N.K.S. .

FULL BENCH

Before S. S. Sandhawalia, C.J., I. S. Tiwana & M. M. Punchhi, JJ.

VINOD KUMAR SETHI and others,—*Petitioners.*

versus

THE STATE OF PUNJAB and another,—*Respondents.*

Criminal Misc. No. 4022-M of 1981.

March 30, 1982.

Code *of Criminal Procedure* (II *of* 1974)—*Sections* 173 *and* 482—*Indian Penal Code* (*XLV of* 1860—*Sections* 405 *and* 406—*Dowry Prohibition Act* (*XXVIII of* 1961)—*Sections* 2 *to* 6—*Investigation* **in**

progress in pursuance of a registered First Information Report—No final report under section 173 filed in any Court—High Court—Whether has jurisdiction to quash the First Information Report and half the investigttion in exercise of its inherent jurisdiction—Pre-requisites for quashing the proceedings at such stage—Stated—Hindu Law—Dowry and traditional presents given to wife at the time of wedding—Whether constitute her individual property—Codification of Hindu Law—Whether has abolished the concept of Stridhana—Special provisions of Dowry Prohibition Act—Whether exclude the general provisions of sections 405/406 of the Penal Code—Husband and wife fall out and the wife allegedly expelled from the matrimonial home—Articles of dowry and traditional presents not returned to the wife by the husband and his parents despite demands—Such articles—Whether could be said to have been entrusted to the husband and his parents within the meaning of section 405 of the Penal Code—Offence of Criminal breach of trust—Whether committed.

Held, that there is neither any statutory provision nor any binding precedent which in any way places a blanket bar against the quashing of proceedings by the High Court in its inherent jurisdiction at investigation stage or place the later process beyond the pale of judicial scrutiny. Though the High Court has inherent jurisdiction to quash the investigative process in a proper case, it does not mean that this power is to be exercised indiscriminately. The affirmance of such a power is one thing but using it like the proverbial 'bull in a China Shop' is altogether another. It calls for a strong reminder that even where the proceedings have reached the Court by way of a charge-sheet or in the case of the existence of a complaint before it well defined limitations for quashing the same have been authoritatively spelt out and it is thus broadly within the parameter spelt out thereby that the power to quash proceedings is to be exercised even with regard to cases pending in a Court. It follows that even a more stringent criterion would apply in quashing the First Information Repor and the subsequent police investigation before the charge-sheet is filed. Thus, there is no blanket bar against the quashing of the First Information Report and tht subsequent investigation (even before a charge-sheet is filed in Court) provided that the requisite preconditions for the exercise of the powers stand satisfied. Without being exhaustive, these may be briefly summarised as under ;

(i) When the First Information Report, even if accepted as trut, discloses no reasonable suspicion of the commission of a cognizable offences ;

(ii) When the materials subsequently collected in the Course of an investigation further disclose no such cognizable offence at all ;

(iii) When the continuation of such investigation would amount to an abuse of power by the police thus necessitating interference in the ends of justice ; and

(iv) That even if the first information report or its subsequent investigation purports to raise a suspicion of a cognizable offence, the High Court can still quash it if it is convinced that the power of investigation has been exercised *mala fide*. (Paras 12, 13 and 20).

Held, that from times immemorial Hindu Law has recognised the individual ownership of the wife with regard to the articles of dowry and traditional presents given at the time of wedding. Continued recognition of this fact and the individual ownership of the Hindu wife with regard thereto is manifest from the well settled rule that Stridhana cannot be attached for the debts of her husband. Equally well acknowledged is that the husband has no right of alienation to that which is the Stridhana of his wife. These facts highlight the clear cut recognition by the oldest treatises of Hindu Law with regard to individual ownership of her separate property by a Hindu wife. It is, therefore, wholly idle to contend today that the articles of dowry and traditional presents given at the time of wedding cannot be the individual property of a Hindu wife. Now once it is so held that articles of dowry and traditional presents given at the wedding are owned by the bride individually in her own right, then one fails to see how by the mere fact of her bringing the same into her husband's or parents-in-law's household, would forthwith divest her of the ownership thereof. Separate and individual right to propery of the wife therein cannot vanish into thin air the moment the threshold of the matrimonial home is crossed. To say that at that point of time she would cease to own such property altogether and the title therein would pass to her husband or in any case she would lose half of her right therein and become merely a joint owner of the same with the family of her husband, does not appear to me even remotely warranted either by the statute, principle or logic. No such marriage hazard against the wife can be implied in law. Once she owns property exclusively, she would continue to hold and own it as such despite marriage and coverture and the factum of entering the matrimonial home (Paras 25 & 26).

Held, that there is nothing in the codification of Hindu Law which in any way abolishes the concept of Stridhana or the right of a Hindu wife to exclusive individual ownership. Indeed, the resultant effect of the enactments like the Hindu Marriage Act and the Hindu Succession Act is to put the Hindu female wholly at par with the Hindu

male, if not at a higher pedestal with regard to individual ownership of the property. (Para 35).

Held, that the plain reading of the definition of dowry under the Dowry Prohibition Act, 1961 would show that it means any property given directly or indirectly as a coonsideration for the marriage of such parties. Now once it is so, dowry of this kind is in fact a *quid pro quo* for marriage itself. Inevitably it would follow that whatever is given as a consideration for the marriage itself cannot possibly be deemed in the eye of law as an entrustment or passing of dominion over property. To recall the familiar analogy of the law of contract—the consideration is the price for the promise and, therefore, such property cannot be deemed even remotely to have been entrusted or dominion passed over it to the other. The necessary result, therefore, is that the same set of facts allegedly constituting an offence under the Dowry Prohibition Act cannot possibly come within the ambit of section 406 of the Indian Penal Code. This would be plainly a contradiction in terms. One offence is rested on property forming the consideration for the marriage as such, whilst the other visualises the entrustment and passing of dominion over property individually owned. The offences under the Dowry Prohibition Act and under section 406, Indian Penal Code, thus, cannot stand together on the same set of facts. (Para 39).

Held, that the very concept of the matrimonial home connotes a jointness of possession and custody by the spouses even with regard to the moveable properties exclusively owned by each of them. It is, therefore, inapt to view the same in view of the conjugal relationship as involving any entrustment or passing of dominion over property day to day by the husband to the wife or *vice versa*. Consequently, barring a special written agreement to the contrary, no question of any entrustment or dominion over property would normally arise during coverture or its imminent break up. Therefore, the very essential pre-requisites and the core ingredients of the offence under section 406 of the penal Code would be lacking in a charge of criminal breach of trust of property by one spouse against the other. Inevitably, therefore, the purported allegations of breach of trust betwixt husband and wife so long as conjugal relationship lasts and the matrimonial home subsists, cannot constitute an offence under section 406 of the Indian Penal Code, subject to any special written agreement. Equally, as against the close relations of the husband no facile presumption of entrustment and dominion over the dowry can be raised prima facie and this inevitably has to be by a subsequent conscious act of volition which must be specifically allegedly and conclusively established by proof. Lastly, because of the definition in section 2 of the Dowry Prohibition Act,

the offences under the said cannot come within the ambit of section 406 of the Indian Penal Code as these cannot stand together on the same set of facts. Hence, the bonds of matrimony bar the spectre of the criminal breach of trust *qua* the property of the spouses at the very threshold of the matrimonial home. It cannot enter its hallowed precincts except through the back door of a special written contract to the contrary with regard to such property.

(Paras 56 and 57).

Jaswant Rai and others *v.* Smt. Kamal Rani
1963 PLR 667.

OVERRULED.

Bhai Sher Jang Singh and others *vs.* Smt. Varinder Kaur
1978 P.L.R. 737.

PARTLY OVERRULED.

Petition under Section 482 Cr.P.C. praying that in view of the facts and circumstances set out above the following relief may be granted.

(a) That the criminal petition may be admitted and proceedings against the petitioners be quashed as the same are palpably unjust and abuse of the process of the Court.

(b) That the proceedings be stayed during the pendency of the present petition ;

(c) that exemption be granted from filing the certified copies of the documents annexed thereto.

(Case referred by a Single Judge Hon'ble Mr. Justice M. M. Punchhi on 6th March, 1981 in Criminal Misc. 5119-M of 1980 to a larger Bench for decision of an important question of law involved by this. A Division Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice M. M. Punchhi again referred the case to the Full Bench on 30th October, 1981. The Full Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia Hon'ble Mr. Justice I. S. Tiwana and Hon'ble Mr. Justice M. M. Punchhi again referred the connected case to a Single Judge for decision on merits on 30th March, 1982).

M. C. Bhandare, Senior Advocate, *for the Petitioners.*

K. S. Thapar, K. G. Bhagat, M. L. Sharma and S. K. Taunque, Advocates with him),—*for the Petitiontr.*

M. J. S. Sethi, Additional A.G., *for the State.*

A. S. Rupal, Advocate, *for respondent No. 2.*

JUDGMENT

S. S. *Sandhawalia, C.J.*—

1. Do the bonds of matrimony inhibit a prosecution for breach of trust betwixt the spouses inter-se, and in particular with regard to the wife's dowry, is the spinal issue which has necessitated the reference of these twelve cases for an authoritative decision by the Full Bench. Allied therein is the equally (if not more) significant question — whether the High Court has the power in its inherent jurisdiction to quash the police investigative process before it reaches a Court of law for trial.

2. The matrix of facts may be noticed from Criminal Misc No. 4022 of 1981—*Vinod Kumar Sethi* v. *State of Punjab & others*. The petitioners therein are the husband, the mother-in-law and the father-in-law of respondent No. 2 Smt. Veena Rani. The marriage of Smt. Veena Rani respondent to Vinod Kumar Sethi petitioner took place at Bhatinda on the 28th of January, 1979, according to Hindu Vedic rites. It is plain that the marriage did not subsist and on the 18th of April, 1980, Veena Rani respondent addressed an appplication to the Senior Superintendent of Police, Bhatinda. Therein she alleged that at the time of her marriage she had received substantial presents of ornaments, valuable clothes, furniture and other household articles besides Rs. 21,000 from her parents and relations as also from her husband and mother-in-law as dowry and in consideration of the marriage. She claimed that all these items of property over which she had absolute control had become her Stridhana. It was further stated that as a dutiful wife and as daughter-in-law she reposed full faith in her husband and her parents-in-law and entrusted all the properties aforesaid to them as detailed in annexures 'A' and 'S' to the application. It was then alleged that after the marriage, all the three petitioners started mal-treating her for extracting more dowry from her parents and made repeated demands from time to time to this effect. When these were not satisfied she was expelled from the house in her wearing apparel and deprived of all the articles of her dowry around January, 1981. Thereafter she made demands for the return of the aforesaid property which allegedly had been entrusted to the petitioners but they refused to do so. On these facts it is alleged that the three petitioners in conspiracy with each other were mis-appropriating her dowry and converting it to their own use in breach

of the entrustment made to them. On the basis of the application aforesaid, a first information report was registered at Police Station Kotwali, Bhatinda, under section 406, Indian Penal Code, and for other offence.

