**Court :** Delhi

**Decided On :** Sep-27-1984

**Reported in :** 1985(8)DRJ75

**Judge :** D.R. Khanna, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 405 and 406

**Appeal No. :** Criminal Revn. No. 34 of 1983 (Against order of V.K. Shali, Metropolitan Magistrate, New Delhi, D/-

**Appellant :** Anil Bhardwaj and Others

**Respondent :** The State

**Advocate for Pet/Ap. :** Mr. Pandey

**Judgement :**

ORDER

1. So far as the merits involved in the case, no opinion can be expressed at this stage. The factual aspects will receive adjudication in due course when the parties have led their evidence. Suffice it to say that the police investigation has so far resulted in registration of a case under S. 406 I.P.C., and filing of challan on its basis. The trial court has summoned the accused after considering those challan papers to find whether a prima facie case is made out or not. Apart from this, there have been some observations by Mr. M. A. Khan, Additional District Judge, Delhi,

in the penultimate paragraph of his detailed judgment dt. 30-3-1983 by which he dismissed the petition for divorce moved by Anil Bhardwaj, the husband against his wife Nirmallesh under S. 13 of the Hindu Marriage Act. After extensively discussing the evidence led by the parties before him, he had observed as under :-

'In the foregoing paras it has been held that the respondent's father had given one fridge on the occasion of 'Sagai' before the marriage. It has also been proved by the respondent that a sum of Rs. 5000/- was also given by her father to the petitioner's father for buying a sofa-set and a television set. Further it has been established that the respondent has not taken any jewellery with her on March 12, 1979. The statement of Shri Megh Sham Sharma R.W. 12 has also proved that one wrist watch and a steel almirah were also purchased by him for the marriage on behalf of his father-in-law, he has produced the cash memos and the guarantee card mark X-3 and X-1. The petitioner's father P.W. 1 could not deny that one of the two almirah in his house is 'Raja' make. There is no reason for Shri Megh Sham Sharma who is the brother-in-law of the respondent to make a false statement. On the other hand the petitioner and his father are interested in making wrong statements in order to get rid of the respondent. Those things have been recovered by the police during the case filed by the respondent. Thus there is ample force in the contention of the respondent and her father that the articles mentioned in annexure 'A' of their application under S. 27 of the Hindu Marriage Act were given in the respondent's marriage. The contention of the jewellery mentioned in para 5 of his application under S. 27 of the Hindu Marriage Act was in his possession and the respondent has not proved (sic). Even the petitioner in his deposition as P.W. 1 could not deny that the respondent's father had spent Rs. 30,000/- on her marriage. A little discrepancy in the list filed by the respondent with her application under S. 27 of the Hindu Marriage Act and the list sent to the petitioner with the notice Ex. P.W. 6/A does not make the claim of the respondent wholly unbelievable. Anyhow there is no use in entering into this controversy in detail because in view of the finding on issue No. 1 no order about the distribution of the property jointly belonging to the parties presented on or about the time of the marriage could be passed in these proceedings. The issues stand disposed of accordingly.'

At present an appeal against this judgment is pending.

2. Nirmalesh complainant and Anil Bhardwaj were married on 31-1-1979. They, however, hardly lived for 1 1/2 months together, and according to Nirmalesh she was turned out on 12-3-1979 when she and her parents were unable to fulfill the further dowry demands of Anil Bhardwaj and his parents. The attempts for reconciliation and admittance of the complainant back to the matrimonial home by her relations and a Women's Organisation did not bear fruits. Instead Anil Bhardwaj filed a divorce petition on 21-7-1980 against the complainant in which allegations of cruelty and non-consummation of marriage were made. During its course the wife moved a petition under S. 27 of the Hindu Marriage Act on 23-9-1980 for return of her ornaments clothes and other things retained by the husband, as according to her she was turned out with the clothes she was wearing. The husband too later moved a petition under the same provisions on 4-11-1980. On 30-3-1983 the learned Additional District Judge in an 89 pages' detailed judgment, after discussing extensively the evidence produced before him dismissed the divorce petition holding that there was no cruelty on the part of the complainant, and in fact she had been the victim of dowry demands which could not be fulfilled, and, therefore, turned out. During its course, the aforesaid observations were made. As already stated above, an appeal by the husband against that judgment is pending.

3. Nirmalesh complainant filed a report with the police on 26-5-1982 under S. 406/34 I.P.C. against Anil Bhardwaj and his parents with allegations that they had retained her ornaments, articles of furniture, clothes etc. which had been given to her by her parents in dowry at different times before, during and after the marriage. The mother of Anil Bhardwaj was taken into custody, but later released on bail, while the other two obtained anticipatory bail. The police thereafter raided their house on 23-6-1982, and recovered a number of articles, refrigerator, clothes etc. They were later given by the court on superdari to Nirmalesh on 10-8-1982. Finally challan against the three accused was filed in court on 27-11-1982, and the court finding that a prima facie case was made out, summoned the accused. It is against this summoning that the present criminal revision has been moved by Anil Bhardwaj and his parents.

