



GAHC010285212019

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1385/2019

ASHOK KUMAR RATHI AND ANR.
S/O LATE MULCHAND RATHI, R/O BJ-366, SALT LAKE CITY, SECTOR-II,
KOLKATA, DIST- NORTH 24 PARGANAS, P.O.-SECH BHAWAN, P.S.-
BIDGHANAGAR (EAST), WEST BENGAL, PIN-700091

2: SMTI. DURGA RATHI
W/O ASHOK KUMAR RATHI
R/O BJ-366
SALT LAKE CITY
SECTOR-II
KOLKATA
DIST- NORTH 24 PARGANAS
P.O.-SECH BHAWAN
P.S.-BIDGHANAGAR (EAST)
WEST BENGAL
PIN-70009

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2: SMTI. PREETI RATHI
W/O AYUSSH RATHI
R/O 301
3RD FLOOR
UTTARAYAN VILLA
B.R. PHUKAN ROAD
KUMARPARA
NEAR RAILWAY GATE-7
DIST-KAMRUP (M)
GUWAHATI-781009
ASSA



Advocate for the Petitioner : MR. A M BORA

Advocate for the Respondent : MR. DAS(ADDL.PP, ASSAM)

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : MR A. M. Bora, Sr. Advocate.
Assisted by Mr. V. A. Chowdhury, Adv

For the Respondents : Mr. D. Das, Addl.PP.
Mr. A. K. Bhuyan, Advocate.

Date of Hearing : 17.08.2023, 19.09.2023

Date of Judgment : 10.10.2023

JUDGMENT & ORDER (CAV)

1. Heard Mr. A. M. Bora, learned Senior Counsel assisted by Mr. V. A. Chowdhury, learned counsel for the petitioners. Also heard Mr. D. Das, learned Additional Public Prosecutor for the respondent No. 1 and Mr. A. K. Bhuyan, learned counsel for the respondent No. 2.
2. The present criminal petition is filed under Section 482 of the Cr.P.C., seeking quashment of order dated 31.07.2019 passed by the learned Judicial Magistrate First Class, Kamrup (M) Guwahati in connection with Complaint Case No. 681/2019.
3. By the impugned order dated 31.07.2019, cognizance has been taken by the learned Magistrate for an offence under Section 406 of IPC and search warrant has also been issued to recover the stridhan alleged to have been misappropriated by the petitioner's herein.

4. The only ground of challenge is the jurisdiction of the Magistrate to enquire and try the offence under Section 406 of IPC alleged to have been committed by the petitioners herein inasmuch as according to Mr. Bora, learned Senior Counsel, from the averment made in the complaint, it is clear that neither any offence under Section 406 of IPC was committed within the local jurisdiction of the learned Magistrate nor any part of the stridhan which is subject of the offence was received or retained or was required to be returned or accounted for by the petitioners herein at Guwahati and therefore, by virtue of the provision of Section 181 (4) of the Cr.P.C., the learned Judicial Magistrate shall have no jurisdiction to enquire or try the offences. Accordingly, the impugned order is liable to be set aside and quashed.
5. In support of such contention, Mr. Bora, learned Senior Counsel, relies on the decision of this Court in the case ***Kuljit Singh Sethi –Vs- State of Assam and others*** reported in ***2019 Cri.L.J. 1666***, and the decision rendered in the case of ***Bijay Kumar Jalan vs state of Assam and other*** reported in ***2017 5 GLT 811***.
6. Mr. Bora, learned Senior Counsel contending further that in absence of averment made in the petition/complaint regarding any stipulation that the stridhan were required to be returned or accounted for at Guwahati, the learned Magistrate ought not to have taken cognizance of the offence under Section 406 of IPC, inasmuch as admittedly the marriage was solemnized in the State of Maharastra and stridhans were delivered at Maharastra and in Kolkatta. In support of such contention, Mr. Bora , relies upon the judgment of the Punjab and Haryana High Court in the case of