3. According to the petitioners during the course of the investigation of the aforesaid first information report the three petitioners were arrested on the 2nd of July, 1981, and locked up in the Police Station for 24 hours and their remand was taken for four days after which they were released on bail. It is further alleged that all of them were tortured to the maximum extent and the respondent with the help of the police demanded Rs. 1,00,000 (One Lakh) but the petitioners could only arrange Rs. 50,000 which were given to the police. The police party was also handed over gold weighing 30 *tolas*. After investigation, challan was filed in the Court of the Judicial Magistrate, Bhatinda, and the petitioners then preferred the petition seeking the quashing of the whole proceedings as a blatant abuse of the process of the Court.

4. A similar set of petitions came up before my learned brother Punchhi J., sitting singly who by his lucid order of the 6th of March, 1981, referred the cases for an authoritative decision in view of the larger issues involved. Later other petitions raising the identical issues and claiming the same relief of the questioning of the proceedings were also directed to be listed before the Full Bench.

5. It is the admitted position that in a number of these criminal Miscellaneous Petitions, the mattsr is as yet only at the investigative stage in pursuance of the registered first information reports and no final report under section 173 of the Code of Criminal Procedure has been filed in any Court of law. In these cases a strenuous preliminary objection at the very threshold has been pressed on behalf of the respondent-State of Punjab. Mr. Mohinderjit Singh Sethi, the learned Additional Advocate General took up the firm stand that the High Court had no jurisdiction to quash a first information report and to halt the investigation (pursuant thereto) in its tracks. In essence the contention was that till the stage of filing a challan in a Court of law is arrived, the arm of the law under section 482 of the Code is not long enough to reach the statutory

investigative right of the police. In nut-shell the argument is that the inherent jurisdiction to quash airses only when the proceedings enter the precincts of the Court of law and not earlier. Particular reliance in this context was placed on the observations of the final Court in *Johan Singh* v. *Delhi Administration* (1), *Kurukshetra University & another* v. *State of Haryana & another* (2), *and State of Bihar & another* v. *J.A.C. Saldanha & others* (3).

6. There is no gainsaying the fact that the question raised by the learned Additional Advocate General is of obvious significance and not altogether free from difficulty because a penumbral area does seem to exist on the point. However, within this jurisdiction it would be unnecessary to examine the matter afresh on first principles because it is not altogether res-integra. The identical point had earlier arisen before a Division Bench, to which I was a party in *Saral Beopar Association* v. *The State of Haryana and another*, (4), and the specific question for determination framed by me in the order of reference was in the following terms :—

> "Is the High Court under section 561-A, Criminal Procedure Code, empowered in an appropriate case to interfere and quash criminal proceedings during the pendency of an investigation by the Police and before a report under section 173, Criminal Procedure Code, has been filed in a Court of competent jurisdiction ?"

The Division Bench after a broad conspectus of first principles, the relevant statute, and the precedent then existing, rendered a somewhat halting answer to the issue in the following terms :—

> "* * *. In this view of the matter, the broad proposition that the Court can in no case interfere with the investigation of the case does not appear to be justified. On reference to the various provisions contained in the Code of Criminal Procedure relating to the investigation into criminal offences, it will be seen that the investigation is not entirely independent of the Court but is to some extent,

(1) A.I.R. 1974 S.C. 1146.
(2) A.I.R. 1977 S.C. 2229.
(3) A.I.R. 1980 S.C. 236.
(4) 1970 Cur. L. J. 720.

> though limited, under the supervision of Magistrate, who can be approached not only by the investigating officer but also by the accused to issue necessary process and pass orders in aid of proper and fair investigation of the case. There can, however, be no doubt that, as ruled by their Lordships of the Supreme Court and earlier by the Privy Council in *Khawaja Nazir Ahmad's case* (5), the power of investigation so far as it vests exclusively in the police or investigating agency is not to be interfered with by the Courts, and the investigating agency should be left to carry on investigation without any interference. This, however, clearly postulates that the investigation so long as it is in accordance with the provisions of law cannot be interfered with and it does not give immunity to investigation which is not in consonance with the relevant provisions of law governing the particular case or is in breach of them."

However, on the particular facts of the case it was held that the first information report did disclose a cognizable offence which the police was entitled to investigate and the relief of quashing the investigation was consequently declined. It is thus plain that on the ratio of *Saral Beopar Association's case* (supra) there is no blanket bar against the quashing of proceeding at the investigative stage. Therefore the real question now is whether the aforesaid view has been eroded by the subsequent decisions or observations of the final Court.

7. Now primary reliance in behalf of the respondent-State was on *Jehan Singh's case* (supra) and in particular to the following observations in the penultimate paragraph thereof:—

> "For the foregoing reasons, we would hold that the petitions under section 561-A were liable to be dismissed as premature and incompetent. On this short ground, we would dismiss this appeal."

On the basis of the aforesaid observations it was sought to be contended that a claim for quashing before the charge-sheet is filed

(5) A.I.R. 1945 P.C. 8.

under section 173 of the Code of Criminal Procedure would be both incompetent and pre-mature.

8. I am inclined to the view that the stand is not well-conceived. A closer analysis of the judgment in *Jehan Singh's case* would disclose that it does not lay down any absolute and inflexible bar against the quashing of a first information report prior to the fling of a charge-sheet. Were it to be so, then the only question calling for enquiry would be the factual one whether the charge-sheet had been filed in Court or not and nothing else. Far from doing so the Bench in *Jehan Singh's case* expressly noticed that the real issue was whether the allegations in the first information report, if assumed to be correct, did or did not constitute the offence of theft or its abetment. Their Lordships thereafter closely weighed the contents of the first information report and came to the conclusion that the facts therein, if accepted, would disclose the commission of a cognizable offence. It was after arriving at this finding that the Court refused to quash the proceedings and held the petition as premature and incompetent. Perhaps that afore-quoted observations in the penultimate paragraph of the report, if read in total and abstruse isolation, can be twisted to mean as if an application for quashing the proceedings is either incompetent or pre-mature till the challan is filed but as observed in *Quinn* v. *Yeathem* (1901) A.C. 495 and approved in *State of Orissa* v. *Sudhansu Sekhar Misra and others,* (6), it is not a profitable task to extract a sentence here and there from a judgment and to build upon it. The true ratio of *Jehan Singh's case,* as I took at it is that in a case where the first information report does disclose a cognizable offence the Court would be extremely loath to interfere with the investigation pursuant thereto.

9. What I have said above applies equally to the following observations in *Kurukshetra University and another* v. *State of Haryana and another,* (supra), on which heavy reliance was also sought to be placed on behalf of the respondent-State :—

"It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under section

(6) A.I.R. 1968 S.C. 547.

> 482 of the Code of Criminal Procedure, it could quash a First Information Report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the F.I.R. It ought to be realised that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases."

On the aforesaid premises the learned Additional Advocate General had canvassed that these observations spell out a total ban on the quashing of a police investigation till the matter reaches a Court of law. I, however, regret my inability to construe these observations in any such abstruse light. It is significant to recall that their Lordships in terms found that the first information report disclosed a cognizable offence and, therefore, the police could not refuse to act on the complaint lodged by the University. Further the police had not even commenced investigation when the proceedings were quashed by the High Court. In fact the ultimate conclusion that the statutory power, has to be exercised sparingly, with circumspection and in the rarest of rare cases in a context where the matter had as yet not reached the Court is indicative of the fact that the final Court did not totally and mathematically rule out quashing at the investigation stage.

10. Our attention was then drawn to the recent judgment in *State of Bihar and another* v. *J.A.C. Saldanha and others,* (supra) wherein Desai, J., speaking for the Bench noticed the well-defined and well-demarcated decision in the field of crime detection, and its subsequent adjudication, betwixt the police and the Magistrate. After referring to *Khwaja Nazir Ahmad's case* (supra), it was observed that the power of the police to investigate into a cognizable offence is *ordinarily* not to be interfered with by the judiciary. This judgment also nowhere lays down any absolute interdict against the wholesome and supervisory power of the judicial process over an investigation which may be wholly unwarranted in law and a clear abuse of process.

11. Before parting with the aforesaid precedent, it must be pointedly noticed that the common streak which runs through all of them is the approval or the affirmative of the much-quoted passage of Lord Parter rendering the opinion of the Judicial Committee in *Khwaja Nazir Ahmed's case* (supra). What, however, seems to have been missed is the fact that the Privy Council spelt out no absolute rule of barring the jurisdiction of the High Court altogether at the investigative stage as is manifest from the notable exception carved out as under:—

> "....No doubt, if no cognizable offence is disclosed and still more if no offence of any kind is disclosed, the police would have no authority to undertake an investigation and for this reason Newsam, J. may well have decided rightly in A.I.R. 1938 Mad. 129. But that is not this case."

It deserves highlighting that in *Khwaja Nazir Ahmad's case* (supra), the first information report clearly spelt out an offence under Section 409, Indian Penal Code and possibly also one against Section 420, Indian Penal Code. Clearly enough, the case was not one where the investigation did not raise a reasonable suspicion of the Commission of a cognizable offence. The case, *In re: T. Tirumalai* (7); *Mudaliar*, approvingly referred to by their Lordship pertained to a private complaint filed in the court of a Magistrate and is thus not directly in aid of the point at issue. Neverthless, Newsam, J. whilst quashing the complaint had observed as follows:—

> "......Since prevention is always better than cure, the obligation to prevent specious and spitful criminal prosecutions for actions which, though strictly dishonour able, yet do not amount to crimes, is one that must never be shirked......."

