

**Desh Ram Pal Vs. State**

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**Court :** Delhi

**Decided On :** Sep-01-1992

**Reported in :** 1992(24)DRJ206

**Judge :** Usha Mehra, J.

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

**Appeal No. :** Criminal Miscellaneous (Main) Appeal No. 1071 of 1992

**Appellant :** Desh Ram Pal

**Respondent :** State

**Advocate for Pet/Ap. :** Baldev Raj and; R.K. Bahri, Advs

**Judgement :**

**Usha Mehra, J.**

(1) The petitioner Desh Ram Pal has been implicated by the Police Station Moti Nagar. under Section 406 Indian Penal Code . vide F.I.R. No. 128/92. In brief the case of the prosecution is that the petitioner was married to complainant Smt. Santosh, daughter of late Shri R.L. Sharma. After the marriage, the petitioner started quelling and beating his wife and turned her out from his house along with their son who was eight months old. She lodged a report with the Police Station Rani Bagh. The petitioner filed a petition for divorce which was contested by his

wife and got the same dismissed. The petitioner filed a writ petition which was also dismissed but the Letter Patent Appeal is pending. Since the wife had no source of income, therefore, she filed a petition for maintenance and the Court granted the maintenance at the rate of Rs.350.00 per month. For some time the petitioner paid the amount of maintenance but thereafter stopped the same. She is living with her parents for the last 15 years and had been demanding the return of her articles given to her by her parents at the time of marriage. Along with the complaint she has furnished all the details regarding the articles lying with the petitioner and the demand made by her.

(2) On this complaint the present F.I.R. was lodged, it is further the case of the prosecution that in order to investigate, the Investigating Officer tried to contact the petitioner but found that he has given a wrong address. His whereabouts are not available nor he is disclosing his whereabouts as a result of which the investigation could not be completed because the petitioner is absconding.

(3) The petitioner has sought for quashing of the F.I.R. inter-alia on the grounds that the complaint of the wife is barred by time. She could have demanded the return of the dowry articles maximum within three years. Having not done so, the complaint cannot lie. Moreover, the ingredients of Sections 405 and 406 are not made out from her complaint. Her complaint suffers from lack of particulars. The same is vague, as no particulars of dowry have been mentioned nor it is mentioned that the petitioner refused to return the same.

(4) Taking these as the grounds he has attacked the F.I.R. lodged. In support of his contention, Mr. Baldev Raj counsel for the petitioner urged that according to complainant's own showing she got married 15 years before the lodging of the complaint and the F.I.R. has been lodged on 2nd March, 1992. therefore, on the face of it, it is barred by time and in this regard he has placed reliance on the decision of the Punjab and Haryana High Court in the case of Gurcharan Singh v. Lakhwinder Kaur reported in Recent Criminal Reports in CrI.M.809-M of 1986 decided on 9th March, 1987. The case before the Punjab and Haryana High Court was also under Section 406 I.P.C. While dealing with the preliminary submission of the counsel for the petitioner the Court opined that the complaint was not within

time prescribed under Section 468-A of the Code of Criminal Procedure and in view of that the trial court was not competent to take cognizance of the matter. It was further observed that in the complaint, nowhere it was mentioned by the complainant as to when any of the accused refused to return the article entrusted to them which she claimed to be her 'Stridhan'. All that was stated in the complaint was that the articles of dowry presented at the time of marriage and handed over to the accused persons remained in trust with them till the same are handed over by them to the complainant and their refusal to hand over the said articles to the complainant amounts to breach of trust. In this view of the matter, the Punjab and Haryana High Court took the view that the complaint was not within limitation. The argument of the wife that the limitation should run from the date she filed the complaint, because even after the filing of the complaint, the articles had not been returned amounted to refusal. But this argument was repelled by the Punjab and Haryana High Court. Therefore, relying on this judgment, Mr. Baldev Raj, counsel for the petitioner, contended that this judgment is on all force applicable to the facts of this case, therefore, the F.I.R. should be quashed because the complaint being barred by limitation.

(5) This position has been contested by the counsel for the State on the ground that the mis-appropriation of the trust articles is a continuous offence and the limitation should start running only from the date when the demand is made. In this case, the demand though made earlier but the last was made when the F.I.R. was lodged on 2nd March, 1992 when the wife stated as under:

'I would therefore, request that my husband may kindly be directed to return my dowry given to me by my parents at the time of my marriage.'

