

Before M. R. Sharma and S. S. Sidhu, JJ.

BHAI SHER JANG SINGH AND ANOTHER—*Petitioners*
versus

VIRINDER KAUR—*Respondent*.

Criminal Misc. No. 1973-M of 1978

September 20, 1978.

Indian Penal Code (XLV of 1860)—Section 406—Hindu Succession Act (30 of 1956)—Section 14—Hindu Marriage Act (25 of 1955)—Section 27—Dowry Prohibition Act (28 of 1961)—Sections 2 and 4—Concept of Istridhan—Whether has been rendered obsolete—Presents of ornaments and other articles to a wife at the time of her marriage—Whether meant for her exclusively—Istridhan property alleged to have been misappropriated by the husband or parents-in-law—Such allegation—Whether can form subject matter of a criminal breach of trust—Section 27—Whether a bar to criminal prosecution.

Held, that the two statutes, namely, the Hindu Marriage Act, 1955 and the Hindu Succession Act, 1956 have only partially modified the principles of Hindu Law and no provision contained in either of these statutes has either expressly or by implication in any way modified the concept of *istridhan*. A female has an absolute right to use her *istridhan* in any way she likes and even if her husband can take this property at the time of distress, this right is personal to him. The earlier concept of the 'dowry' which embraced in its ambit the presents made to the newly wedded wife which were to form part of her *istridhan* has not at all been affected even by the provisions of the Dowry Prohibition Act, 1961.

(Paras 8, 9 and 12).

Held, that some of the articles presented to a wife at the time of her marriage may be for the use of both the spouses but the ornaments and things of the like nature are certainly meant for her and her alone. When she makes an allegation in the complaint that either her husband or her parents-in-law had converted to their own use the ornaments forming the part of her *istridhan* which she had entrusted to them, the Court has to give legal effect to such allegation and to assume that such ornaments had been made the subject matter of criminal breach of trust. It is settled law that even in a criminal complaint the complainant is under no obligation to plead the legal effect of the allegations made. All that is required is that the facts constituting a complaint should be specifically mentioned so that the court may be able to perform its duty of punishing

Bhai Sher Jang Singh v. Virinder Kaur (M. R. Sharma, J.)

the accused under the appropriate provisions of law if such allegations are made out. (Para 13).

Held, that section 27 of the Hindu Marriage Act empowers a court while deciding a matrimonial dispute to also pass a decree in respect of property which may jointly belong to both the husband and the wife. This section at best provides a civil remedy to an aggrieved wife and does not in any way take away her right to file a criminal complaint if the property belonging to her is criminally misappropriated by her husband or parents-in-law. (Para 10).

Surinder Mohan and others v. Smt. Kiran Saini, (1977) Chandigarh Law Reporter 212
OVERRULED.

Application Under Section 482 Cr. P. C. praying that the complaint P/2 and the Order Annexure P/3 summoning the petitioners as accused be quashed as an abuse of the process of the Court and the proceedings in the complaint be stayed.

K. S. Thapar, Advocate with R. S. Palta, S. S. Chopra and Deepak Thapar, Advocate, for the Petitioners.

Harbhagwan Singh, Sr. Advocate with J. S. Chahal, Advocate, for the Respondent.

JUDGMENT

M. R. Sharma, J.—(Oral).

(1) Petitioners Nos. 1 and 2 are the father-in-law and the mother-in-law respectively of the respondent. The latter filed a complaint under section 406, Indian Penal Code, against them in the Court of the learned Chief Judicial Magistrate, Chandigarh. In that complaint it was averred that the respondent was married to Iqbal Jang Singh, son of the petitioners, on March 27, 1977, at Chandigarh by Anand Karaj ceremony which is the customary form of marriage prevalent in the community of the parties. At the time of her marriage, the respondent received substantial presents of ornaments, clothes, furniture and other household articles from her parents, relations, her husband and the petitioners. These items of property, over which she had absolute control, according to her, became her *istridhan*. As a dutiful daughter-in-law of the petitioners, she reposed full faith in them and entrusted all this property to them. She was disallowed the use of the ornaments (which according to the items mentioned in Annexure 'A' to the complaint were of the value of rupees over one

lac) on the pretext that "the times were not safe for wearing valuable ornaments".