12. From the analysis of the aforesaid precedents it would appear that the subsequent decisions of the final Court have not overriden the ratio in *Saral Beopa Association's case* (supra)

7. A.I.R. 1938 Madras 129.

I am, therefore, unable to find that either the statutory provisions or the binding precedents in any way place a blanket bar against the quashing of proceedings by the High Court in its inherent jurisdiction at the investigative stage or to place the later process beyond the pale of judicial scrutiny.

13. Having opined as above, I must strike the strongest note of caution in this context. Though I have held that the High Court would have the inherent jurisdiction to quash the investigative process in a proper case. It does not mean that this power is to be exercised indiscriminately. The affirmance of such a power is one thing but using it like the proverbial 'bull in a China shop' is altogether another. It calls for a strong reminder that even where the proceedings have reached the Court by way of a charge-sheet or in the case of the existence of a complaint before it well defined limitations for quashing the same were authoritatively spelt out in *R. P. Kapur* v. *State of Punjab*, (8). It is broadly within the parameter spelt out thereby (though they are not absolutely exhaustive) that the power to quash proceeding has to be exercised even with regard to cases pending in the Court. It follows that even a more stringent criterion would apply in quashing a first information report and the subsequent police investigation before a charge-sheet is filed. One must strongly hearken to the warning in *Khwaja Nazir Ahmed's case* (supra), that in India the police have a statutory right to investigate cognizable offence under the Code and the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of an enquiry.

14. What then one may ask are the very pre-requisites for entering the arena for quashing a first information report and the investigation pursuant thereto even before a charge-sheet is put in Court ? Inevitably reference must first be made to the statutory provisions of the Code. Section 154 provides for the information in cognizable cases whilst the succeeding section 155 pertains to such information in non-cognizable cases and bars a police officer from investigating therein without the order of a Magistrate. Section 156 given a statutory right to the police officer to investigate

(8) AIR 1960 S.C. 866.

cognizable offences within their jurisdiction whilst the procedure for such investigation is spelt out as under:—

> "S. 157 (1) *If from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate,* he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf to proceed, to the spot, to investigate the facts and circumstances of the case, and if necessary, to take measures for the discovery and arrest of the offender ;

Provided that .. .. .. "

15. The meaningful words in the above provision are underlined and it would follow therefrom that a reasonable suspicion about the Commission of a cognizable offence in the mind of a police officer is the pre-requisite for entering into an investigation. To repeat the statutory sanction for the very *sine qua non* for a lawful investigation by the police under sections 156 and 157 is the reasonable suspicion of a cognizable offence. Therefore, if the information with a police officer as recorded does not disclose any cognizable offence whatsoever then the statutory mandate for investigation would be lacking and non-existent. It, however, bears repetition that the phraseology of 'reason to suspect the commission of an offence' has to be construed liberally in favour of the investigating agency. Both on principle and on the relevant provisions of the Code, I am inclined to hold that where the recorded first information report, when accepted as true, still discloses no cognizable offence whatsoever, then this would attract the inherent jurisdiction of the High Court.

16. However, one cannot jump to the conclusion that merely because the first information report does not disclose a cognizable offence, it must necessarily be quashed along with the consequential investigation. What has to be sharply borne in mind is the oft-repeated adage that the first information report is not an encyclopaedia of the investigation into a criminal offence. Nor is it an

inflexible pre-condition for entering into an investigation. It has been authoritatively pointed out in *Emperor* v. *Khawaja Nazir Ahmad,* (supra) as follows:—

> "......But, in any case, the receipt and recording of an information report is not a condition precedent to the setting in motion of a criminal investigation. No doubt in the great majority of cases, criminal prosecutions are undertaken as a result of information received and recorded in this way but their Lordships see no reason why the police, if in possession through their own knowledge or by means of credible though informal intelligence which genuinely leads them to the belief that a cognizable offence has been committed, should not of their own motion undertake an investigation into the trust of the matters alleged....."

Apart from the above, sometimes, the first information report may be recorded on the basis of very brief and inadequate facts. It may be so done either for the paucity of precise information on the point and the urgency of commencing investigation, or some times even by the in-apt or if one may say so inefficient recording of the information by a very junior police officer. It has been held that there would be no bar to its foundation being no other than a cryptic and telephonic information. Therefore, the solitary factor that what has been recorded as the first information report, does not come squarely within the ambit of a cognizable offence, does not straight-away warrant the quashing of the proceedings. If its subsequent investigation clearly discloses material pointing to the commission of a serious cognizable offence, the police cannot be halted in their tracks. To put it in other words, the first information report may sometimes be no more than the tip of an ice-berg which on a deeper probe would lead to the discovery of a huge mass of gravely incriminating facts. This aspect was rightly highlighted by the Bench in *Saral Beopar Association's case* (supra), in the following words:—

> "......A different view would lead to startling results. Take the case where the police finds a dead-body on the road without any obvious mark of injury on it. Nobody knows how the deceased had met his end. The police is informed merely about the presence of the dead-body or a police

official just comes across it. Can it be contended with any seriousness that in such a case if a police official starts investigation to find out whether any offence has been committed in respect of the deceased, such investigation can be stopped or should not be allowed to proceed merely because the information on which it commences does not disclose a cognizable offence. It would be only after some investigation is conducted that the police will be in a position to find out whether it is a case of natural death, suicide or culpable homicide or murder. If the contention, that unless the police is able to satisfy the Court that it is in possession of information about the commission of a cognizable offence, it cannot proceed to investigate, is accepted it would lead to the conclusion that in a case like the one that has been cited above, the Court must step in and stop the investigation. This, in my opinion, is not warranted by the provisions of Section 561-A, Criminal Procedure Code, nor by any other provision of the Code......"

17. It necessarily follows from the above that if the first information report discloses no cognizable offence what-so-ever, it would give the court jurisdiction for entering into an enquiry for quashing the proceedings. However, this is no warrant for holding that either because a defective first information report has been recorded or at the time of commencing the investigation, the information was cryptic, yet the subsequent investigation must be quashed irrespective of all other considerations. Indeed, the true test appears to be that when challenged the investigation agency, even on the basis of all the material collected by it, is unable to show that there is reason to suspect the commission of a cognizable offence, it would be then and then alone that the inherent jurisdiction can warrant the quashing of the investigation itself, being a patent harassment to the accused. It deserves highliting that the core of the jurisdiction herein is the satisfaction of the court that it amounts to a clear abuse of power by the police. Therefore, it would be an overly technical and indeed an erroneous assumption to hold that if the first information report discloses no cognizable offence, the investigation must be quashed even though meanwhile enough incriminating material has been collected by the police agency to point to the commission of

a cognizable crime. In such a situation, the court is entitled and indeed bound to examine such material, if necessary, though always keeping the salutary rule in mind that the police has a statutory right to investigate and the judicial process should not be overly zealous to interfere into this complementary statutory power. It must, however, be made clear that the examination of the material, in this context, is not to be confused with the appraising of evidence at a trial or the sufficiency thereof. The High Court cannot embark on an enquiry as to whether the evidence collected in the case is reliable or not. Reference in this connection may be made to *S. P. Jaiswal* v. *The State and another,* where Kapur, J. adverted to the material collected in the course of investigation including the police diary for exercising the power to quash proceedings under Section 561-A, Criminal Procedure Code. It must, however, be borne in mind that that was a case where the proceedings had reached the court, though they were at a relatively preliminary stage of a charge-sheet filed.

18. From the aforesaid discussion, it emerges that the statutory right of the police to commerce investigation is rested on the reasonable suspicion of the commission of a cognizable offence. The foundations thereof are rooted in Section 154, 156 and 157 of the Criminal Procedure Code and one cannot presume any unfettered power in the hands of the police to launch on an investigation independently of the aforesaid provisions. Consequently, the information in the possession of the police or as recorded in the first information report, must *prima facie* be a pointer to the commission of a cognizable offence. Once that condition is satisfied, the courts must as a general rule abstain from interfering in the investigative process, and the rule in *Khwaja Nazir Ahmed's case* (supra) would be at once attracted to such a situation. There is an obvious danger that stopping an investigation in this context, would be far from promoting the ends of justice and may inhibit the police from bringing serious criminals to book.

19. The question nevertheless remains — whether the hands of the court are totally tied where the first information report purports to disclose the commission of a cognizable offence? It bears repetition that generally speaking in such a case, the court must not trench

upon the lawful power of the police to investigate into cognizable offences. Nevertheless, even in such a case, if it can be established beyond all doubt that the investigation is *mala fide* and amounts to a pure harassment and abuse of the statutory process, the court is not totally barred from interferring. It was apparently a situation of this kind where a first information report was registered against the Additional District Magistrate, Gorakhpur, alleging serious cognizable offences against him, in *S. N. Sharma* v. *Bipen Kumar Tiwari and others,* (9). Though their Lordships held that Section 159 of the Code vested no power in a Magistrate to stop the investigation, yet the situation was not wholly without remedy. It was observed as under:—

> "....It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Art. 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer *mala fide,* the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers.........'

I, however, see no reason why the identical relief cannot be accorded in the exercise of the inherent powers under Section 482 of the Criminal Procedure Code. Indeed, the language of this provision is of a wider amplitude. This has been authoritatively so held in *State of Karnatake* v. *L. Muniswamy and others* (10) in the following words:—

> ".....In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed.

(9) AIR 1970 S.C. 786.

(10) (1977)2 S.C.C. 699.

> The saving of the High Court's inherent powers, both in civil and criminal matters, in designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of more law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."
>
> * * * * * *

And again,

> "......Considerations justifying the exercise of inherent powers for securing the ends of justice naturally vary from case to case and a jurisdiction as wholesome as the one conferred by section 462 ought not to be encased within the strait-jacket of a rigid formula'.

20. To conclude, I see no blanket bar against the quashing of a first information report and the consequent investigation (even before a charge-sheet is filed in Court) provided that the requisite pre-conditions formulated above for the exercise of the power stand satisfied. Without being exhaustive, these may be birefly summarised as under :—

(i) When the first information report, even if accepted as true, discloses no reasonable suspicion of the commission of a cognizable offence;

(ii) when the materials subsequently collected in the course of an investigation further disclose no such cognizable offence at all;

(iii) when the continuation of such investigation would amount to an abuse of power by the police thus necessitating interference in the ends of justice; and

(iv) that even if the first information report or its subsequent investigation purports to raise a suspicion of a cognizable offence, the High Court can still quash if it is convinced that the power of investigation has been exercised *mala fide*.