4. Mr. Pandey appearing for the petitioners, has vehemently contended that the entire prosecution is misconceived inasmuch as under its threat, civil disputes are sought to be settled. According to him, the petitioners do not have any property of the complainant in their possession, and that in any case, if there have been any, the Additional District Judge would have granted her relief under S. 27 of the Hindu Marriage Act. According to them, the complainant had taken away all her jewellery when she left the house of her own accord on 12-3-1979. The petitioners were said to have been put into great humiliation and harassment by the police when the mother of Anil Bhardwaj was taken into custody, and later their house raided and several things taken away. All this is said to be at the instance of the complaint's father who is an official in the Research & Analysis Wing of the Cabinet Secretariat. Such like prosecutions, it has been urged, would destroy all concepts of matrimonial relationships, and provide handle to one of the parties howsoever he or she may be the cause of the breakdown of the home, to vindictively harass and terrorise the other. In support reliance has been placed upon a Full Bench decision of the Punjab & Haryana High Court in Vinod Kumar Sethi v. State of Punjab , and specific reference was made to the following observations at page 389 from an earlier Full Bench decision of the same Court in the case Kailash Vati v. Avodhia Parkash, 2nd (1977) 1 Punj & Har 642 :-

'To my mind, the idea of the matrimonial home appears to lie at the very center of the concept of marriage in all civilised societies. It is indeed around it that generally the marriage tie revolves. The home epitomizes the finer nuances of the marital status. The bundle of indefinable rights and duties which bind the husband and the wife can perhaps be best understood only in the context of their living together in the marital home. The significance of the conjugal home in the marriage tie is indeed so patent that it would perhaps be wasteful to elaborate the same at any great length. Indeed, the marital status and the conjugal home have been almost used as interchangeable terms.'

Further :-

'To summarise, I have attempted to show by reference to Anglo-American Jurisprudence that the concept of the marital home lies at the very center of the

idea of marriage in all civilised societies. Perhaps from primeval times when human beings lived sheltered in subterranean caves to the modern day when many live perched in flats in high raised apartments within the megapolis, the husband and the wife have always hankered for a place which may be their very own and which they may call a home. The innumerable mutual obligations and rights which stem from the living together of man and wife are undoubtedly beyond any precise definition and stand epitomized by the concept of the matrimonial home.'

Later, the Court in Vinod Kumar's case as under :-

'In view of the above, it would be equally untenable to hold that either the desertion or the expulsion of one of the spouses from the matrimonial home would result in entrusting dominion over the property belonging to the other so as to bring the case within the ambit of this pre-requisite under S. 405 I.P.C. The joint custody and possession once established would thereafter exclude either express entrustment or the passing of dominion over the property. It was rightly argued that if an irate husband or wife walks out from the matrimonial home in a huff, this cannot constitute an entrustment or dominion over the property to the other. Consequently, unless a special written agreement to the contrary can be established, the strongest presumption arises that during the existence and immediately after the crumbling of the matrimonial home, there was in essence, a joint possession and custody of the property of the spouses therein, including dowry and traditional presents, which would preclude the essentials of entrustment or dominion over the property which form the corner-stone of criminality under S. 405 I.P.C.'

5. The Court, therefore, held that even if the allegations in the first information report were treated as wholly true, they would not amount to any entrustment or passing of dominion over the dowry to the husband and his mother and father jointly. Inevitably therefore, the first information report did not even remotely disclose any offence under S. 406 read with S. 34 I.P.C.

6. I have given my due consideration to the circumstances brought out above and the Full Bench decisions of the Punjab & Haryana High Court. With utmost

respect, I must say that I am unable to persuade myself to subscribe to the ultimate reasoning that prevailed in holding that in no circumstances a case of misappropriation can be made out where there is a breakdown of the matrimonial home. The said sanctimonious concepts, the matrimonial harmony and oneness, and the unison of two beings when they enter into wedlock are certainly sentiments and values to be greatly admired, cherished and endeavored to be achieved. In fact, no stone need be left unturned to make a success of marriage. It is the blissful vista of new life of love, companionship and procreation which opens. This pervades in text books and surely becomes reality where matrimonial homes develop harmony and homogeneity. No court should attempt to disturb it. It has as such not been without purpose that the law enjoins upon the courts to ensure as far as possible the rehabilitation of the matrimonial home and bring in reconciliation in what may otherwise be mere storms in a tea cup which the parties have for lack of maturity, experience or wisdom, unduly magnified. In the present case also, attempts in this direction were made by this court, but without result. At the same time, there is no point in indulging in euphoria high solicitudes to nobler tenets, and what idealism would demand where marriages have irretrievably broken down and the spouses have fallen out entirely. The sermonious platitudes become irrelevant and totally divorced from realities, and are nothing more than blind-fold declining to assess the affairs in correct perspective, howsoever crude and repulsive they may appear to conventional thinking or religious adjuncts. The human affairs have to be judged not in the context of what an ideal human being should be, but in the realisation of humans as they are with all their virtues and frailties.