Harjit and vs- State of Punjab and another reported in ***1986 Cri-L-J, 2070.***

7. Per contra Mr. Bhuyan, learned counsel for the respondent No. 2, submits that Section 406 of IPC, is a continuing offence and every day of non-return of stridhan articles, would give a continuous cause of action and as the respondent is a residence at Guwahati, the Magistrate at Guwahati shall have jurisdiction to enquiry into the complaint.
8. It is further contended by Mr. Bhuyan, learned counsel that Section 178 of Cr.P.C., creates an exception to the ordinary rule under Section 177 of Cr.P.C., by permitting the Courts in another local area where the offence is continued in another local area to try the offence. According to Mr. Bhuyan, learned counsel Section 181 (4) of Cr.P.C., is to be harmoniously read with Section 178 of Cr.P.C., more particularly in a case of misappropriation of stridhan. He further submits that the Hon'ble Apex Court in the case of ***Rupali Devi –Vs- Sate of U.P. and others*** reported in ***(2019) 5 SCC 384***, while dealing with the provision of Section 498A of IPC and Section 178 of Cr.P.C. held that when the offence/ crime is against a woman and includes cruelty, such victim can file a complaint/FIR in a place where she has taken shelter. According to Mr. Bhuyan, learned counsel, misappropriation of stridhan itself is a cruelty and therefore in respect of victim women whose stridhans are misappropriated, the principles as laid down in the case of ***Rupali Devi –Vs- State of U.P.*** (supra) shall be made applicable. Accordingly, he submits that the learned Magistrate has rightly taken cognizance of the offences under Section 406 of IPC.
9. In order to appreciate, the arguments advanced by the learned counsels

for the parties it will be necessary to refer to the averments made in the complaint, which are as follows:-

- I. From the cause title it is reflected that the complainant/respondent No. 2 is a permanent resident of 301, 3rd Floor, Uttarayan Kumarpara near Railway Gate-7, district- Kamrup (M), Guwahati. The petitioners accused are permanent residents of Kolkatta.
- II. The marriage between the complaint and the accused No. 1 was solemnized on 27.11.2015 as per Hindu Rites and Rituals at Maharastra.
- III. After the marriage, the complainant started living with accused Nos. 1, 2 and 3 and Salt Lack City, Kolkatta at her matrimonial house.
- IV. At the time of marriage parents of the complainant jewelleries to the complainant as stridhan.
- V. Subsequently, on demand from the accused Nos. 1, 2 and 3, the father of the complainant transferred an amount of Rs. 15 lakhs in the bank account of the complainant, she withdrew the same and purchased jewellery.
- VI. The complainant also purchased gold jewelleries worth about 35 lakhs, out of money from her own personal account at Kolkata.
- VII. The aforesaid jewelleries were handed over to the accused Nos. 1, 2 and 3 at Kolkata.

VIII. From the Month of July, 2017 till November, 2017 though the behaviour of the accused were normal but since December, 2017 all the accused started abusing the complainant with unparliamentary words and the same continued for months.

IX. She was subjected to physical assault on 10.09.2018 and therefore, on 10.09.2018, she came out of matrimonial house at Kolkata leaving behind her stridhan which the accused Nos. 1, 2 and 3 refused to give her.

X. Though till December, 2018 the complainant and her parents pursued the accused persons to return her stridhan, the accused avoided to return the same.

XI. On 13.02.2019, it was intimated that already a portion of gold ornaments has been sold by accused No. 2 and 3, to recover the cost incurred in the marriage and they will not return the stridhan.

XII. That being the position, the complaint case was filed.

10. In the case of **Bijay Kumar Jalan** (supra) relied on by Mr. Bora, learned Senior Counsel for the petitioners, it was held that the concept of continuing offence enunciated by the Hon'ble Apex Court in the case of **Krishna Bhattacharjee –VS- Sarathi Choudhury** reported in **2016 2 SCC 705**, can be made applicable to the offence under Section 406 of IPC so far the same relates to misappropriation of stridhan property.

11. In the absence of an averment in the said case (**Bijay Kumar Jalan**) that, stridhan articles were to be returned at Jorhat and in the absence of

any averment to the same effect in the legal notice issued by the complainant, Court opined that in view of provision of Section 181 (4) Cr.P.C., the judicial Magistrate, Jorhat shall not have any jurisdiction to try an offence under Section 406 of IPC in the given facts of the said case. Such decision was based on the ratio laid down by the Hon'ble Apex Court in the case of ***Kushal Kumar Gupta –Vs- Mala Gupta*** reported in ***(2011) 12 SCC 434***.

12. In ***Kushal Kumar Gupta*** (Supra), at paragraph 7, the Hon'ble Apex Court laid down the proposition of law that during the trial, the accused will have to disprove the complainant case that part of cause of action arose in the place where the dowry articles were to be returned to the complainant. From the paragraph 7, it is seen that in the said case, in the complaint, it was averred facts disclosing that the part of cause of action arose at Patiala and therefore, the decision of the Trial courts and the decision of the High Court holding that Patiala court was having jurisdiction to entertain the complaint was upheld.
13. Now coming to the judgment of the ***Rajib Chakraborty and Ors –Vs- Leena Mazumdar and Ors in Crl Petition No. 605/2018***, the decision was based on the ratio laid down in ***Y. Abraham Ajith and Ors –Vs- Inspector of Police, Chennai and Anr*** reported in ***2004 8 SCC 100***. In ***Abraham Ajith***, (supra) the hon'ble Apex Court held that the determining factor for jurisdiction is whether any part of cause of action arose within the local jurisdiction of the Magistrate for initiation of proceeding against the accused. Further the decision in ***Rajib Chakraborty*** (supra) was rendered on the basis of ***Bijay Kumar Jalan*** (supra).