21. Having thus crossed the procedural hurdle raised at the very threshold (regarding prosecutions which as yet are at the investigative stage) one can now proceed to examine the primary and substantial issue. The present set of cases presents a sad spectacle of a house divided against itself, not merely in the biblical but in the literal sense, where wives are ranged against their husbands in acrimonious criminal prosecutions. The challenge on behalf of the husbands and their relations is focussed basically against the charge of breach of trust under section 406 of the Indian Penal Code, levelled against them. Now the core of the argument on behalf of the petitioners is that the very concept of any entrustment or passing dominion over her property by the wife to the husband does not arise at all so long as the marriage subsists. The contention is that the very nature of the conjugal relationship itself would negative any such stand. On this premise it is contended that the basic prerequisite of the entrustment of property or dominion over property being lacking and non-existent, no offence under section 406, Indian Penal Code, can possibly be made out. Therefore it was argued that even accepting the complaints and the first information reports as true they do not and indeed cannot disclose a cognizable offence under section 406. The petitioners, therefore, seek the quashing of the proceedings forthwith rather than being obliged to go through the tortious mill of a police investigation of the consequent criminal trial.

22. At the very outset, I would wish to notice and highlight that all these cases arise from the Hindu marriages and have been specifically argued on the premises of the applicability of Hindu Law, both codified or otherwise. It is, therefore, apt to first take up and adjudicate on the somewhat extreme stand sought to be projected on behalf of the petitioners by Mr. K. S. Thapar, that a Hindu

wife by the very factum of her marriage cannot own or possess property separately from her husband during the subsistance of the marriage. The tenor of this argument, in essence, is that the property of the wife is that of her husband or, in any case, it can only be jointly owned by her with her husband. Resting on this stance the argument is that a wife's dowry would equally be either her husband's property or at the highest jointly owned by both. In nut-shell, the stand is that the Hindu wife cannot own anything separately and individually during coverture.

(22-A) It appears to be that the aforesaid contention merits only to be noticed and rejected and it is unnecessary to extend the compliment of an elaborate and exhaustive refutation thereto. It seems untenable and indeed odd in the extreme capable of holding any property separately from her husband. Acceding to such a proposition would be harking back to the dark ages when the wife herself was considered to be a chattel and property of her husband and inevitably could not own any property herself and certainly not against her lord and master. These are archaic notions having only historical and academic interest in the development of Hindu Law at the dawn of time and seems to me as having little or no relevance to this law as it stands today. Neither principle nor authority could be cited at the bar for this extreme proposition initially canvassed on behalf of the petitioners. The stand is untenable on principle and equally on the tenets of Hindu Law and if any authority were at all needed to the contrary, it is available even more than a century earlier in the Division Bench judgment of the Madras High Court in *Ramaswami Padeiyatchi and another* v. *Virasami Podeiyatchi,* (11), observing categorically as follows :—

> "The correctness of the Civil Judge's decision, therefore, depends upon the affirmance of the broad proposition—that every thing acquired by a woman during coverture is the property of her husband.
>
> We regard that proposition as unfounded in Hindu law; and the contrary of it to be unquestionably true. It seems

(11) 1866—1868 Madras High Court Reports 272.

> pretty clear that the passage of Mr. Justice Strange's Manual (Sec. 146), quoted by the Munsif as the ground of his original decision, cannot, without very numerous qualifications, be regarded as the law laid down by the Smriti Chandrika. It is rather the law propounded by an objector, from whom the author dissents."

It must, therefore, be unreservedly stated that the law, as it stands, property by a Hindu wife and in this context the factum of marriage property by a Hindu wife and in this context the factum of marriage is of little or no relevance and she can own and possess property in the same manner as a Hindu male.

23. In fairness to Mr. Thapar, I would notice that when faced with an impregnable wall of principle and precedent against his stand that a Hindu wife could own no property whatsoever during coverture separately from her husband, he shrank from the brink of this extreme stance and conceded that a Hindu wife could own property in her own right. However, lowering his sights a little, he watered down the contention to submit that dowry, as commonly understood, and the traditional presents given at the time of the marriage were not the Shridhana of the bride. It was submitted that dowry or these traditional presents were necessarily intended. to be and in law must be deemed as the joint property of husband and wife. The last throw in this context raised in the alternative was that even if dowry and traditional presents at the marriage were Stridhana, they ceased to be so, the moment she entered the house of her husband or the parents-in-law and would become joint property thereafter.

24. I am afraid that the aforesaid contention of the learned counsel and its corollary have equally no legs to stand on. Once it is held that a Hindu wife can own property in her own right, then it is purely a question of fact whether the dowry or the traditional presents given to her, were to be individually owned by her or had been gifted to the husband alone or jointly to the couple. One finds nothing in the ordinary dictionary meaning of the 'dowry' and even in the ancient concept of Hindu Law with regard to the traditional presents given at the wedding which can possibly bar the exclusive ownership of the bride in such property. For instance, jewellery

meant for the personal wearing of the bride, wedding apparel made to her measures specifically, cash amounts put into a fixed deposit in a bank expressly in her name, or a motor car presented to her and duly registered in her name, are obvious examples of dowry raising the strongest, if not conclusive presumption, of her separate ownership in these articles. Once it is found as a fact that these articles of dowry were so given to her individually and in her own right, then I am unable to see how the mere factum of marriage would alter any such property right and divest her of ownership either totally or partially.

25. Now apart from the principle, the most ancient texts of Hindu Law have always been categoric that dowry, as commonly understood, was Stridhana and thus in the exclusive ownership of the bride. It is unnecessary to go individually to the original sources and the following summarization in the authoritative work of Mulla on Hindu Law suffices notice :—

> ',*Stridhana according to the Smritis, that is, the sacred writings of Rishis or sages of antiquity* :—Manu enumerates six kinds of stridhana :—
>
> 1. Gifts made before the nuptial fire, explained by Katyayana to mean gifts made at the time of marriage before the fire which is the witness of the nuptial (adhyagni).
> 2. Gifts made at the bridal procession, that is, says Katyayana, while the bride is being led from the residence of her parents to that of her husband. (padavandanika).
> 3. Gifts made in token of love, that is, says Katyayana, those made through affection by her father-in-law and mother-in-law (pritidatta), and those made at the time of her making obeisance at the feet of elders (Padavandanika).
> 4. Gifts made by father.
> 5. Gifts made by the mother.
> 6. Gifts made by a brother.

All the commentators are agreed that the above is not an exhaustive enumeration of stridhana.

To the above list Vishnu adds—

1. Gifts made by a husband to his wife on supersession, that is, on the occasion of his taking another wife cadhivedanika).

2. Gifts, subsequent, that is, says Katyayana those made after marriage by her husband's relations or her parent's relations (anwadheyaka).

3. Sulka, or marriage-fee, a term which is used in different senses in different schools.

4. Gifts from sons and relations.
   Vishnu does not make any specific mention of gifts made at the bridal procession."

It would be manifest from the above that from times immemorial Hindu law has recognized the individual ownership of the wife with regard to the afore-mentioned articles of dowry and traditional presents given at the time of wedding. Continued recognition of this fact and the individual ownership of the Hindu wife with regard thereto is manifest from the well-settled rule that Stridhana cannot be attached for the debts of her husband. Equally well-acknowledged is it that the husband has no right of alienation to that which is the Stridhana of his wife. These facets highlight the clear-cut recognition by the oldest treatises of Hindu law with regard to individual ownership of her separate property by a Hindu wife. It is, therefore, wholly idle to contend today that articles of dowry and traditional presents given at the time of the wedding cannot be the individual property of a Hindu wife.

26. Now once it is so held that articles of dowry and traditional presents given at the wedding are owned by the bride individually in her own right, then one fails to see how by the mere fact of her bringing the same into her husband's or parents-in-law's household, would forthwith divest her of the ownership thereof. Separate and

individual right to property of the wife therein cannot vanish into thin air the moment the threshold of the matrimonial home is crossed. To say that at that point of time she would cease to own such property altogether and the title therein would pass to her husband or in any case she would lose half of her right therein and become merely a joint owner of the same, with the family of her husband, does not appear to me as even remotely warranted either by the statute, principles or logic. No such marriage hazard against the wife can be implied in law. Once she owns property exclusively, she would continue to hold and own it as such despite marriage and coverture and the factum of entering the matrimonial home. The second part of Mr. Thapar's argument, therefore, is equally unsustainable.

27. Now in fairness to the learned counsel for the petitioner, a special limb of the aforesaid general argument must also be noticed. Herein, it was broadly argued that those articles in the dowry and traditional presents which are intended for common use and enjoyment by the couple can never be the exclusive property of the wife In essence the submission was that by their very nature such articles of common use and enjoyment cannot be the exclusive property of the wife, e.g., furniture for the living and the dining rooms, kitchenware beds, etc., would be property which by the very factum of marriage and being in the matrimonial home would be deemed to be jointly owned. On this premise, no question of any entrustment of these articles to the husband or his relations would possibly arise.

28. I am afraid that even this line of distinction sought to be drawn with regard to the articles of dowry which are for the common use and enjoyment by the couple also cannot be accepted as a general proposition. Though at the initial flush the argument has a tinge of plausibility, a closer analysis would reveal its fallacy. What may be kept in mind is that the dowry and the traditional presents given to a bride in a Hindu wedding may usually be put in three categories as under :—

(i) Property intended for exclusive use of the bride, e.g., her personal jewellery and wearing apparel etc.,

(ii) Articles of dowry which may be for common use and enjoyment in the matrimonial home;

(iii) Articles given as presents to the husband or the parents-in law and other members of his family.

