

Before : S. S. Grewal, J.

DR. VINOD KUMAR GOYAL AND OTHERS,—*Petitioners.*

*versus*

THE UNION TERRITORY, CHANDIGARH AND ANOTHER,  
—*Respondents.*

*Criminal Misc. No. 7675-M of 1989.*

14th December, 1990.

*Code of Criminal Procedure, 1973 (II of 1974)—S. 482—Indian Penal Code, 1860—Ss. 406, 498-A, 323, 384, 506, 120-B—Quashing of F.I.R.—F.I.R. lodged against husband and his relatives—No specific allegations of cruelty or entrustment of dowry by the wife levelled against the relatives—F.I.R. liable to be quashed—Allegations against husband, however, disclosing prima facie case—Trial Court directed to proceed with the trial against husband alone.*

*Held*, that mere general allegations in the complaint either concerning entrustment of articles of dowry constituting *istradhan* to all the accused, or, their refusal to return such articles of dowry to the complainant-wife at a later stage, would not *per se* be sufficient to make out a *prima facie* case for commission of offence against any particular accused. In the absence of clear, specific and unambiguous allegations referred to above and in the absence of further allegations against the accused that he had dishonestly or with *mala fide* intention retained the same and had refused to return those articles to the wife for whose exclusive use such articles were allegedly entrusted to him, no *prima facie* case for commission of such offence would be made out against that particular accused. Taking into consideration the allegations levelled in the impugned F.I.R. against the relatives no *prima facie* case concerning commission of offences as alleged under the Indian Penal Code has been made out against them. Thus the impugned F.I.R. against the relatives and consequent proceedings taken thereunder are directed to be quashed as continuation of such proceedings would amount to abuse of the process of Court.

(Paras 8 & 15)

*Held further*, that in view of clear, specific and unambiguous allegations against the husband, it cannot be said that no *prima facie* case in respect of commission of offence as alleged under the provisions of Indian Penal Code has been made out against him. The trial Court is directed to proceed with the trial of the case against the accused-husband alone according to law.

(Para 17)

*Petition under section 482 of the Code of Criminal Procedure praying that the petition be accepted and F.I.R. No. 170 of 1988 under*

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sections 406/498, 323/384/506, 120B I.P.C. etc; registered with Police Station (West) Chandigarh, the challan submitted on the basis of this F.I.R. and the charge framed by the learned Magistrate Ist Class, Chandigarh on 8th August, 1989 be quashed.

Raman Mahajan, Advocate, for the Petitioners.

Anand Sawroop, Sr. Advocate, with Sunidh Kashyap, Advocate, for U.T. Chandigarh.

A. K. Mittal, Advocate, for Respondent No. 2.

### JUDGMENT

S. S. Grewal, J.

(1) This petition i.e. Crl. Misc. No. 7675-M of 1989 re : *Dr. Vinod Kumar Goyal etc. v. Union Territory, Chandigarh and another* as well as Crl. Misc. No. 1164-M of 1990 re : *Bharat Bhushan Goyal v. Union Territory, Chandigarh and others*, relate to quashment of impugned first information report No. 170 of 1988 under sections 406/498-A, 323/384/506 and 120-B of the Indian Penal Code registered at Police-Station (West) Chandigarh and consequent proceedings taken thereunder including the charge framed by the Judicial Magistrate, Ist Class, Chandigarh on 8th August, 1989, against the accused-petitioners. As common questions of law and fact are involved, both these petitions shall be disposed of by one order.

(2) In brief, facts relevant for the disposal of those petitions, as emerge from the impugned first information report, are that the marriage of the complainant with Bharat Bhushan Goyal was solemnized on 10th April, 1988, at Bhatinda. On that occasion, father of the complainant wife and his other relations had given various gifts and cash, which, were handed over to the husband and also to his parents expecting them to give all these articles to the complainant-wife as and when required. After the marriage, the accused-petitioners started mal-treating the complainant-wife for bringing inadequate dowry. After living at Bhatinda for one day the complainant-wife came to Chandigarh. Her husband Bharat Bhushan Goyal was working as Lecturer on deputation in Rohtak University. On 12th April, 1988 after showing his resentment that the dowry given was quite meagre, Bharat Bhushan husband of the complainant-wife left for Rohtak. The father of the complainant-wife tried to pacify Bharat Bhushan but he was adamant and did not come to