14. In the case of **Harjit Singh** (supra) relied on by Mr. Bora, learned Senior Counsel, the ratio laid down was that the provision used under Section 181 (4) of Cr.P.C., required to be returned or accounted for” is having no nexus with either parental home of the wife or any other place where she chooses to reside after leaving matrimonial home and neither of the Courts at those places would have jurisdiction to try offence of criminal breach of trust”. It was further held in **Harjit Singh** (supra) that “the requirement is to be determined on the basis of a stipulation, if any between the parties”. Such decision is though having a persuasive value but the same cannot be said to be binding precedent upon this Court. This court respectfully disagrees with the view rendered in **Harjit Singh** (supra) that the determination of place of filing the complaint is to be based on the basis of the stipulation between the parties, more particularly for the reason that in a case of misappropriation of stridhan a stipulation of place of return may not be there inasmuch as stridhan is whatever a woman receives during her life time. Such stridhan includes all movable and immovable property etc. received by woman prior to marriage, at the time of marriage, during child birth and during her widowhood. It is well settled that if stridhan is entrusted to the husband or in-laws, it does not stand transferred to them as co-owners or partners is entrusted, they are bound to return the same if and when demanded by the lady. Therefore, in the aforesaid context there may not be any stipulation or condition of return.
15. Section 2 (j) of Cr.P.C., defines local jurisdiction as the local area within which a Court or Magistrate can exercise all or any of its power under this Code. Section 177 of Cr.P.C., provides that ordinarily inquiry and trial of every offence shall be done by the Court within whose local jurisdiction, the

offence was committed. As held in **Rupali** (supra), Section 178 of Cr.P.C., is an exception to the general rule of Section 177 of Cr.P.C. Amongst other, Section 178 of Cr.P.C., provides that when an offence is continuing one and continued to be committed in more than one area, the Magistrate in any of such area shall have the jurisdiction to inquire or try such offences. Section 179 of Cr.P.C., further provides that when an offence is committed at one place but its consequence continues / occurs at another place then, the offence may be inquired into or tried by any Court under whose local jurisdiction, the offence was committed or the consequence ensued.

16. A special provision is made under Section 181 Cr.P.C., for trial of certain offences. Sub-Section 4 of Section 181 of Cr.P.C., provides that an offence of criminal misappropriation or criminal breach of trust may be inquired into or tried by a Court :-

- Where the offence was committed, in the present case, it is at Salt Lake, Kolkata.

Or

- Any part of the property was received or retained, in the present case one part is at Maharashtra and other is at Kolkata.

Or

- Required to be returned or accounted for by the accused person, in the case in hand, it is averred in the complaint that demand was made at Kolkata after the victim lady was allegedly thrown out from her matrimonial house at Kolkata.

17. If we go by the word /conditions "was required to be returned in the context of a stridhan", this Court is of the view that Section 406 IPC being a continuing offence, the question of there being any stipulation that the stridhan will be returned back at a specific place shall not arise inasmuch as a bride when alleges that she is deprived of her stridhan, and a case of deprivation is made out, it is in terms of Section 181 (4) of Cr.P.C., to be treated that such stridhan is required to be returned to the complainant bride at the place where she makes demand for return. Therefore, even if she is residing at Guwahati and makes a demand that her stridhan should be returned, the court / Magistrate at Guwahati shall have jurisdiction. However, unfortunately though the address of the petitioner in the cause title is given as a resident of Guwahati, however, reading the entire complaint this court finds no whisper/ any averment even remotely suggesting that a demand was made from Guwahati for return of the stridhan. Even there is no averment regarding any incident after the alleged demand of stridhan and non-return of stridhan demanded at Kolkata. There is no whisper, not to say any specific averment, how and under what circumstance she is now a resident of Guwahati or anything relating to the offence alleged, which is having any context or nexus or relevance to Guwahati except stating her address in cause title to be resident of Guwahati.
18. Even if it is assume that Rupali (supra) can be made applicable, as urged by Mr. Bhuyan, learned counsel, however, there is no averment in the complaint that the complainant has to take shelter at Guwahati.
19. Accordingly, in view of the reasons discussed hereinabove, this Court is of



the unhesitant view that the Magistrate at Guwahati shall not have jurisdiction to proceed with the Complaint Case No. 681/2019 and therefore has committed illegality in taking cognizance of the offence under Section 406 IPC.

20. Accordingly, the impugned order dated 31.07.2019 is set aside and quashed. It is provided that the respondent shall be at liberty to file the petition before any court having jurisdiction in terms of the determination made hereinabove.

JUDGE

Comparing Assistant