Obviously as regards the third category those presents and gifts intended for the husband or his relations after delivery would pass into their ownership and may well cease to be the property of the bride. This would be so also as the traditional presents, etc. given by the husband and parents-in-law to the bride at or about the time of wedding would pass into her ownership. Similarly as regards the first category of articles meant for the exclusive use of the bride, she would retain her pristine ownership therein irrespective of her entry and presence in the matrimonial home or that of her parents-in-law. As regards category (ii) it is purely a question of fact whether the articles of common use and enjoyment were given and intended to be the exclusive property of the bride or otherwise. I am inclined to the view that the normal presumption would be that the ownership in such like articles would vest in the Hindu wife unless it can be clearly established to the contrary that these were given expressly for the joint ownership of the couple. Dowry of this nature would be commonly used and enjoyed with the implied leave and licence of the wife. Mere joint enjoyment thereof does not necessarily divest a Hindu wife of her exclusive ownership or make it joint property by the mere factum of such user. This seems to be so on general principles of law. An individual owner of property, apart from a Hindu wife, may well allow the use of the property jointly by others. But that by itself cannot divest him of the ownership or make a licencee a joint owner forthwith. I, therefore, see no reason how a Hindu wife is to be treated invidiously and on a different plane from any other owner of property in this context. Indeed the nature of article, whether meant for exclusive or common use, seems hardly relevant to the question of ownership therein. It was rightly contended on behalf of the respondent-State that mere joint user and enjoyment cannot make the husband a joint owner of the property if it originally belonged to the wife strictly. The valid submission herein was that joint use or enjoyment herein must be deemed to be with the express and implied leave and licence

of the owner, namely, the wife and the moment she revokes such a leave or licence then any such claim to joint use and enjoyment would obviously come to an end. The break-down of the marriage or the splitting up of the matrimonial home would inevitably involve the revocation of such leave and licence by the wife thus resusciating her right to exclusive possession.

29. Reiterating the stand taken on behalf of the petitioners in *Bhai Sher Jang Singh's case* (supra) and assiduously assailing its ratio, Mr. Thapar had contended that whatsoever may have been the position earlier, the codification of Hindu Law had totally eroded. the concept of Stridhana. It was contended that, in particular, after the enactment of the Hindu Succession Act and the Hindu Marriage Act, the exclusive property of the Hindu wife stands virtually abolished and is now the joint property not only of the couple, but in fact that of the Joint Hindu Family to which the husband may belong. Particular reliance was sought to be placed on section 27 of the Hindu Marriage Act and the procedural provisions of Order 32-A of the Code of Civil Procedure, recently inserted by the Amending Act of 1976, with regard to the suits relating to matters concerning the family.

30. As I am inclined to agree with and affirm the rati in *Bhai Sher Jang Singh's case* (supra) on this specific point, it is unnecessary to refute the aforesaid contention with any great elaboration. Suffice it to mention that the identical argument had been expressly noticed by the Bench and elaborately refuted therein. Nor am I able to see how section 27 of the Hindu Marriage Act even remotely advances the case of the petitioners. It is in the following terms :—

> S. 27. "In any proceeding under this Act, the Court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife."

The plain words of the Section far from aiding the stand of the petitioners in fact tend to undermine the same. The express words of the provision refer to property 'which may belong jointly to both the husband and the wife'. It nowhere says that all the wife's property belongs jointly to the couple or that Stridhana is abolished

and she cannot be the exclusive owner thereof. Indeed, in using the above terminology, the statute expressly recognises that property which is exclusively owned by the wife is not within the ambit of section 27 of the Hindu Marriage Act and it is concerned, only with that property presented at or about the time of the marriage, and belonging jointly to the couple. I have already adverted to this aspect that certain articles of dowry can as a matter of fact be established to be not only jointly owned by the couple, but even as exclusively presented to the husband or his relations. Once it is held as a matter of fact that certain articles of dowry were given to be exclusively owned by the wife then section 27 can make not the least difference to this vested right of ownership. Equally no other provision in the Hindu Marriage Act could be pointed out which erodes the concept of Stridhana or in any way incapacitates the Hindu wife to hold property as an exclusive owner.

31. Nor can I see how the recently inserted provision of Order 32-A in the Code of Civil Procedure would adversely affect the substantive right of a Hindu wife to own and possess property in her own right. A bare reference to the provisions of Order 32-A would show that rule 6 thereof defines family for the purposes of the Order and it is provided that the provisions thereof shall apply to all proceedings relating to matters concerning such family. Rules 2 to 5 of this Order are essentially procedural in nature empowering the Court to hold the proceedings *in camera* and imposing a duty on it to make efforts for settlement and to enquire into facts and secure the services of a welfare expert for its assistance. It is more than manifest that these provisions are pristinely procedural and cannot even remotely impinge on the concept of Stridhana and the absolute ownership of property by Hindu women.

32. Our attention was also drawn to the provisions of the Hindu Succession Act in this context. However, I am unable to find anything in the thirty-one sections of this Act which can even remotely advance the stand taken on behalf of the petitioners and indeed it appears to me that section 14 of the said Act points conclusively to the contrary. The provisions thereof merit notice in extenso :—

"14(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act,

shall be held by her as full owner thereif and not as a limited owner.

Explanation s In this sub-section, 'property' includes both movable and immovable property acquired by a female Hindu by inheritance or device, or at a partition, or in lieu of maintenance or arrears of maintenance, *by gift from any person, whether a relative or not, before, at or after her marriage, or by her* own skill or exertion, or by purchase or by prescription, or by purchase or by prescription, or in any other manner whatsoever, and *also any such property held by her as stridhana, immediately before the commencement of this Act.* (2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property."

33. This provision declares in no uncertain terms that the property of a female Hindu is to be her absolute property and what is of particular relevance here is that the explanation pointedly refers to any property given before, at or after her marriage and further any property held by her as *Stridhana* has been brought within the ambit of her absolute ownership. To contend in face of this provision that Hindu women cannot be absolute owners of their property or are not so with regard to dowry or stridhana appears indeed to be the proverbial crying for the moon. The afore-quoted provisions of section 14 indeed show the concern and the object of the law to remove all fetters on the ownership of property by a Hindu female and confer absolute ownership on her with regard thereto. It deserves recalling that prior to the codification of the law there was the well-known concept of limited ownership known as a 'Hindu Womans Estate'. The provisions of section 14 virtually abolishes those limitations thereby making a Hindu female an absolute owner of her property and indeed putting her on a higher pedestal than a Hindu male who may well be subject to the limitations of a Hindu Coparcentary.

34. In fairness to Mr. Thapar his assiduous challenge to the correctness of the ratio in *Bhai Sher Jang Singh and another* v. *Smt. Virinder Kaur* (12) must be noticed. It was sought to be contended that there was no adequate rationale behind the conclusion arrived at by the Division Bench therein and it was impelled only by sentimental reasons of avoiding hardship against illiterate and helpless wives in this country. I am, however, unable to subscribe to any such criticism and indeed find no flaw in the reasoning underlying the ratio on this point in *Bhai Sher Jang's case*. Added to this reasoning Sharma, J.'s observations which took into consideration the subservient status of the wives in the country and the general illiteracy with particular reference to female illiteracy are not only well called for and well-merited but indeed deserve affirmance at our hands.

35. To conclude on this aspect I find nothing in the codfication of Hindu Law which in any way abolishes the concept of Stridhana or the right of a Hindu wife to exclusive individual ownership. Indeed the resultant effect of such enactments is to put the Hindu female wholly at par with the Hindu male, if not at a higher pedestal with regard to individual ownership of the property.

36. Much ado was then raised about the provisions of the Dowry Prohibition Act, 1961 as originally enacted and later amended within the States of Punjab and Haryana,—*vide* Punjab Act No. 26 of 1976 and Haryana Act No. 38 of 1978). Counsel referred to the definition of dowry in section 2 thereof and the provisions of sections 3 to 6 for raising a twin contention. It was argued that dofry falls within the ambit of the definition of the provision of a special Act and therefore would exclude the offences under the general provisions of the Indian Penal Code. In the alternative it was contended that the definition of the dowry under the aforesaid Act would exclude entrustment of property which is a pre-requisite of the offence under section 406 of the Indian Penal Code.

37. To deal with the aforesaid contention, it becomes necessary to notice the provisions of section 2 of the Dowry Prohibition Act (The Haryana amendment makes only marginal changes therein

(12) 1978 P.L.R. 737.

whilst the Punjab Act has left the same untouched):—

"2. *Definition of dowry.*—In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or after the marriage *as consideration for the marriage of the said parties*, but does not include dower or *mehr* in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation 1.—For the removal of doubts, it is hereby declareed that any presents made at the time of a marriage to either party to the marriage in the form of cash, ornaments, clothes or other articles, shall not be deemed to be dowry within the meaning of this section, *unless they are made as consideration for the marriage of the said parties.*

Explanation 2.—The expression 'valuable security' has the same meaning as in section 80 of the Indian Penal Code.

A plain reading of the provisions makes it manifest that the aforesaid definition is a specialised one directed to a particular purpose. The core of the matter here is that dowry must be as a consideration for the marriage of the parties and Explanation (1) again highlights that the presents made at the time of the marriage would come within the net only if they are made as consideration for such a marriage. It has, therefore, to be borne in mind that this statue was particularly directed to the prohibiting of the giving and taking of dowry by an extortionate means as a prime consideration for the marriage itself. The provisions of the Act itself and the under-mentioned statement of its objects and reasons would disclose that it had been enacted in order to strike at this particular social evil: —

"The object of this Bill is to prohibit the evil practice of giving and taking of dowry. This question has been engaging

the attention of the Government for some time past, and one of the methods by which this problem, which is essentially a social one, was sought to be tackled was by the conferment of improved property rights on women by the Hindu Succession Act, 1956. It is, however, felt that a law which makes the practice punishable and at the same time ensures that any dowry, if given, does ensure for the benefit of the wife will go a long way to educating public opinion and to the eradication of this evil. There has also been a persistent demand for such a law both in and outside Parliament. Hence, the present Bill. It, however, takes care to exclude presents in the form of clothes, ornaments, etc. which are customary at marriages, provided the value thereof does not exceed Rs. 2,000. Such a provision appears to be necesssary to make the law workable."

The Dowry Prohibition Act goes to the farthest limit of creating criminal offences in order to proscribe the giving or taking of dowry as a consideration for marriage or demanding or abetting the same. What this statute intended to eradicate was this kind of corruption and commercialisation of the concept of dowry. The definition under the Act was, therefore, designed for and moulded to the peculiar objects of nipping this extortionate evil in the bud. This special definition, therefore, has no relevance to the word 'dowry' as understood in common parlance and its ordinary dictionary meaning to which reference has been made earlier.

