

Before A. P. Chowdhri, J.

BHIM SINGH,—*Petitioner.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Misc. No. 4794-M of 1989

24th May, 1990.

Code of Criminal Procedure—Ss. 177, 181 (4), 482—Dowry Prohibition Act, 1961—S. 6—Criminal Misappropriation and breach of trust—Jurisdiction in dowry cases—Where offence had been committed and not where either marriage has taken place or alleged entrustment of dowry articles made.

Held, that Section 177 of the Code of Criminal Procedure makes a general provision that every offence shall ordinarily be enquired into and tried by a Court within whose local jurisdiction it was committed. Section 181(4) makes a specific provision with regard to an offence of criminal misappropriation or criminal breach of trust. It lays down that the said offence may be tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is subject to the offence was received or retained or was required to be returned or accounted for by the accused-person. At this stage reference may be made to provisions of Section 6 of the Dowry Prohibition Act, 1961, which supplements the law with regard to offence under Section 406 of the Indian Penal Code in so far as dowry articles are concerned. (Para 6)

Petition under Section 482 of Code of Criminal Procedure praying that the petition may be accepted and the impugned F.I.R. Annexure P-2 may kindly be quashed the F.I.R. No. 27 of 1989 (D.D.R. No. 21) Police Station Mulepur, Tehsil Sirhind, District Patiala under Section 498-A, I.P.C.

Sarjit Singh, Sr. Advocate with Navkiran Singh, Advocate, for the *Petitioner.*

S. S. Saron, AAG., Punjab, for the *State.*

H. S. Mattewal, Sr. Advocate with Sukhbir Singh Advocate, for the *complainant.*

ORDER

A. P. Chowdhri, J.

(1) In this petition under section 482 of the Code of Criminal Procedure, the following facts need to be stated before dealing with the points arising herein :—

Bhim Singh petitioner was married to Shrimati Jaspreet Kaur on March 30, 1986. The bride's father is stated to have given ornaments and various other articles, detailed in the First information Report, as dowry. The husband and in-laws of the girl were dissatisfied with the dowry. There was a demand of Rs. 1,00,000 for buying a car. The girl's father gave Rs. 60,000 at his native village Khara in district Patiala in the month of May, 1987, for the purchase of car. This, however, did not satisfy the husband and his parents. Jaspreet Kaur was subjected to harassment. The further case is that by practising fraud, the husband obtained an ex parte decree for dissolution of marriage under Section 13 of the Hindu Marriage Act on March 1, 1989 and later on turned out the wife from his house on April 13, 1989. Since then Jaspreet Kaur is living at her father's house at village Khara, Police Station Mulepur district Patiala. Her father lodged F.I.R. (Annexure P-2) dated April 28, 1989, for offences under Section 498-A/406 of the Indian Penal Code.

(2) While the case was still at the investigation stage, the husband has filed this petition for quashing the F.I.R.

(3) To up-date the facts, an application for setting aside the ex-parte decree of annulment of marriage was made by the wife. The ex-parte decree was set aside by the District Judge, Chandigarh,—vide order dated March 20, 1990. A revision filed against the said order has since been dismissed by this Court. Before setting aside the ex parte decree, however the husband is alleged to have remarried some other lady.

(4) The first contention of learned counsel for the petitioner is that the Courts at Patiala had no jurisdiction and, therefore, the F.I.R. should be quashed. In this connection, it was pointed out that admittedly the marriage took place at Chandigarh. It follows that the alleged entrustment of dowry articles took place at Chandigarh and the alleged misappropriation also took place there

and it is not shown how the Courts at Patiala came to have jurisdiction.

(5) The stand taken by the respondents is that a demand for Rs. 1,00,000 was made by the petitioner at village Khara and father of the girl had paid a sum of Rs. 60,000 to him at village Khara and therefore, the Courts at Patiala had jurisdiction. It is also pointed out that, according to the allegations made in the complaint, Jaspreet Kaur was given a beating at village Khara,—*vide* para 5 of the complaint (Annexure P-2). Reliance has been placed by learned counsel for the respondents on *Smt. Nirmal Bhasin and others v. Smt. Alka Bhasin* (1), where it was held that the place where demand for return of dowry articles was made and the same was turned down, the Court at that place had jurisdiction for an offence under Section 406 of the Indian Penal Code.