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Chandigarh upto 16th April, 1988. On receipt of message from father-in-law, complainant-wife was sent to Bhatinda. Rs. 30,000 were given on that occasion by wife's father, out of which Rs. 10,000 were given to the accused and remaining amount of Rs. 20,000 was kept in the account of the wife. On 27th April, 1988, the husband was transferred to Chandigarh where he lived with his wife up to 20th May, 1988. During this interval Rs. 40,000 more were given by the wife's father to his son-in-law Bharat Bhushan Goyal but maltreatment of the wife continued, and, ultimately she was turned out on 16th August, 1988 from her matrimonial home. On 21st June, 1988, the husband gave slaps to his wife who was studying in Panjab University, Chandigarh. Besides, it was pleaded that jewellery and other valuable articles including T.V., Scooter and clothes etc. were not handed over to the wife and that all the accused-petitioners acted with cruelty towards her, in order to compel her to bring more dowry.

(3) The learned counsel for the parties were heard.

(4) On behalf of the complainant-wife, it was mainly contended that the facts mentioned in the complaint and other material on the record, taken at their face value, clearly make out a case against the husband, parents-in-law and other relations concerning entrustment of articles of dowry (constituting *istridhan*) to them at the time of the marriage; that they had refused to return her *Istri Dhan* and had dishonestly and *mala fide* retained the same, in order to cause wrongful gain to themselves and wrongful loss to the complainant. As such *prima facie* case punishable under section 406 of the Indian Penal Code has been made out against the husband and his aforesaid relations, including the petitioners.

(5) Reliance in this respect has been placed on the authority of the apex Court in *Pratibha Rani v. Suraj Kumar and another* (1), wherein as per majority view, it was held that where the allegation of entrustment of misappropriation of *istridhan* properties was made out by the married woman in her complaint and the allegations were clear specific and unambiguous and all the facts stated in the complaint constitute the offence under S. 405/406, the right to prove the case could not be denied to the complainant. Since the complaint *prima facie* disclosed an offence of criminal breach of trust as defined in S. 405/406, the High Court was not justified in quashing the complaint under S. 482.

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(1) A.I.R. 1985 S.C. 628.

(6) There is no dispute with the proposition of law enunciated in *Pratibha Rani's case* (supra). However, while dealing with quashment of criminal proceedings against the accused in initial stages under section 482 Cr.P.C., it would depend on the facts and circumstances of each particular case, as to whether clear, specific and unambiguous allegations levelled in the impugned complaint/F.I.R. taken at their face value make out a *prima facie* case for commission of offence punishable under section 406 of the Indian Penal Code or not and that resort to criminal proceedings in the circumstances of such a case would amount an abuse of the process of the Court or not.

(7) The learned counsel for the petitioners has rightly argued that in the absence of any clear, specific and unambiguous allegations either concerning entrustment of articles of dowry (constituting istri dhan) at the time of the marriage, to a particular accused, or at a later stage, in the absence of specific allegations either that the accused refused to return Istri-Dhan or articles of dowry entrusted to any individual accused or that the same were dishonestly and *mala fide* retained by that particular accused, in order to cause wrongful gain to him and wrongful loss to the complainant, no *prima facie* case for commission of any offence punishable under section 406 I.P.C. would be made out against that particular accused.

(8) Mere general allegations in the complaint either concerning entrustment of articles of dowry constituting istriddhan to all the accused, or their refusal to return such articles of dowry to the complainant wife at a later-stage, would not *per se* be sufficient to make out a *prima facie* case for commission of offence punishable under Section 405 or 406 I.P.C. against any particular accused. In the absence of clear, specific and unambiguous allegations concerning entrustment of specific articles of dowry to any particular accused and in the absence of further allegations against him that he had dishonestly or with *mala fide* intention retained the same and had refused to return those articles to the wife for whose exclusive use such articles were allegedly entrusted to him, no *prima facie* case for commission of such offence would be made out against that particular accused. Normally, in the cases relating to commission of offence of criminal breach of trust punishable under section 406 of the Indian Penal Code, a particular accused can *prima facie* be said to be responsible only for his individual acts and cannot be fastened with joint or vicarious liability.

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(9) These arguments were neither raised, nor, this aspect was specifically considered or decided by the apex Court in *Pratibha Rani's case*, referred to above. The main question dealt with in *Pratibha Rani's case* (supra) was that a woman entering the matrimonial home, the ownership of Istri Dhan property, does not become joint with the husband or his relations and even if Istri-Dhan property of a married woman is placed in the custody of her husband or in-laws, they would be deemed to be trustees, and bound to return the same if and when demanded by her. The aforesaid contentions raised on behalf of the petitioners are quite pertinent while dealing with the question of quashment of criminal proceedings concerning commission of criminal breach of trust in respect of articles of dowry or Istri-Dhan property of the complainant-wife.

