

Selvakumar, Vs. the State Represented by Inspector of Police and V. Indumathi

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Court : Chennai

Decided On : Apr-03-2006

Reported in : 2006(3)KLT792

Judge : M. Jeyapaul, J.

Acts : Indian Penal Code (IPC) - Sections 34 and 406; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : CRL. O.P. No. 31890 of 2005 and CRL. M.P. Nos. 9009 and 9010 of 2005

Appellant : Selvakumar, ;v. Lingasamy, ;mrs. Parvathy and Dhanasekaran

Respondent : The State Represented by Inspector of Police and V. Indumathi

Advocate for Def. : V. Jaya Prakash Narayanan, Govt. Adv. for Respondent No. 1 and ;A.S. Baalaji, Adv. for Respondent No. 2

Advocate for Pet/Ap. : D. Nellaiappan, Adv.

Judgement :

ORDER

M. Jeyapaul, J.

1. Heard both sides.

2. The petitioners who have accused of an offence under Section 406 read with Section 34 of the Indian Penal Code, move this application seeking quashment of the criminal proceedings in C.C. No. 4463 of 2005 pending on the file of the learned XV Metropolitan Magistrate, George Town, Chennai.

3. Apart from the allegations which are not germane to the offence under Section 406 read with Section 34 of the Indian Penal Code it is contended that the accused herein, having refused to part with the dowry and stridhana property entrusted to the first accused at the time of marriage of the daughter of the defacto complainant with the first accused, threatened the defacto complainant with dire consequences.

4. Learned counsel for the petitioners/accused, referring to the first information report in the background of 161 statements recorded by the Investigating Officer, would submit that there is no allegation to constitute the offence under Section 406 of the Indian Penal Code. It is his further submission that the stridhana property entrusted to the husband becomes absolute property of the husband after the demise of the wife. Only very vague allegations are found even in the 161 statements, it is further submitted by the learned counsel for the petitioners.

5. Learned counsel for the defacto complainant would submit that on the demise of the wife, the stridhana property does not become the absolute property of the husband. It is his further contention that if the stridhana properties are not returned as sought for either by the wife or on her demise by the family members of the wife, it constitute an offence of criminal breach of trust. Learned counsel for the defacto complainant, referring to the first information report as well as the statements recorded under Section 161 of the Code of Criminal Procedure, would argue that there is ample allegation as against the petitioners with regard to the criminal breach of trust alleged as against them.

6. The learned Government Advocate (Criminal Side) would submit that the investigation embarked upon by the respondent-police would disclose that the stridhana property entrusted to the custody of the petitioners by the defacto

complainant at the time of marriage of her daughter were not returned and thereby the petitioners committed an offence punishable under Section 406 read with Section 34 of the Indian Penal Code.

7. In the complaint, the defacto complainant has clearly stated that the second accused V. Lingasamy threatened the defacto complainant with dire consequences, if at all, the defacto complainant ventured to come over to Kakinada to retrieve the stridhana properties entrusted to him at the time of marriage of her daughter.

8. Of course, the complaint does not give any details about the involvement of the other accused. As rightly pointed out by the learned counsel for the defacto complainant the first information report is not an encyclopaedia supposed to contain all the ingredients of the various offences alleged.

9. On a perusal of statements of Vimaladithan and Vijayasarithi, the sons of defacto complainant, it is found that they have specifically stated that Selvakumar's family refused to part with the stridhana property and the cash entrusted at the time of marriage of their sister with the first accused Selvakumar.

10. The Hon'ble Supreme Court has held in *Pratibha Rani v. Suraj Kumar* : 1985 CriLJ817 that conversion to own use the dowry articles constituting the stridhana property given by the parents of a Hindu woman to the husband would amount to criminal breach of trust.

11. In the very same judgment, it has been further held that the husband cannot claim exclusive right over the stridhana property entrusted to him at the time of marriage inasmuch as the ownership of wife continues even if she has started living with her husband after the marriage.

12. The second limb of the aforesaid ratio has been reiterated in the later judgment passed by the Hon'ble Supreme Court in *Rashmi Kumar v. Mahesh Kumar Bhada* : (1997)2SCC397 . The wife is the absolute owner of the stridhana property and the husband can not even become the joint owner of the said property, it has been declared.

13. The Court will have to analyse whether there is sufficient allegation against the petitioners who have chargesheeted for an offence under Section 406 read with Section 34 of the Indian Penal Code. The text of the first information report as well as the statements recorded under Section 161 of the Code of Criminal Procedure, as referred to above, will go to show that there is a specific allegation as against A.1 and A.2 for the offence of criminal breach of trust.

14. It is the admitted case of both the parties that the fourth accused Dhanasekaran is not the family member of the second accused Lingasamy. Of course, it has been stated that he was related to the said Lingasamy. Unless there is entrustment of property, the offence of criminal breach of trust will not arise. The prosecution cannot claim that there was entrustment of the stridhana property to a stranger of the family. Therefore, the Court is convinced with the submission made by the learned counsel for the petitioners that the fourth accused Dhanasekaran is not concerned with the offence under Section 406 read with Section 34 of the Indian Penal Code. Further, on a careful perusal of the entire evidence collected by the Investigating Agency, it is found that there is no whisper about the criminal breach of trust as against the third accused Mrs. Parvathy.

15. Therefore in the interest of justice, the Court will have to relieve the third accused Mrs. Parvathy and the fourth accused Dhanasekaran from the charge under Section 406 read with Section 34 of the Indian Penal Code. The other two accused viz., Selvakumar (A.1) and V. Lingasamy (A.2) will have to necessarily face the charge under Section 406 read with Section 34 of the Indian Penal Code as there is ample allegation as against them.

16. In the result, the criminal proceedings in C.C. No. 4463 of 2005 pending on the file of the learned XV Metropolitan Magistrate, George Town, Chennai, as against the third accused Mrs. Parvathy and the fourth accused Dhanasekaran stands quashed and as regards the first accused Selvakumar and the second accused V. Lingasamy, the petition seeking quashment of the criminal proceedings as against them in C.C. No. 4463 of 2005 on the file of the learned XV Metropolitan Magistrate, George Town, Chennai stands dismissed. Consequently, connected criminal miscellaneous petitions also stand dismissed. The observations made by

this Court will not have any bearing on the trial of this case.

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