(6) So this amounts to demand made on 2nd March, 1992 hence the limitation will run from 2.3.1992. In order to strengthen his argument he has placed reliance on the decision of our own High Court in the case of Hasmukh Trivedi Vs . State and another reported in : 45(1991)DLT379 . Similar point came up before our own High Court, In that case. the marriage took place between the parties in 1979 when the 'Stridhan' was entrusted to the parties. The marriage fell out. The wife demanded return of the 'Stridhan' and filed a complaint in 1987. The husband took the

objection that the complaint is barred by time. Repelling the contention of the husband this Court held that the Stridhan although alleged to be entrusted in 1979, misappropriation qua it will not be barred by limitation because it is a continuing offence and the limitation will continue running from the date the demand is made by the wife. After observing so, this Court held that it was not a fit case for quashing the charge against the petitioner on this ground. I am in respectful agreement with the observation made by R.L. Gupta, J. in the above said case. The entrustment though made in this case 15 years ago but the limitation would start from the date the demand is made and refused by the other side. In this case in pursuance of demand made in her complaint dated 2nd March, 1992 petitioner has not resumed her articles. This is an admitted case of the parties. therefore, it can be said that his complaint is not barred by limitation. In arriving at this conclusion I am supported by another decision of our own High Court in the case of Sudhish Chandra Anand Vs . Rekha Anand reported in : 42(1990)DLT278 . therefore, prima facie it constitutes mis-appropriation of the entrusted articles. Hence it cannot be said that when repeated demands are made it will not extend the period of limitation. therefore, relying on the judgments of our own High Court referred to above, I Find no merit in the contention of the petitioner nor the F.I.R. can be quashed on this ground.

(7) Now coming to the second objection raised by the petitioner that the complaint is vague hence the F.I.R. should be quashed and for which he has placed reliance on the decision of the Punjab and Haryana High Court in the case of Balvinder Kumar and another v. Kashama Devi reported in 1987 C.C. 554. In that case the Court found from the record that there was no mention about the specific articles of dowry having been entrusted to the petitioner at the time of marriage nor any evidence was produced against the petitioner hence came to the conclusion that no prima facie offence made out against the petitioner and therefore, the complaint was ordered to be quashed. Similarly in the case of Anokh Singh and ors. v. Parmjit Kaur reported in 1990 (1) R C R 497. Punjab and Haryana High Court held that in the absence of specific details regarding entrustment of dowry the offence under Section 406 I.P.C. is not made out. I am afraid these observations do not help the petitioner because according to the prosecution the complainant has furnished all the details regarding the articles which were

entrusted at the time of marriage and which according to her are lying with the petitioner and also the details as to when she made the demands. According to Mr. R.K. Bahri, counsel appearing for the State details of the dowry articles were also furnished by her. In this view of the matter, the objection of the counsel for the petitioner has no force. Merely because of details have not been mentioned in the F.I.R. will not lead to the conclusion that the complainant has not furnished the details of the dowry articles. On police file there is a complaint filed by the wife indicating all the details. therefore, the authority cited by Mr. Baldev Raj Counsel for the petitioner is of no help to him. Mr. Bahri, counsel for the State, has placed reliance on the decision of the Supreme Court in the case of Pratibha Rani Vs . Suraj Kumar and another : 1985 CriLJ817 , where the Supreme Court has opined that husband and in-laws being trustees of such property given to the wife as 'Stridhan' are bound to return the same if and when demanded by the married woman. Where there is a clear allegation of entrustment by the wife against the husband, he could be prosecuted by a Criminal Court on a complaint filed by the wife and further observed that the High Court should very sparingly exercise its discretion under Section 482 of the Code of Criminal Procedure and observed as under:

'THE High Court, be cannot refrain from observing, might well have refused to invoke its inherent powers at the very threshold in order to quash the proceedings, for these powers are meant to be exercised sparingly and with circumspection when there is reason to believe that the process of law is being misused to harass a citizen.'

(8) In this view of the matter, Mr. Bahri contended that this Court should not interfere or exercise its inherent jurisdiction in quashing the F.I.R. because the matter is still at the investigation stage and the petitioner is absconding. He is not joining the investigation nor his whereabouts are being disclosed. So much so his address given is wrong and he is trying to hamper the investigation. Since the petitioner is not traceable to the police and further investigation cannot take place. The Supreme Court in the case of Pratibha Rani and ors. as referred to above has clearly laid down the law that the Court should sparingly use its inherent powers under Section 482 Cr.P.C. in such like cases, therefore, taking all these factors

into consideration, I Find no merits in the petition of the petitioner on both the counts. The petition is accordingly dismissed.

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