38. It calls for pointed notice that tha Dowry Prohibition Act does not, in any way, bar the traditional giving of presents at or about the time of the wedding, which may be willing and affectionate gifts by parents and close relations of the bride to her. Such presents or dowry given by the parents is, therefore, not at all within the definition of the aforesaid statute. Indeed, this traditional giving of presents at or about the time of wedding is an accepted practice which finds mention in the oldest of Hindu scriptures and is continued today with a greater zeal. Consequently, dowry as commonly understood is something different and alien to the peculiar definition thereof in the Dowry Prohibition Act. A voluntary and affectionate giving of dowry and traditional presents would thus be plainly out of the ambit of the particular definition

under the Act and once that is so the rest of the provisions thereof would be equally inapplicable. Consequently the argument that the applicability of the special provisions of the Dowry Prohibition Act would exclude the general provisions of the Indian Penal Code would not even arise and in any case has no validity.

39. This matter can also be viewed from another angle. Herein what we are primarily concerned is the commission of the offence under section 406 of the Indian Penal Code. The whole exercise is directed to determine whether the requisites thereof are satisfied and the allegations, even if accepted as true would disclose any offence thereunder. To go to the definition in an altogether different statute of the Dowry Prohibition Act in this context, therefore, is not only inapt but may be grossly misleading. The settled and indeed the hallowed rule of construction in this context has been succinctly laid by their Lordhips in *Laurence Arthur Adamson & others v. Melbourne and Metropolitan Board of Works,* (13) as under:—

> "It is always unsatisfactory and generally unsafe to seek the meaning of words used in an Act in the definition clauses of another statute dealing with matters more or less cognate, even when enacted by the same legislature and much more so when resort is bad to the enactments of other legislatures."

The aforesaid rule was again reiterated tersely in *Jainarayan Ramkisan* v. *Motiram Gangaram,* (14) as follows:—

> "It is a well-known rule of construction that it is not permissible in interpreting one Act to travel beyond it and to apply definitions (except in the General Clauses Act) of other Act."

However, the alternative contention that where property falls within the definition of section 2 of the Dowry Porhibition Act then it cannot come within the ambit of entrustment envisaged under section 406 of the Indian Penal Code, has plainly a modicum of merit.

(13) AIR 1929 P.C. 181.

(14) AIR 1949 Nagpur 34.

A plain reading of the definition of dowry under the aforesaid statute would show that it means any property given directly or indirectly as a consideration for the marriage of the said parties. Now once that is so, dowry of this kind is in fact a *quid pro quo* for the marriage itself. Inevitably it would follow that whatever is given as consideration for the marriage itself cannot possibly be deemed in the eye of law as an entrustment or passing of dominion over property. To recall the familier analogy of the law of Contract — the consideration is the price for the promise and, therefore, such property cannot be deemed even remotely to have been entrusted or dominion passed over it to the other. The necessary result, therefore, is that the same set of facts allegedly constituting of offence under the Dowry Prohibition Act cannot possibly come within the ambit of section 406, Indian Penal Code. This would be plainly a contradiction in terms. As pointed out above, one offence is rested on property forming the consideration for the marriage as such, whilst the other visualises the entrustment and passing of dominion over property individually owned. The offences under the Dowry Prohibition Act and under section 406, IPC thus cannot stand together on the same set of facts.

40. Now having held as above that a Hindu wife can exclusively own and hold property including her dowry and traditional presents given at the wedding, the decks are cleared for tackling the core question posed at the very outset. What indeed is the true legal relationship of the husband and wife *qua* the property individually owned by each within the four walls of the matrimonial home ? Does the wife stand entrusted with the property belonging to her husband individually and *vice versa* the husband stands entrusted with such property vesting in the exclusive ownership of the wife ? It is the answer to this question which in essence would determine the attraction and applicability of section 405, I.P.C. betwixt the spouses. At the outset I would wish to notice that the learned counsel for the parties did not present this issue before us in the light in which I now proceed to examine the same.

41. It bears repetition that the question herein has to be examined against the backdrop of the matrimonial home. What truly is the concept and essence thereof had come up for exhaustive consideration earlier before a Full Bench in *Kailash Vati* v. *Ayodhia*

Parkash, (15) in the context of Hindu Law itself. It is, therefore, apt to refer to the authoritative enunciation therein:—

> "To my mind, the idea of the matrimonial home appears to lie at the very centre of the concept of marriage in all civilised societies. It is indeed around it that generally the marriage tie revolves. Th home epitomizes the finer nuances of the marital status. The bundle of indefinable rights and duties which bind the husband and the wife can perhaps be best understood only in the context of their living together in the marital home. The significance of the conjugal home in the marriage tie is indeed so patent that it would perhaps be wasteful to elaborate the same at any great length. Indeed, the marital status and the conjugal home have been almost used as interchangeable terms.

and

> 42. To summarise, I have attempted to show by reference to Anglo-American jurisprudence that the concept of the marital home lies at the very centre of the idea of marriage in all civilised societies. Perhaps from primeval times when human beings lived sheltered in subterranean caves to the modern day when many live perched in flats in high rise apartments within the megapolis, the husband and the wife have always hankered for a place which may be their very own and which they may call a home. The innumerable mutual obligations and rights which stem from the living together of man and wife are undoubtedly beyond any precise definition and stand epitomized by the concept of the matrimonial home."

In the light of the above it would be farcical to assume that despite the factum of a marriage and a common matrimonial home the two spouses would stand in a kind of a formal relationship where each is entrusted with or has been passed dominion over the exclusive property of the other. Rather it appears to me that the conjugal relationship and the existence of a matrimonial home automatically

(15) (1977) 1 I.L.R. Pb. & Hary. 642.

obviates any such hyper-technicalities of an entrustment or dominion over property. It seems inapt to conceive the relationship as a day to day entrustment of the property of the husband to the custody of the wife or *vice versa* of the property of the wife to the husband. The matrimonial home so long as it subsists presumes a jointness of custody and possession by the spouses of their individual as also of their joint properties which cannot be divided by any metaphorical line. In a homely metaphor in the context of the modern commercialised world it has been said that the marriage relationship is not one of "I and You limited" but that of "We limited". Whilst the law undoubtedly now clearly recognises the individual ownership of property by the husband and wife, the necessary assumption in law, therefore, would be that during the existence or even the imminent break up of the matrimonial home the concept of jointness of possession therein seems to be a paramount one. The inevitable presumption during the existence or the imminent break up of the matrimonial home therefore is one of joint possession of the spouses which might perhaps be dislodged by the special terms of a written contract. However, to be precise this presumption of joint possession of properties within the martimonial home can subsist only as long as the matrimonial home subsists or on the immediate break up thereof.

43. The aforesaid position seems to be well borne out by a homely example which was rightly advanced by Mr. Bhandare on behalf of the petitioners. It was submitted that where a husband entrusts a specific amount to a wife for paying the school fees of their children but in a shopping spree she converts the same into *sarees* for herself, would she thereby become liable to breach of trust under section 406, Indian Penal Code ? The answer would obviously appear to be in the negative. Similarly where a husband misuses or even appropriates any property exclusively belonging to her wife within the matrimonial home he hardly comes within the ambit of criminality under section 406, Indian Penal Code. Usually if not invariably where the husband is the bread winner he brings home the month's wages and hands them over to the wife to be spent on the family. Would it be possible to say that if she uses the same for herself and even against the consent of her husband she would be committing a criminal breach of trust ? Obviously the answer would appear to be in the negative.

44. One may now turn precisely to the language of the Code itself. Section 405 is in the following terms:—

> "405. *Criminal Breach of trust*: whoever being in any manner entrusted with property, or with any dominion over property, dishonestly misapppropriates or converts to his own use that property, or dishonestly uses or disposes of that proptrty 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'."

It is well-settled that from a legal contract, or violation of directions of law, the entrustment of property or dominion over property are the pre-requisites for the applicability of the aforesaid provision. Once it is held as above, that property within the matrimonial home is in the joint possession and custody (despite rights of the individual ownership therein) then these very pre-requisites of entrustment or dominion over property cannot be easily satisfied betwixt the spouses *inter se*. It is indeed well-settled that the very concept of the jointless of possession and custody would rule out the entrustment or dominion over property betwixt such joint custodians. In line with the concept of joint ownership where the possession of one joint owner is deemed to be the possession of all, the analogy is to be extended that the existence of the property within the matrimonial home raises a presumption that both the husband and the wife are in possession thereof jointly and not that each one has entrusted his exclusive property to the custody of the other. Subscribing to the later view would be both overly hyper-technical and subversive of the very concept of marriage, the matrimonial home and the inevitable mutual trust which conjugality necessarily involves.

45. It is obviously because of the afoersaid legal position and this inarticulate premise underlying the same that the learned counsel for the State and the complainants were unable to cite even a single case of conviction for criminal breach of trust betwixt husband and wife. Even when pointedly asked, counsel conceded that despite the diligent research neither under the Indian Penal Code, nor under

the analogous provisions of English law could they lay their hands for over a century and a half on any case where such a conviction had been upheld. This paucity, rather the total absence of precedent, indirectly buttresses the view I have expressed above on principle and the statutory provisions. An analogy in this context may well be drawn from the law of partnership. However, at the very outset I would notice that the position is not identical because partnership envisages a joint or co-ownership of partnership property whereas in a conjugal relationship, as shown above, the spouses may well be the individual and exclusive owners of their respective properties. Nevertheless, a marked similarity herein is that in partnership, co-ownership necessarily connotes a jointness of possession of partnership properties whilst the same position inheres in the matrimonial home where the spouses are deemed to be jointly in possession and custody. Now, barring some ancient notes of discordance, it seems to be now well accepted that a partner cannot be held guilty of criminal breach of trust *qua* partnership property except by virtue of a special agreement either written or conclusively established. This had always been so in English law until it was specifically altered by statute 31 and 32 Victoria c. 116 and it is now governed by the special provisions of the same and subsequent legislation. In India, however, in the absence of any statutory change, the legal position would continue to be the same. This came up for pointed consideration before a Full Bench of five Judges in *Bhuban Mohan Das* v. *Surendra Mohan Das*, (16). The relief sought therein of quashing the proceedings under section 406, Indian Penal Code, betwixt partners, was granted whilst holding that a charge under section 406, Indian Penal Code, cannot be framed against a person who, according to the complainant, is a partner with him and is accused of the offence in respect of property belonging to them as partners. P. B. Mukharji, in his concurring judgment observed as under:—

> "The question here is of much broader application and of a more fundamental nature. Its fundamental nature is this that the very conception of partnership precludes possibility of entrustment or dominion of the partnership property by one partner as against the other and, therefore, precludes any possible operation of the crime under section

(16) AIR 1951 Calcutta 69.

