

Om Prakash Vs. Radha Devi

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Court : Jammu and Kashmir

Decided On : May-01-2003

Reported in : 2003(3)JKJ233

Judge : B.L. Bhat, J.

Acts : Jammu and Kashmir Code of Criminal Procedure (CrPC) , Svt. 1989 - Section 538; ;Ranbir Penal Code (IPC) - Section 406

Appeal No. : Petition No. 28/2002

Appellant : Om Prakash

Respondent : Radha Devi

Advocate for Pet/Ap. : V.B. Gupta, Adv.

Disposition : Petition allowed

Judgement :

B.L. Bhat, J.

1. Through the medium of this petition under Section 561-A Cr. PC, the petitioner/accused has sought indulgence of this Court for quashment of proceedings of complaint in file No. 34 titled as Radha Devi v. Om Parkash pending decision before the learned Chief Judicial Magistrate, Kathua for offence

under Section 406 RPC.

2. It is inter alia maintained in the petition that Radha Devi, respondent who was wife of the petitioner filed complaint on 10.9.2001 against the petitioner in the court of learned Chief Judicial Magistrate, Kathua under Section 406/420RPC alleging therein that the petitioner has misappropriated the dowry articles allegedly given to the petitioner and respondent at the time of their marriage; that the trial court did not take cognizance of the complaint up to 3.4.2002 and that on 3.4.2002, the court below took cognizance in the complaint for offence under Section 406 RPC against the petitioner; that in petition filed by the respondent/complainant before the learned District Judge, Kathua, she had prayed besides decree of divorce, decree in terms of Section 27 of the Hindu Marriage Act in respect of dowry articles, which the learned District Judge, Kathua came to ignore while passing decree for divorce between the parties; that when the District Court has already ignored the prayer of the complainant regarding the dowry articles taking of cognizance by the learned trial court for offence with respect to misappropriation of the dowry articles, is not warranted. The court below has wrongly taken the cognizance of the offence when there is specific averment in the complaint that the dowry articles were given to both jointly; that no offence under Section 406 RPC is made out, therefore, issuance of process in the case liable to be quashed.

3. On institution of the complaint, the learned Magistrate after examining the complainant and her witnesses under Section 200 Cr. PC came to take cognizance of the offence under Section 406 RPC and issued process against the respondent.

4. Notice of the petition in hand under Section 561-A Cr. PC was issued to the respondent/complainant and Mr. R.S. Kotwal caused appearance before this Court on her behalf as it is manifest from order dated 20.2.2003 but later on absented.

5. Heard learned counsel for petitioner and also gone through the record of the case.

6. To constitute an offence of breach of trust punishable under Section 406 RPC as defined under Section 405 RPC are that there was an entrustment of property

or domain over property; secondly persons entrusted with property dishonestly misappropriated it or converted it into his own use or dishonestly used or disposed it in violation of any direction of law prescribing the mode in which such trust is to be discharged or any such legal contract express or implied which he has made touching the discharge of such trust or that he wilfully suffered any other person to do so,

7. Having regard to this law, let us examine the case of the respondent/complainant. In her complaint instituted before learned Chief Judicial Magistrate, Kathua, the respondent/complainant has alleged that she was married to petitioner/accused in accordance to Hindu rites and ceremonies; that at the time of marriage, the parents of the respondent/ complainant gave her as well to the petitioner/ accused dowry articles as detailed in the list which are items of furniture, kitchenware and beds etc. for their own use; that after the marriage, the accused maltreated the respondent, compelled her to bring more dowry and ultimately turned her out from her matrimonial house, as a result of which, the respondent filed divorce petition on 30.9.1996, which came to be accepted by the learned District Judge, Kathua by passing decree of divorce dated 21.7.1998 in her favour.