(6) After hearing learned counsel for both the parties I am of the view that the Court at Patiala has jurisdiction though I would like to base my conclusion on different reasons. Section 177 of the Code of Criminal Procedure makes a general provision that every offence shall ordinarily be enquired into and tried by a Court within whose local jurisdiction it was committed. Section 181(4) makes a specific provision with regard to an offence of criminal misappropriation or criminal breach of trust. It lays down that the said offence may be tried by a Court within whose local jurisdiction the offence was committed or any part of the property which is subject to the offence was received or retained or was required to be returned or accounted for by the accused-person. At this stage reference may be made to provisions of Section 6 of the Dowry prohibition Act, 1961, which supplements the law with regard to offence under Section 406 of the Indian Penal Code insofar as dowry articles are concerned. Section 6 lays down that where any dowry article is received by any person, that person shall transfer it to the woman in connection with whose marriage that article has been received and pending such transfer shall hold it in trust for the benefit of the woman. In other words, the person receiving the dowry articles is under a legal obligation to transfer the same to the woman for whom he holds the dowry in trust. In *PTS Saibaba and another v. P. Manqatayaru and another* (2), following a Full Bench decision in *E.S.I. Corporation v. Md. Ismail Sahib* (3), it was held by a learned Single judge of the

(1) 1990(1) Recent Criminal Reports 83.

(2) 1978 CrL. L.J. 1362.

(3) A.I.R. 1960 Madras 64 (1960, CrL. L. J. 242).

Madras High Court that the person can transfer the dowry at the place where the woman is residing. If he fails to do so, the woman gets a cause of action for filing a complaint at the place where it should have been transferred to her. It was, therefore, laid down that the complaint can be filed by the woman where she is residing. I am in respectful agreement with the above view and, therefore, the present F.I.R. cannot be quashed for want of territorial jurisdiction.

(7) The learned counsel for the petitioner next submitted that the allegations made in the F.I.R. with regard to the entrustment of various items of dowry to specific individuals as also with regard to the beating alleged to have been administered to the wife are conspicuous by their absence and, therefore, F.I.R., deserves to be quashed. I have gone through the F.I.R. with the learned counsel. I find that the allegations do disclose a *prima facie* case. In this connection, it will be useful to remember that the extraordinary powers of the High Court under Section 482 of the Code of Criminal Procedure are required to be exercised in rarest of rare cases with utmost circumspection. In a recent decision in *Mrs. Dhanalakshmi v. R. Prasanna Kumar and others* (4), their Lordships of the Supreme Court reiterated that in proceedings instituted on complaint exercise of inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. It was further observed, if the allegations set out in the complaint do not constitute the offence for which cognizance is taken by the Magistrate, it is open to the High Court to quash the same. Their Lordships proceeded to observe and it is important—that it is not necessary that there should be a meticulous analysis of the case before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence are disclosed and there is no material to show that the complaint is *mala fide*, frivolous or vexatious, in that event there would be no justification for interference by the High Court. Applying the law referred to above, I find no case for quashing the F.I.R. The petition is accordingly dismissed. The parties through their counsel are

directed to appear in the trial Court for further proceedings according to law on June 6, 1990.

P.C.G.

Before J. V. Gupta, C.J. & R. S. Mongia, J.

STATE OF PUNJAB AND OTHERS,—Appellants.

versus

M/S SUBHASH CHANDER,—Respondent.

Letters Patent Appeal No. 622 of 1986.

24th August, 1990

Punjab Land Revenue Act, 1887—Ss. 31, 32, 33, 41, 42, 44—Punjab Land Revenue (Special Assessment) Act, 1955—Record of rights—Vesting of brick-earth—No specific mention in Sharait Wajib-ul-arz in favour of Government—Presumption in favour of landowners—State Government—Whether entitled to charge royalty.

Held, that in these appeals where there was a record-of-rights earlier to 18th day of November, 1871, as well as a later record of rights after 18th of November, 1871, it will be the later record-of-rights that would prevail and accordingly since there is no specific vesting of brick-earth in the State Government, the brick-earth would vest in the landowners. (Para 15)

Held, that the brick-earth vests in the landowners, the State Government would be entitled to charge revenue under the Punjab Land Revenue (Special Assessment) Act, 1955, but would not be entitled to charge any royalty. (Para 16)

Letter Patent Appeal Under Clause X of the Letter Patent Against the Judgment of Hon'ble Mr. Justice D. V. Sehgal passed in the above noted case on the 18th March, 1986.

H. S. Riar, Sr. D.A.G. Punjab, for the Appellants.

H. L. Sibal Sr. Advocate with P. C. Dhiman, Advocate, for the Respondent.

JUDGMENT

R. S. Mongia, J.

(1) "This judgment of ours will dispose of L.P.A. No. 516 of 1986 and L.P.As No. 622 to 630 of 1986, which have been filed by