> 406, Penal Code, of criminal breach of trust by one partner against the other in respect of the partnership property."

The aforesaid view has been expressly referred to and approved by their Lordships in *Velji Raghavji* v. *State of Maharashtra*, (17) with the following added observations:—

> "* * *. Every partner has dominion over property by reason of the fact that he is a partner. This is a kind of dominion which every owner of property has over his property. But it is not dominion of this kind which satisfies the requirements of section 405. In order to establish 'entrustment of dominion' over property to an accused person the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment. Therefore. as rightly pointed out by Harris, C.J., the prosecution must establish that dominion over the assets or a particular asset of the partnership was, by a special agreement between the parties, entrusted to the accused person. If in the absence of such a special agreement a partner receives money belonging to the partnership he cannot be said to have received it in a fiduciary capacity or in other words cannot be held to have been 'entrusted' with dominion over partnership properties."

If that is so in the partnership relation, it appears to me that it would be more so in the conjugal relationship with regard to the property within the matrimonial home.

46. It is unnecessary to quote profusely from Indian authorities and reference in this connection may be made to *Bhupendra Nath Sinha* v. *Girdhari Lal Nagar,* (18); *Man Mohan Das & Others* v. *Mohendra Barsal* (19); *Privanshu Ranjan Datta* v. *Harendra Kumar Mitra,* (20); and Jai*krishna* v. *Crown & another,* (21). The broad

(17) AIR 1965 S.C. 1433.
(18) AIR 1933 Cal. 582.
(19) AIR 1948 Cal. 292.
(20) ILR 1949 Cal. (1) 454.
(21) AIR 1950 Nagpur 99.

rationale underlying the view that a partner cannot be prosecuted by another partner for criminal breach of trust, in respect of partnership property, is a twin one. The nature, character and incident of partnership property are such that during the subsistence of partnership, there cannot be, except by special agreement, any entrustment or dominion etc. within the ambit of section 405, Indian Penal Code. Secondly, partnership property is not always specifically ascertainable and sometimes so equivocal and problemetic in nature (until dissolution of partnership or rendition of accounts) that it is not susceptible of being used in a manner which can bring into play section 405, Indian Penal Code. Now as I said above, there is undoubtedly a point of distinction in so far as partnership property is deemed to be in joint ownership in law. Even keeping that sharp distinction, in mind, it appears to me that larger rationale is equally attracted to the conjungal relationship. The nature, character and the incident of property within the matrimonial home, so long as the marriage subsists, seem to be such that except by a special written agreement, no entrustment or dominion etc. of the individual property of the spouses to each other can be presumed. Equally, herein the specific and ascertainable property of each spouse within the matrimonial home can be so equivocal and problemetic so as to oust the requisite *mens rea* with consequent criminality with regard thereto until the title to such property is clearly and specifically established. If the civil remedy seems to be adequate betwixt partners, during the subsistence of partnership there is no reason why it would not equally be so betwixt spouses in an existing matrimonial home during the subsistence of the conjugal relationship. As already referred to, apart from the civil remedy under the general law, added provisions exist in this context under section 27 of the Hindu Marriage Act buttressed by the procedural provisions of Order 32-A of the Code of Civil Procedure.

47. In view of the above, it would be equally untenable to hold that either the desertion or the expulsion of one of the spouses from the matrimonial home would result in entrusting dominion over the property belonging to the other so as to bring the case within the ambit of the pre-requisits under section 405, Indian Penal Code. The joint custody and possession once established would thereafter exclude either express entrustment or the passing of dominion over the property. It was rightly argued that if an irate husband or wife

walks out from the matrimonial home in a huff, this cannot constitute an entrustment or dominion over the property to the other. Consequently, unless a special written agreement to the contrary can be established, the strongest presumption arises that during the existence and immediately after the crumbling of the matrimonial home, there was in essence, a joint possession and custody of the property of the spouses therein, including dowry and traditional presents, which would preclude the essentials of entrustment or dominion over the property which form the corner-stone of criminality under section 405, Indian Penal Code.

48. However, the concept of joint custody and possession of their individual properties by the spouses, in the matrimonial home cannot be elongated *ad infinitum*. Particularly in focus herein is the question of the relations of the husband or other persons living jointly in the matrimonial home which is not unusual in Hindu families. Whilst a presumption in law may well be drawn about the joint custody and possession of the couples of their respective properties within the marital homestead, there appears to be no warrant to extend it to every other occupant thereof. The rule flows from the peculiar nature of the conjugal relationship and the incidents of the matrimonial home and neither on principle nor precedent can it be extended further to others, or indiscriminately to the whole joint family to which the husband may happen to belong. An apt example, in this context, was spelt out by Mr. Sethi, learned Additional Advocate General, Punjab, on behalf of the respondent-State. He cited a hypothetical instance of dowry given to the bride of a serving Army Officer which initially may be taken to the home of the bride's parents-in-law. However, later the couple may wish to take it away to the place of posting of the husband. Could it be said that having been once brought within the joint family home, the possession and control thereof would pass to the undivided family and thus in a way to the *Karta* thereof? Mr. Thapar attempted to take up the extreme position that this would be so and once such a property had been brought into the Joint Hindu Family home, the possession and control therein would pass jointly to the family and its *karta*. I see not the least reason to accept such an extreme position which apppears to me as untenable on principle, and no authority could be cited in support thereof.

49. Equally the common use and enjoyment of certain articles of dowry and traditional presents, by the other members of a Joint Family with the leave and licence of a Hindu wife, cannot have the effect of extending the jointness of control and custody of the couple to undefined and unreasonable limits. Consequently, there is no reason to assume that the mere user or enjoyment of the dowry by other members of the household, would have the effect of passing the possession and control thereof jointly to the Hindu Undivided Family as such.

50. In the aforesaid context, pointed reference must be made to the opening word 'whoever' of section 405 of the Code to highlight that the criminal law does not take ken of any proximity of relationship for the offence of breach of trust. Whoever would, include within its ambit the parents-in-law, the brother-in-law, sister-in-law (and other close relations of the husband) of a Hindu wife provided that the basic ingredients of entrustment or passing of dominion over her separate individual property stands fully satisfied. Apart from the pecularity of the conjugal relationship and the consequent sharing of the matrimonial home, the existence of the blood relationship of the parties does not seem to be relevant for the applicability or otherwise of section 406 of the Code. Since the other members of the Hindu joint family, to which the husband may belong, would not be covered by the presumption of jointness of custody and posession of their individual properties by the spouses alone, they cannot by the mere fact of kinship be excluded from the scope of sections 405 and 406 of the Code.

51. Even on larger considerations as well, Mr. Sethi, learned Additional Advocate General, Punjab, had advocated that the speedier and effective remedy of a criminal breach of trust cannot and should not be denied in the somewhat peculiar context of helpless Hindu wives against avaricious parents-in-law or other relations of the husband, who may dishonestly mis-appropriate or convert for their own use, the dowry or the traditional presents exclusively owned by the bride. In what appeared to me as a somewhat sentimental appeal, learned counsel for the State beseached the Court to not lose sight of the social evil of extorting dowry which sometimes leads to the sadistic cases of bride-burning where such a gready lust had remained thwarted or unsatisfied. On these premises it was submitted that denuding such Hindu wives of the rather speedier relief of the

criminal law against even the relations of the husband, and throwing them to the tender mercies of the inevitably long drawn out and protracted civil claims with regard to what may essentially be wife's exclusive property, would be virtually rendering them without remedy against a crying social evil.

52. There is a medium of merit in the aforesaid stand taken on behalf of the respondent-State. Nevertheless, whilst holding that mere blood relationship of the husband is not *ipso facto* exclusionary of the criminal law for breach of trust, the matter cannot be pushed to the other extreme of holding that the parents and the members of the joint family of a Hindu husband would be presumed to be entrusted with or dominion over the dowry of the wife by the mere factum of such marriage. As in other fields, so in law, one must shun the falsehood of extremes. The giving of dowry and the traditional presents at or about the time of the wedding, does not in any way raise a presumption that such property is thereby entrusted and put under the dominion of the parents-in-law of the bride or other close relations so as to come within the ambit of those words as used in sections 405 and 406 of the Code. Nor would the mere factum of bringing the dowry and such other traditional presents into the family home of the husband by itself constitute such entrustment or passing of dominion to the relations or the other members of the joint family of the husband. The mere living together of the couple in the joint family is not a legal equivalent of entrustment *per se* of the individual property of the wife to the parents-in-law or the other close relations within the family homestead. Any such entrustment or passing of dominion over the dowry to the relations of the husband, therefore, can only be by a subsequent act of concious volition. Inevitably this has to be matter of particular and specific proof on its own set of facts.

53. In the aforesaid context, the three categories referred to in paragraph 28 may well be recalled. Inevitably those articles of dowry given as presents to the husband or the parents-in-law and other members of his family after having been brought in the joint family and delivered to its recepients may pass into the ownership of the latter far from being entrusted to them as such. Again, with regard to the articles of dowry which may be for common use and

enjoyment in the matrimonial home, it is purely a question of fact in each case, whether these were given and intended to be the exclusive property of the bride or otherwise. It cannot, therefore, be *prima facie* presumed that these are exclusively the ownership of the wife or inevitably entrusted either to the husband or his close relations. As was noticed earlier, if an irate wife in a tantrum abandons the matrimonial home, such like property does not in the eye of law become entrusted to the parents-in-law or other close relations of the husband. No such gullible presumption of entrustment or passing of the dominion of property can be raised in such a situation to come within the mischief of criminality for breach of trust. Entrustment or dominion over the property has to be unequivocally alleged and conclusively established by proof later.