(2) The complaint goes on to state that in June, 1977, Iqbal Jang Singh, husband of the respondent, left for U.S.A. on the pretext of a business trip. Before leaving the country, he told the respondent that the ornaments etc. should remain in the safe custody of his parents, i.e., the petitioners. The respondent had no ground to doubt his statement and she acted upon the same, though later on it came to light that it was a plan on the part of her husband with the connivance of his parents to desert the respondent. After the departure of her husband for U.S.A. the attitude of the petitioners towards her underwent a complete change and they started taunting her. On Basant Panchmi day, i.e., February 12, 1978, the respondent asked for a set of ornaments for wearing them to celebrate the *Basant* but the petitioners refused to give any ornaments to her and bluntly told her that she will not be allowed to have those ornaments and articles of dowry for use. She was further taunted and told to bring a lac of rupees from her parents. The behaviour of the petitioners was not only rude but also unbecoming of gentle parties of status. It was also averred that "the accused abused and slapped the complainant, forcibly took of the diamond ring, wrist watch, gold necklace and gold ear-rings and forced the complainant to leave the house only in the clothes which the complainant was wearing and told never to return and that the complainant would not get the ornaments and the other articles."

(3) After making a mention of certain other facts, the complaint goes on to state that "the accused have committed an offence under section 406, I.P.C. by committing criminal breach of trust of the ornaments and other articles owned by the complainant which are her *istridhan* which were entrusted to the accused for safe custody and which the accused have dishonestly misappropriated, which offence is cognizable and triable by this Court." Towards the end, it was prayed that they be tried and suitably punished in accordance with law and the articles mentioned in Annexure A & B be ordered to be returned to her.

(4) The order dated March 21, 1978, passed by the learned Chief Judicial Magistrate shows that the respondent besides herself entering the witness-box produced her sister Daljinder Kaur P.W. 2 and Gurinder Singh P.W. 3 in support of the version mentioned in the complaint. The learned Chief Judicial Magistrate after making a

Bhai Sher Jang Singh v. Virinder Kaur (M. R. Sharma, J.)

detailed review of the statement made by the respondent felt satisfied that the petitioners *prima facie* appeared to have committed an offence under section 406, I.P.C. They were accordingly ordered to be summoned as accused persons.

(5) The two petitioners have filed the instant petition under section 482, Criminal Procedure Code, with a prayer that the complaint filed by the respondent and the subsequent order dated March 21, 1978, passed by the learned Chief Judicial Magistrate summoning them as accused persons be quashed. It has been mentioned therein that petitioner No. 1 is a Rais of Siddhowal having received his education at Aitcheson Chief's College, Lahore, and Government College, Lahore. He retired as a member of the Indian Administrative Service. It was admitted that Shri Iqbal Jang Singh, the only son of the petitioners, was married to the respondent on March 27, 1977, but in order to give a lead to the society and because of their social position they declined to accept any gifts or dowry at the time of the marriage or their only son. The petition states that soon after the marriage it was discovered that the respondent could have no interest in her husband because of her antecedents. It is stated that her elder sister was married to Sardar Jasbir Singh, son of Ajit Singh of village Buraj, district Amritsar. The said Sardar Ajit Singh was involved in a triple murder case along with some others. That case arose out of the allegations that the three deceased persons had been abducted from the Crystal Chowk, Amritsar, tortured and murdered in collusion with members of the Border Security Force but the case ended up in acquittal by the Supreme Court of India. It is claimed that the respondent eluded her husband for six hours on May 7, 1977, and was not found anywhere where she should have been. She had no explanation for this lapse on her part. Further locker No. 26 had been taken on rent in the Andhra Bank in the joint name of Iqbal Jang Singh and the respondent which could be operated jointly or severally and on April 28, 1977, the respondent alone operated the locker. After she had left the house of the petitioners on May 7, 1977, Iqbal Jang Singh, son of the petitioners, operated the locker on May 9, 1977, and found that there was nothing contained therein. It is claimed that the story put forth in the complaint that she lived in the house of the petitioners up to February 12, 1978, was incorrect and the petitioners never demanded any sum from her parents. After May 7, 1977, the petitioners started receiving suspicious telephone calls which made them very anxious about their personal safety and the safety of their son. The