7. Now a perusal of the decision of the case Vinod Kumar Sethi (supra), shows that the learned Judges recognised that the dowry and the traditional presents given to a bride in a Hindu wedding may usually to be put in three categories as under :-

'(i) Property intended for exclusive use of the bride, e.g. her personal jewellery and wearing apparel etc.,

(ii) Articles of dowry which may be for common use and enjoyment in the matrimonial home.

(iii) Articles given as presents to the husband or the parents-in-law and other members of his family.'

I will like to add still another category where a working lady as such earns and owns her property at the time of the marriage or acquires that subsequent thereto. She can independently also inherit or be a donee.

8. So far as the articles of dowry and presents which are given to the husband or the in-laws, may perhaps those also which are for common use and enjoyment, it can be said that there may not be misappropriation or theft. However, when the right of a spouse to own exclusive property is recognised, and so also dowry items intended for exclusive use of the bride, e.g. her personal jewellery and wearing apparels etc. are acknowledged, it would be wholly unjustified and unacceptable line of reasoning to say that when the wedlock has come to rock, the other party who is not the owner or entitled to the user thereof, can with immunity usurp and deprive the rightful owner of those properties. The language of S. 406 or S. 378 does not make any exception in this regard, and there is no justification to exclude the operation of their provisions qua victimised spouse, more so an unfortunate wife who is thrown out of the matrimonial home in the clothes that she may be just wearing. It cannot be that she is just rendered into penury all of a sudden at the whim and fancy of the husband. Civil rights apart, when the requirements of criminal law are attracted, there is no point in ignoring them by escapist compulsions of what ought to be or what the age-old male dominated concepts have passed on from the past. Societies which are diseased with compulsive dowries, where the parents do attempt to do everything for their children to make a success of their marriages, and not unoften go beyond their means in this direction, cannot be passive spectators to either of the spouses indulging in high-handedness or appropriating every thing and throwing out the other to wilderness. The basic concepts of individual ownership cannot be in such circumstances ignored, and any violation of them must entail the consequences which otherwise in normal circumstances must flow.

9. I am, therefore, of the considered opinion that where an exclusive property of one of the spouses is unwarrantedly taken away or misappropriated by the other, and the marriage breaks down, it will not be correct to have a rigid approach, divorced from facts and circumstances of each case, to hold that the offence of misappropriation or theft cannot be made out. Similar must be held to be the position of the dowry items given for the exclusive use of one of the spouses. Even with regard to the articles of dowry which are given for common use and enjoyment, the purpose for which they are brought in for such use and enjoyment disappears when the commonality no longer remains with the breakdown of the matrimonial life. In such a case, the spouse bringing in the articles in the commonality should be entitled to render that into his or her severalty. If in such eventuality the other spouse is not ready to see reason, and is bent upon unwarranted retention or usurpation, the law must take its course. The bonds of matrimonial home are already fallen asunder and when the human beings constituting the wedlock part company for good, it is folly to treat what belonged to each one of them exclusively as continuing to remain joint or common.

10. There is no gainsaying that acts of misappropriation can take place even where initial possession was acquired innocently or in the legitimate course of events. Thus a postman who is given an article for disbursement can subsequently acquire criminal design to misappropriate the same to his own benefit. This can be position in the case of any other employee, a hire purchase agreement, pledged goods and so on. There can be as well theft of goods placed in the same almira in a room of a hostel shared by two students when one of them steals away or misappropriates the articles of the other. Taking possession of *res nullius* may be an innocent act, but when it is later learned that the article belongs to a particular person, its retention may involve criminal intention. Thus in an old decision in *Queen Empress v. Butchi* (1893) 2nd 17 Mad 401, it was observed that there is no presumption of law that a wife and husband constitute one person in India for the purpose of criminal law. If the wife removing her husband's property from his house does so with dishonest intention, she is guilty of theft. Similarly a wife who clandestinely gives over the articles of her husband to her paramour without his knowledge, and the paramour also takes them away knowing this position well, he can be held guilty of theft. Of course, where there is a claim of right in good faith, it

reasonably saves the act of taking from being theft, and where such a plea is raised by the accused, it is mainly a question of fact whether much belief exists or not. Similarly a partner using partnership assets for his own use, is not liable for misappropriation as he has undefined ownership along with other partners over all the assets of the partnership. (See in this regard *Chandi Kumar Das Karmarkar v. Abanidhar Roy*, : 1965 CriLJ496 , and *Velji Raghavji Patel v. State of Maharashtra*, : 1965 CriLJ431 ).

11. So far as S. 27 of the Hindu Marriage Act, the same covers only those properties which jointly belong to both the husband and wife. It has no reference to their individual properties or those given for their exclusive benefits or enjoyment.

12. In view of the discussion above, I dismiss this petition. However, before concluding it is clarified that nothing in this order will be considered as an expression of opinion on the merits which the parties may ultimately establish during the trial.

13. Petition dismissed.