54. For the sake of clarity of precedent within this Court, a reference must be made to *Jaswant Rai and others* v. *Smt. Kamal Rani*, (22). Therein the learned Single Judge, in similar circumstances of a complaint by a Hindu wife, whilst quashing the proceedings against the five close relations, nevertheless allowed their continuance against the husband and the mother-in-law of the complainant. It is plain, on analysis of the judgment, that the matter was not presented in an exhaustive manner and in the same light as before us, nor were the wide ramifications of the issue debated before the Bench. Consequently, the learned Single Judge had no occasion to pronounce thereon. Nevertheless, if this judgment is now read as a warrant for any facie presumptions being raised against the husband or the mother-in-law (as was sought to be done on behalf of the respondent-State), as being *per se* entrustment or dominion over the dowry of the wife, then the same can no longer be held as good law.

55. The preceding observations apply equally to this aspect of the judgment in *Bhai Sher Jang's* case (supra). Therein paragraphs 12 and 13 of the report are capable of a strained construction of raising a presumption of entrustment or dominion over the property against the husband and the parents-in-law of the Hindu wife. For the detailed reasons above, with respect, such a view cannot hold the field any longer.

(22) 1963 P.L.R. 667.

56. To conclude, it necessarily follows from the aforesaid discussion that the very concept of the matrimonial home connotes a jointness of possession and custody by the spouses even with regard to the moveable properties exclusively owned by each of them. It is, therefore, inapt to view the same in view of the conjugal relationship as involving any entrustment or passing of dominion over property day-to-day by the husband to the wife or vice versa. Consequently, barring a special written agreement to the contrary, no question of any entrustment or dominion over property would normally arise during coverture or its imminent break-up. Therefore the very essential pre-requisites and the core ingredients of the offence under section 406 of the Penal Code would be lacking in a charge of criminal breach of trust of property by one spouse against the other. Inevitbly, therefore, the purported allegations of breach of trust betwixt husband and wife so long as the conjugal relationship lasts and the matrimonial home subsists, cannot constitute an offence under section 406 of the Indian Penal Code, subject to any special written agreement. Equally, as against the close relations of the husband, no facile presumption of entrustment and dominion over the dowry can be raised *prima facie* and this inevitably has to be by a subsequent concious act of violation which must be specifically alleged and conclusively established by proof. Lastly, because of the definition in section 2 of the Dowry Prohibition Act, the offences under the said Act cannot come within the ambit of section 406 of the Indian Penal Code as these cannot stand together on the same set of facts.

57. Hence, the answer posed at the very outset is rendered in the affirmative. The bends of matrimony, therefore, bar the specire of the criminal breach of trust *qua* the property of the spouses at the very threshold of the matrimonial home. It cannot enter its hallowed precincts except through the back door of a special written contract to the contrary with regard to such property.

58. In the light of the aforesaid principles one may now turn to the terra-firma of facts which have been already briefly delineated in paragraphs 2 & 3 of this judgment. In pursuance of the first information report lodged by respondent No. 2 Smt. Veena Rani, the

police authorities arrested the petitioners on the 1st of July, 1981, and they were remanded to police custody for four days. As already noticed, the stand of the petitioners is that they were tortured to the maximum during this period and extortionate demands were made upon them in pursuance whereof they had to shell out Rs. 50,000 in cash and 30 *tolas* of gold to the police. However, according to the investigating agency the three petitioners made disclosure statements under section 27 of the Evidence Act leading to the recovery of the alleged articles of dowry. Curiously enough the case is that a sum of Rs. 24,750 in cash and about 27 *tolas* of gold were also recovered which were identified to be the same which had been given to respondent No. 2 at the time of her marriage. In accordance with the view expressed in the earlier part of this judgment, we had called upon the respondent-State with regard to any subsequent collection of materials in pursuance of the first information report. In this context the basic reliance of the learned Additional Advocate General Mr. Sethi was on the written statement in the form of an affidavit filed by Shri Bhagat Ram, Sub-Inspector, S.H.O. of Police Station Kotwali, Bhatinda, dated the 16th of August, 1981. Therein the stand of the investigation is that an offence is jointly made out against the three petitioners under section 406 read with section 34, Indian Penal Code, and a synopsis of the steps taken during the course of the investigation till it was stayed under the orders of the Court is given in the affidavit.

59. Adverting now to the first information report what first catches the eye is para 2 thereof in the following terms :—

> "That at the time of my marriage I received substantial presents of ornament, valuable, clothes, furniture and other house-hold articles besides Rs. 21,000 from my parents, relations, my husband and mother-in-law as consideration of the marriage."

It would be plain from the above that on respondent No. 2's own showing substantial parts of the alleged dowry are said to have been given by the relations of her husband and mother-in-law. It is equally with regard to these that the charge of entrustment is laid at the door of the husband and his relations as also her mother-in-law. These allegations, however, look even more incongruous in the

context of the under-quoted allegation in paragraph 5 of the complaint to the effect that the alleged entrustment was done on the very day of the wedding itself.

60. Apart from the above, the rather ambivalent allegations of entrustment to the husband and the parents-in-law jointly are then contained in paragraphs 4, 5, and 6 of the first information report as under :—

> "4. That as dutiful wife and daughter-in-law I had reposed full faith in my husband and in my parents-in-laws and entrusted all the properties aforesaid to them as mentioned in annexure A and B.
>
> 5. That the above mentioned articles as shown in annexures 'A' and 'B' were entrusted at Bhatinda to accused persons in the presence of Sarvshri Jas Rai, Bhagla, Sham Sunder, s/o Ramji Dass, Rajpal and Dr. S. K. Arora on the same day, i.e. 28th January, 1979.
>
> 6. That immediately after the marriage, all the abovesaid accused started mal-treating me for not fulfilling the lust of the accused for more dowry which they were demanding repeatedly from time to time. It was ultimately about 3 months back that all the accused expelled me in my wearing apparels and deprived me of all the articles in annexures 'A' & 'B'."

61. What would be manifest from the above is that an omnibus and equivocal allegation of entrustment jointly to the husband and his mother and father is suggested. What calls for pointed notice is that the alleged date and time of entrustment is said to be the very day of the wedding itself on the 28th of January, 1979. Plainly enough the import of the allegation herein is that the factum of the marriage on that date was tantamount to the entrustment of the dowry to the husband as also the latter's mother and father. No subsequent specific entrustment of any property thereafter is even remotely alleged in the first information report. It is then the complainant's own case that for full two years thereafter

from the date of the marriage till her alleged expulsion from the home of her husband and in-laws around January—February, 1981, she continued to live in the matrimonial home even though unhappily. It was not disputed before us that the firm case of the prosecution itself is that the alleged articles of dowry were taken from Bhatinda to the matrimonial home at Malout and were allegedly taken in possession from there in July, 1981, by the police.

62. Even accepting the first information report as the gospel truth it would appear that when tested on the anvil of the principles laid earlier the allegations therein cannot amount to entrustment *stricto sensu* within the meaning of section 405, Indian Penal Code As has been said earlier there is a jointness of control and possession of the property of the spouses within the matrimonial home which negates the very concept of entrustment by the husband to the wife or the wife to the husband therein. As has been held above in paragraph 50 the factum of the marriage itself does not in any way raise a presumption that dowry is thereby entrusted to the husband or the parents-in-law or put under their dominion *per se*. It bears repetition that the allegation herein is that the entrustment jointly to the husband and the parents-in-law took place on the wedding day itself. Equally the mere factum of taking the dowry and the traditional presents into the family home of the husband does not and cannot in law constitute entrustment or passing of dominion to either the husband or his close relations. Lastly, the admitted fact of this dowry having been kept in the matrimonial home for well-nigh two years (from the alleged date of entrustment on the wedding day of 28th of January, 1979) which inevitably brings in the strongest presumption of the jointness of possession and control negates the very concept or continuance of any such entrustment. It has been held expressly above that either the irate walking of from the matrimonial home by anyone of the spouses or even his or her alleged expulsion therefrom would not saddle the other with being entrusted with or dominion over the property in the matrimonial home within the meaning of section 405, Indian Penal Code.

63. It would thus be plain that even accepting the allegations in the first information report as wholly true they would not amount to any entrustment or passing of dominion over the dowry to the

husband and his mother and father jointly. Inevitably, therefore, the first information report does not even remotely disclose any offence under section 406 read with section 34, Indian Penal Code.

64. Once that finding is arrived at this Court is entitled to consider the quashing of the first information report in the light of the principles enunciated in paragraph 20 above. It has already been held that the allegations, considered in detail above, even at their face value, would not in the eye of law, amount to any entrustment or passing of dominion over property within the ambit of Section 405, Indian Penal Code. Consequently, the first information report would not and cannot indicate any reasonable suspicion of the commission of the cognizable offence of criminal breach of trust punishable under Section 406, Indian Penal Code. Despite the lodging of the aforesaid report on the 18th of April, 1981 and the subsequent investigation of the same, till the matter was stayed by this Court in July, 1981, no material collected by the investigating agency further discloses the commission of any such cognizable offence either. Indeed, the alleged recoveries of property from the matrimonial home itself and the stance taken by the investigating agency in the affidavit of the investigating officer, seem to detract from the allegations originally made rather than in any way add to them. The avertments made in this Criminal Miscellaneous Petition, even if not accepted as wholly true, atleast indicate clearly that the whole matter is an unseemly aftermath of a broken marriage with its inevitable bitterness and in this context the further continuation of the police investigation cannot, but amount to an abuse of power which eminently calls for interference by this Court in the ends of justice. I am, therefore, of the view that the case is one which clearly calls for the exercise of inherent jurisdiction under Section 482, Criminal Procedure Code. Even whilst sharply keeping in mind the somewhat exceptional nature of the exercise of such a power, I am constrained to hold that the Criminal Miscellaneous Application No. 4022-M/1981 must necessarily be allowed and the criminal proceedings initiated against the petitioners be and are hereby quashed.

65. Criminal Miscellaneous Applications Nos. 3884-M, 5119-M, 5309-M, 5791-M, 5860-M of 1986; 1451-M, 1478-M, 1585-M, 1597-M,

2361-M, and 3367-M of 1981 however, would go back for decision on merits before a Single Bench, in the light of the law enunciated and its application as above.

N. K. S.

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