son of the petitioners Iqbal Jang Singh left by air for U.S.A. on June 14, 1977, and on the night of June 22, 1977, three revolver shots were fired at the window of the drawing-room where petitioner No. 1 used to sit. This matter was reported to the police without expressing any suspicions against anybody. The legal objections about the competence of the complaint have been raised in paragraphs Nos. 16 to 20 of the petition, which reads as under :—

- “16. That the claim of the respondent that the property gifted to her at the time of marriage is her *istridhan* is not legally tenable after the passing of the Hindu Succession Act and Hindu Marriage Act and such property is now governed by section 27 of the Hindu Marriage Act, which makes it the joint property of the parties.
17. That the respondent has left the marital home of her own accord and even the false allegation that she was turned out of the home does not mean that the property which, according to the complaint, was brought to the marital home, is misappropriated. The remedy provided in the Hindu Marriage Act has to be availed.
18. That even *istridhan* of Hindu law does not mean an unlimited power of disposal in the female. This doctrine governed the inheritance to such property and made the female new stock of descent and gave preference to the daughters over the son.
19. That under the present law no claim can be made on the basis of *istridhan*, as it has now been completely abolished and can not avail against the statute which makes it the joint property of the parties (1977 Chandigarh Law Reporter 212).
20. That since the property was gifted and was joint of the parties it could not be said to have been misappropriated or converted to a different and dishonest user, as the parties own this property jointly and the property has not been converted to any use different from the one which could have been implied even if the truth of the allegations is admitted.”

Bhai Sher Jang Singh v. Virinder Kaur (M. R. Sharma, J.)

(6) When the case came up before me at the motion stage, Mr. Thapar, the learned counsel for the petitioners, brought to my notice a Single Bench decision of this Court in *Surinder Mohan & others v. Smt. Kiran Saini*, (1). In that case a similar complaint filed by a wife against her husband was dismissed on the ground that a complaint under section 4 of the Dowry Act was not cognisable after a period of one year as laid down under section 7 of the said Act and the offence under section 406 was not made out because the complaint did not disclose the conditions under which the articles constituting the dowry were given by the parents of the girl at the time of the marriage of the spouses in that case. I was *prima facie* of the view that some of the observations in that case were likely to work hardship against illiterate and helpless wives in this country. Consequently, I admitted the revision petition to be heard and decided by a Division Bench. This is how the present case has come up for arguments before us.

(7) Mr. Thapar, the learned counsel for the petitioners, has vehemently argued that because of the subsequent codification of the Hindu law the concept of *istridhan* has vanished and a husband or his parents cannot be held guilty of committing breach of trust even if they retain the ornaments and other articles given to the wife at the time of her marriage. In support of his argument, the learned counsel has taken us through various text books on Hindu Law. In Maine's Treatise on Hindu Law and Usage, Eleventh Edition at Page 728, appears the following passage :—

“According to the Viramitrodaya, whatever is given at the time of marriage to the bride and the bridegroom sitting open the same seat is called *yautaka* through the derivation, ‘what belongs to the ‘yutau’ (or the two united) is ‘yautaka’. *Ayautaka* is that which is not *yautaka*. In “*Muthukaruppa v. Sellathammal*, it was said “*Yautaka* is that which is given at the nuptial fire..... It includes all gifts made during the marriage ceremonies. *Ayautaka* is gift made before or after marriage. *Saudayika* includes both *yautaka* and *ayautaka* not received from strangers. It is defined to be gifts from affectionate kindred.”