8. From the perusal of this complaint, it is manifest on the own showing of the respondent/complainant that the items of dowry in the form of presents like furniture articles, kitchenware, beds etc. were given to her as well as to the petitioner jointly at the time of their marriage. Once it is found that the property in the form of presents like furniture items, kitchenware and beds except cash certificates, motor car, motor bike and fridge etc. is given to the spouses by the parents parental relations and the friends of the wife for their common use, these items of dowry and presents cannot be said the exclusive property of the wife but would in absence of any written agreement to the contrary, be deemed to be the jointly owned and possessed by the spouses and there cannot be entrustment of the jointly owned and possessed property as contemplated under Section 405 RPC. It is settled law that ownership or beneficial interest in the ownership of the property entrusted in respect of criminal offences alleged to have been committed must be in some other persons other than the accused and such persons must

have been held it on account of same person for his benefit. This being so, the petitioner to whom the items of dowry were given alongwith the respondent by the parents of the respondent for their common use, cannot be said to have been entrusted with these items by the respondent, therefore, the very first ingredient of offence under Section 406 RPC is not made out in the case in question against the accused. This takes me to the other aspect of the case i.e. limitation for taking cognizance of certain offences.

Chapter XLV-A Cr. PC deals with limitation for taking cognizance of certain offences (Cr. PC 1989 - 1933 AD). Section 538-A defines period of limitation, which means the period specified under Section 538-B Sub-section (2) prescribes period of limitation and Sub-section (1) to this section provides that no court shall take cognizance of the offence after the expiry of period of limitation. The period of limitation is prescribed with reference to the punishment prescribed for a particular offence. If the offence is punishable with fine, the period of limitation shall be six months; if the offence is punishable with imprisonment for a period not exceeding one year period of limitation shall be one year and if the offence is punishable with imprisonment exceeding one year, but not exceeding three years, period of limitation shall be three years. No period of limitation is prescribed for offence punishable with imprisonment exceeding three years. Section 538-C lays down that when the period of limitation commence it provides that period of limitation shall commence on the date when the offence is committed but if commission of the offence or to any police officer or identity of the person is not known either to the person aggrieved or to the police, period of limitation is commenced in the former case on the date of commission of offence comes to the knowledge of such person or to police officer, whichever is earlier and in the later case, period of limitation shall commence from the date identity of the person is known to the person aggrieved or the police, whichever is earlier.

Section 538-D Cr. PC deals with extension of time in certain cases in calculating the period of limitation that to say the time during which any person has been prosecuting in due diligence of prosecution; the time during which the proceedings were stayed by injunction or order the period of notice be given or time required for obtaining sanction for prosecution; the period during which the offender has been

absented from India or from any territory outside India which is under the administration of Central Government or has avoided arrest by absconding or concealing himself. Section 538-E lays down that if the day of limitation under Section 538-B Sub-section (2), happens to be closed, the court may take cognizance on the next opening day. Section 538-F Cr. PC provides that in case of continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues. Section 538-G deals with extension of period of limitation, if it is satisfied on the facts and circumstances of the case that the delay has been properly explained.

9. In the instant case as indicated in the complaint in question, the petitioner alleged to have committed an offence under Section 406 RPC. The punishment provided for offence under Section 406 RPC, is either imprisonment for three years or fine or both. As indicated in the complaint in question, the items of dowry were given to the parties to marriage that is to say the petitioner and the respondent for their common use at the time of their marriage, which took place on 29.3.1993, the respondent was allegedly maltreated by the petitioner and turned her out from his house and ultimately on 23.9.1996, the respondent filed divorce petition before the learned District Judge, Kathua- the prayer for dissolution of marriage. This being so, the commission of offence as alleged by the respondent/complainant has been committed on 23.9.1996 and the complaint in question has been instituted before the learned Chief Judicial Magistrate, Kathua on 10.7.2001 i.e. well after three years and that the learned Chief Judicial Magistrate has taken cognizance of the offence on 3.4.2002. This being so, the complaint in question has been instituted for offence under Section 406, RPC beyond the prescribed period of limitation, therefore, it is hopelessly time-barred and the learned Chief Judicial Magistrate could not have taken the cognizance of the offence under Section 406, RPC in view of the statutory bar imposed by Sub-section (1) of Section 538B, Cr. PC.

10. All considered. I am of the firm opinion that the case is one which calls for exercise of inherent jurisdiction under Section 561A Cr. PC because the contents of the proceedings in the case in question before the court below will amount to abuse of process of law.

11. Viewed thus, the petition is allowed and complaint titled Radha Devi v. Om Parkash File No. 34 of 10.9.2002 pending decision before the learned Chief Judicial Magistrate, Kathua, the order for taking cognizance dated 3.4.2002 for offence under Section 405, RPC and the order for issuance of the process against the petitioner, is hereby quashed. Record of the case together with copy of this order be sent to the trial court forthwith for information.

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