

Narbada (Smt.) Vs. State and ors.

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Court : Rajasthan

Decided On : Sep-26-2007

Reported in : 2008CriLJ798; RLW2008(1)Raj25

Judge : Gopal Krishan Vyas, J.

Appellant : Narbada (Smt.)

Respondent : State and ors.

Disposition : Petition allowed

Judgement :

Gopal Krishan Vyas, J.

1. By way of filing the present revision petition, the petitioner has challenged the order dated 21.6.2003 passed by Addl. Civil Judge (J.D.) & Judicial Magistrate No.5, Jodhpur, framing charge against the petitioner for offence under Section 406 I.P.C.

2. According to the facts of the case, a complaint was filed at Police Station Mandore by one Yudhister Singh against the present petitioner (wife of complainant) wherein it was alleged that marriage of complainant was solemnized with the petitioner on 14.11.1997 and thereafter on 3.1.1998, she left his house and did not come back and at the time of leaving his house, she took away

ornaments with her. Upon this complaint, Police registered a case and after investigation, negative final report was filed by the Police. Thereafter, protest petition was filed by the petitioner and statements of complainant, his mother, father and one Rajendra Gehlot were recorded by the trial Court and on that basis, cognizance for offence under Section 406 I.P.C. was taken by the trial Court against the petitioner. Thereafter, on 21.6.2003, charge for offence under Section 406 I.P.C. was framed against the petitioner.

3. It is contended by learned Counsel for the petitioner that totally false case was registered against the petitioner and from bare perusal of statement of PW-1 Yudhishter Singh, PW-2 Prem Singh, PW-3 Bhagwati and PW-4 Rajendra, it is clear that no case for offence under Section 406 I.P.C. is made out against the petitioner. The main ingredient of entrustment for constituting offence under Section 406 I.P.C. is absent in this case. Learned Counsel for the petitioner has invited the attention of this Court towards definition of 'criminal breach of trust' as provided under Section 405 I.P.C, which reads as under:

405. Criminal breach of trust.- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'.

4. Thus, it is submitted that ingredient of criminal breach of trust is absent in the present case, therefore, the learned trial Court has wrongly framed charge against the petitioner for offence under Section 406 I.P.C. It is also contended that petitioner is married wife of non-petitioner No.2. There is no evidence on record for entrustment of ornaments to the petitioner. Thus, in absence of any evidence of entrustment of the property in favour of petitioner, which is must for framing charge for offence under Section 406 I.P.C, no charge can be framed. It is also submitted that in the judgment reported in I (1999) DMC 212, the Coordinate Bench of this Court has held that in any case mere failure to return the property does not

constitute an offence of criminal breach of trust under Section 405 I.P.C It has also been observed in the aforesaid judgment that upon perusal of Section 405 I.P.C, which speaks for offence of criminal breach of trust, it must be shown that alleged offender was entrusted with property or with any dominion over property and that he dishonestly misappropriated or converted to his own use that property, or he dishonestly used or disposed of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do. Therefore, in absence of any evidence of entrustment, no charge can be framed under Section 406 I.P.C against the petitioner.

5. I have perused the order impugned as also the statement of prosecution witnesses. It is admitted case that after investigation police gave negative final report and thereafter, cognizance was taken by trial Court. The trial Court has observed in para -5 that on 3.1.1998 when petitioner left her in-laws house, there was no knowledge left with the complainant or mother in law or father in law that she will not come back. Therefore, on the said basis, it is stated by the witnesses that after sometime when ornaments were demanded and the same were not returned by the petitioner, therefore, offence is made out.

6. In my opinion, as per the judgment of this Court cited above by learned Counsel for the petitioner, the above preposition upon which charge was framed does not stand because there is no evidence of entrustment of ornaments to the petitioner by her husband or in-laws.

7. Para-12 of the aforesaid judgment cited by learned Counsel for the petitioner reads as under:

12. It shows that in addition to entrustment of the property in favour of the accused, it must be shown that the accused has dishonestly misappropriated the property or converted that property to his own use or dealt with the property in the manner prescribed in Section 405, IPC. Mere refusal to return the property, which was entrusted to him does not satisfy the requirements of Section 405, IPC. Failure to return the property, may be occasioned or account of several reasons. A

person, who is called upon to return the property, which was entrusted to him may not receive the notice requiring him to return the property or for reasons beyond control, he may not be in a position to return the property by actually carrying it to the person, who entrusted it. In any case mere failure to return the property does not constitute an offence of criminal breach of trust Under Section 405, IPC. It is a quite different matter. If from the act of not returning the property, it is inferred that the person to whom the property was entrusted is unable to return the property, because he has misappropriated it or that he is unable to return it, because he is converting the property for his own use in a dishonest manner. The offence Under Section 405, IPC is therefore, committed when the property which was entrusted to the accused was actually misappropriated or dishonestly converted for his own use or is otherwise dealt with in the manner indicated by Section 405, IPC. The date on which the notice for return of the property was served has little relevance so far as the point of time of commission of the offence Under Section 405, IPC is concerned. The learned Munsif and Judicial Magistrate was, therefore, not justified in coming to the conclusion that the offence of criminal breach of trust Under Section 405 IPC was committed on a date which was five days prior to 20th March, 1990.

8. In this view of the matter, the charge framed against the petitioner - wife of complainant for offence under Section 406 I.P.C. vide order impugned dated 21.6.2003 is totally erroneous.

9. Accordingly, this petition is allowed and the order dated 21.6.2003, framing charge against the petitioner for offence under Section 406 I.P.C. is set aside.

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