“Her husband can neither control her in her dealings with it, nor use it himself. But he may take it in case of extreme

(1) (1977) Chandigarh Law Reporter 212.

distress, as in a famine, or for some indispensable duty, or during illness, or while a creditor keeps him in prison. Even then he would appear to be under at least a moral obligation to restore the value of the property when able to do so. What he has taken without necessity, he is bound to repay with interest."

(Page 736-737)

(8) From these passages the learned counsel wants us to infer that the ornaments and clothes given to the respondents at the time of her marriage were meant for the use of both the spouses, and the husband could actually use this property in case of extreme distress but he is under a moral obligation to return this property with interest. The obligation to pay interest, submits the learned counsel, shows that such a property can never become subject-matter of criminal breach of trust. The learned counsel then referred to us section 27 of the Hindu Marriage Act which empowers a court to pass a decree directing the husband to return to the wife her ornaments and other articles. He argued that the respondent can at the most file a petition under this section and claim a decree for the return of the ornaments etc. The last argument on this point raised was that under section 14 of the Hindu Succession Act a female had become the full owner of her property which implied that the concept of *istridhan* had become wholly obsolete. We have carefully considered these ingenuous arguments advanced by Mr. Tnapar. The two statutes, namely, the Hindu Marriage Act and the Hindu Succession Act have only partially modified the principles of Hindu law, and no provision contained in either of these statutes has either expressly or by implication in any way modified the concept of *istridhan*. N. R. Raghavachariar in his Hindu Law (Principles & Precedents) Fifth Edition at page 533 has observed as under :—

"Powers during Converture.—Saudayaika, meaning the gift of affectionate kindred, includes both Yautaka or gifts received at the time of marriage as well as its negative Ayautaka. In respect of such property, whether given by gift or will, she is the absolute owner and can deal with it in any way she likes. She may spend, sell or give it away at her own pleasure by gift or will without reference to her husband and property acquired by it is equally subject to such rights. Ordinarily the husband has no manner of

Bhai Sher Jang Singh v. Virinder Kaur (M. R. Sharma, J.)

of right or interest in it. But in times of extreme distress, as in famine, illness or imprisonment, or for the performance of indispensable duty, the husband can take and utilise it for his personal purposes, though even then he is morally bound to restore it or its value when able to do so. But this right is purely personal to him and cannot be availed of by a holder of a decree against the husband and if the husband dies without utilising the property for the liquidation of his debts, his creditors cannot claim to proceed against it in the place of her husband. But the position is different in the case of non-Saudayika property. According to Katyayana, "the wealth which is earned by mechanical arts, or which is received through affection from any other (but the kindred) is always subject to the husband's control" and according to the Daya-bhaga he has a right to take it even in the absence of distress. Hence in the case of property which is non-Saudayika, the husband's consent is a condition precedent to her power of disposal and he is entitled to use it for his own purposes even in the absence of any compelling necessity. But after his death, her power of disposition becomes unfettered. Even during the lifetime of the husband the wife does not cease to be its owner, though the husband has the right above referred to. Hence if she dies during the husband's lifetime, the property is taken by her *istridhan* heirs and not by the heirs of her husband." (page 533-534).

(9) The aforementioned passage shows that a female has an absolute right to use her *istridhan* in any way she likes and even if her husband can take this property at the time of distress, this right is personal to him. The allegations made in the instant complaint are not that the husband of the respondent has placed her ornaments and jewellery etc. out of her way. What has been alleged therein is that the petitioners who are the parents-in-law of the respondent have converted the ornaments and clothes etc. presented to the respondent at the time of her marriage to their own use.

(10) Section 27 of the Hindu Marriage Act empowers a Court while deciding a matrimonial dispute to also pass a decree in respect of property which may jointly belong to both the husband and the wife. This section at best provides a civil remedy to an aggrieved

wife and does not in any way take away her right to file a criminal complaint if the property belonging to her is criminally misappropriated by her husband.