(10) I find ample support in my view from the Single Bench authority of this Court in *Balkishan and others v. Poonam Verma* (2), wherein the proceedings against the relations of the husband against whom there was no specific allegations about entrustment of any article of dowry has been made in the complaint and there was only bald assertion that the accused persons turned out the wife and kept such articles in their custody, such proceedings against relations of the husband were directed to be quashed.

(11) This is the consistent view followed in various Single Bench authorities of this Court including those cited below:—

*Inderjit and others v. Smt. Sushma Rani* (3), *Balwinder Kumar and another v. Kashama Devi alias Shama Devi* (4), *Anokh Singh and others v. Paramji Kaur* (5), *Surjit Singh v. Smt. Jaswant Kaur* (6), *Kishan Sharma and others v. State of Haryana and others* (7), *Shori Lal and others v. Smt. Nisha and another* (8) and *Dhan Devi v. Deepak* (9).

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(2) 1987 (1) Recent Criminal Reports 657.

(3) 1988 (1) Recent Criminal Reports 527.

(4) 1988 (1) Recent Criminal Reports 67.

(5) 1990 (1) Recent Criminal Reports 497.

(6) 1990 (1) Recent Criminal Reports 687.

(7) 1989 (1) Recent Criminal Reports 13.

(8) 1989 (1) Recent Criminal Reports 276.

(9) 1989 (1) Recent Criminal Reports 273.

(12) Since all the relevant factors including the proposition of law enunciated in *Pratibha Rani's* case (*supra*) have duly been taken into consideration, there does not seem to be any cogent reason to differ from the view expressed in the aforecited single Bench authorities of this Court. However, while deciding quashment of criminal proceedings (at initial stage) on the basis of the impugned first information reports or criminal complaints, reference has to be made to clear, specific and unambiguous allegations levelled therein against any particular accused.

(13) Perusal of the impugned first information report, lodged by the father of the wife, in the instant case, does not reveal that there are any clear, specific and unambiguous allegations either concerning entrustment of specific articles of dowry constituting *istradhan* to the accused-petitioners (other than the husband) at the time of solemnization of said marriage. There are only vague and general allegations concerning handing over of articles of dowry to parents-in-law. It is pertinent to note that parents-in-law and husband's brother reside at Bhatinda, whereas, both the husband and the wife remained at Chandigarh for most of the period after their marriage. The allegations against the accused-petitioners (other than the husband) concerning demand of more dowry or their refusal to return *istradhan* or further allegations that they too acted with cruelty towards the wife cannot be taken at their face value to make out a *prima facie* case against such petitioners.

(14) Thus, there are no specific, clear and unambiguous allegations against Dr. Vinod Kumar, Smt. Savitri and Hukam Chand accused-petitioners about the demand of return of articles of dowry by the wife from them.

(15) Taking into consideration the allegations levelled in the impugned first information report against Dr. Vinod Kumar Goel, Smt. Savitri Devi and Hukam Chand, accused-petitioners, no *prima facie* case concerning commission of offence punishable under section 406, 498-A, 323/384/506 and 120 of the Indian Penal Code has been made out against them. Thus the impugned first information report against the aforesaid accused-petitioners and consequent proceedings taken thereunder including the charge framed against the said petitioners by the trial Court are directed to be quashed, as continuation of such proceedings would amount to abuse of the process of Court. Crl. Misc. No. 7675-M of 1989 is accordingly allowed.

(16) However, there are specific allegations both concerning entrustment of articles of dowry to the husband at the time of the solemnization of the marriage as well as payment of cash to the husband by his father-in-law after the solemnization of the said marriage. Specific allegations have also been levelled against the husband that he had acted with cruelty towards his wife and is alleged to have maltreated and tortured her, in order to coerce her to bring more cash or dowry from her father.

(17) In view of clear, specific and unambiguous allegations, referred to above, against Bharat Bhushan Goel (husband) it cannot be said at this stage, that no *prima facie* case in respect of commission of offence under sections 406, 498, 323/384/506/120 of the Indian Penal Code has been made out against the said accused-petitioner. Crl. Misc. No. 1164-M of 1990 filed by Bharat Bhushan Goyal petitioner is accordingly dismissed. The trial Court is directed to proceed with the trial of the case against Bharat Bhushan Goyal accused alone according to law. If necessary, the trial Court may alter or amend the charge already framed and dispose of the case against the said accused expeditiously. Copy of this order be sent to the trial Court for compliance.

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J.S.T.