(11) We may now examine the argument that the articles presented to the respondent at the time of her marriage did not constitute 'dowry' or her *istridhan*. In this connection, we might observe that the Dowry Prohibition Act, 1961, is a special statute designed to prohibit husbands from extorting huge sums of money in consideration for the marriage. The term 'dowry' has been defined in section 2 of this Act as under :—

*"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 mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

*Explanation I.—*For the removal of doubts, it is hereby declared 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 II.—*The expression 'valuable security' has the same meaning as in section 80 of the Indian Penal Code."

(12) The 1st Explanation appearing under this section clarifies the entire position. It does not debar anybody to voluntarily make presents to the newly wedded spouses at the time of their marriage.

Bhai Sher Jang Singh v. Virinder Kaur (M. R. Sharma, J.)

The only inhibition contained therein is that such presents shall not be made as consideration for the marriage of the parties. The idea is that no party should be allowed to bargain that in the event of marriage between the two persons either one or the other party shall have to part with a specified sum of money. The explanation further makes it clear that the term 'dowry' has been given a special meaning only for the purpose of this Act. In other words, if a bargain is made or some money is extorted as consideration for the marriage of two persons, the person demanding the dowry shall be liable to punishment under section 4 of this Act. The earlier concept of the 'dowry' which embraced in its ambit the presents made to the newly wedded wife which were to form part of her *istridhan* has not at all been affected by the provisions of the Dowry Prohibition Act.

(13) It might be that some of the articles were presented to her are for the use of both the spouses but the ornaments and things of the like nature are certainly meant for her and her alone. When she makes an allegation in the complaint that either her husband or her parents-in-law had converted to their own use the ornaments forming the part of her *istridhan* which she had entrusted to them, the Court has to give legal effect to such allegation and assume that such ornaments had been made the subject-matter of criminal breach of trust. It is settled law that even in a criminal complaint the complainant is under no obligation to plead the legal effect of the allegations made. All that is required is that the facts constituting a complaint should be specifically mentioned so that the Court may be able to perform its duty of punishing the accused under the appropriate provision of law if such allegations are made out. Furthermore, in a case like this a complaint cannot be quashed without giving the aggrieved wife an opportunity of proving that the ornaments had been given to her at the time of her marriage for her use only. Any observations to the contrary made in *Surinder Mohan & others v. Smt. Kiran Saini* (supra) cannot be regarded as good law.

(14) Now, a reading of the complaint and the annexures attached thereto clearly disclose some items of property which are meant solely for the use of the respondent. In this situation it would not be proper on our part to quash the complaint at this stage.

(15) Mr. Thapar then submitted that a reading of the complaint did not make out any offence and that the accusations were so

frivolous that the complaint could possibly not result in the conviction of the petitioners. We do not agree with this submission made by the learned counsel. There is a definite allegation in the complaint that the ornaments given to the respondent at the time of her marriage were entrusted by her to the petitioners, some of which they refused to part with when she made the demand. Whether she will be able to prove this allegation or not is an entirely different matter and at this stage it is not possible for us to assume that she would not be able to lead any evidence in support of these allegations. It is no doubt true that in a criminal case the burden of proving the charge rests on the complainant and an accused person is entitled to have the benefit of doubt but these principles are quite well known and we have no doubt in our minds that the learned trial Magistrate will keep them in view while trying the complaint. In the circumstances, we find no force in the petition and dismiss the same.

(16) Before parting with the case, we might observe that in view of the status of the parties we tried our best to bring about a compromise between them but failed. Even then we do hope that on some future date this ugly litigation will come to an end and the two spouses would once again decide to live together. Impelled by that hope we direct that the learned trial Magistrate shall grant the petitioners exemption from appearing in person in Court as long as it is felt necessary.

N.K.S.

Before D. B. Lal and Harbans Lal, JJ.

PUSHPA WANTI—Appellant.

versus

MAJESAR DASS—Respondent.

Criminal Appeal No. 56 of 1975

September 25, 1978.

Code of Criminal Procedure (V of 1898)—Sections 256 and 257—Witnesses named by the accused not summoned by the Court—Complainant absent on the date fixed for cross-examination of such witnesses—Such absence—Whether sufficient to acquit the accused.