

GAHC010032762024



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

Case No. : Crl.Pet./187/2024

KIRAN DEVI VERMA AND ANR
W/O LATE HARI BINOD VERMA
R/O F4, AMEY PLAZA, FUNSKOOL ROAD, OPP. PDA COLONY, CORLIM,
NORTH GOA, PIN NO. 403110.

2: SMTI. DEEPA VERMA
W/O SRI MARIA RENINSTON SALES
R/O F4
AMEY PLAZA
FUNSKOOL ROAD
OPP. PDA COLONY
CORLIM
NORTH GOA
PIN NO. 403110

VERSUS

KHUSHI VERMA @ BICKY
W/O PANKAJ VERMA
R/O P.N. ROAD,
SHANTIPARA, DIBRUGARH TOWN,
WARD NO. 12, P.O. DIBRUGARH
DIST. DIBRUGARH, ASSAM, PIN NO. 786001

Advocate for the Petitioner : MR. B K DAS

Advocate for the Respondent : MR S PARASHAR

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 11.06.2024

Heard Mr. B.K.Das, learned counsel assisted by Mr. H.P.Neog, learned counsel for the for the petitioner. Also heard Mr. S.Parashar, learned counsel for the respondent.

2. Both the petitioners have filed an application under Section 482 CrPC against the order dated 03.10.2023 passed by the learned JMFC, Dibrugarh in CR Case No. 91^C /2023.

3. The case of the petitioners is that the husband of the petitioner No. 1 i.e. father of the petitioner No.2, Late Hari Binod Verma has filed a complaint before the Officer-in-charge of Dibrugarh Police Station on 23.06.2018 stating *inter alia* that his son and his wife i.e. the respondent had tortured and abused Late Hari Binod Verma and his wife i.e. the petitioner No.1. On 09.03.2021, the husband of the petitioner No. 1 was expired. After performing the religious rituals the petitioner No.1 went to Rajasthan and after living there for few days she left to Goa and used to reside with petitioner No.2, her daughter.

4. It is also alleged that after the death of husband of petitioner No.1, she filed a case under the provisions of Domestic Violence Act in Goa against the respondent as well as against the son of petitioner No.1 which is still pending for trial. The husband of the petitioner No. 1 was running a photo studio business at Dibrugarh. After his demise, the son of petitioner No.1 i.e. the husband of respondent had been running the said studio. It is alleged that the husband of the respondent had executed a relinquishment deed dated 15.03.2021 in favour of son of the petitioner No. 1 i.e. the husband of the respondent in respect of the land measuring 2.74 lechas along with an Assam type house standing thereon.

5. It is further stated in the petition that husband of the respondent had filed a suit T.S. No. 44/2023 against the petitioners before the court of learned Civil Judge, Dibrugarh seeking

a decree for permanent injunction in the aforesaid studio. Subsequently, the respondent filed a complaint case in the Dibrugarh court under Section 406/120B/34 IPC and the case was registered vide CR Case No. 91^C/2023.

6. The learned counsel for the petitioners has argued that the petitioners are residing in Goa since 2021 and as such, the allegation levelled in the complaint petition is not tenable. There is no specific allegation against the petitioner No. 2 that she is any way involved in the offence under Section 406/120B IPC.

7. It is further submitted that petitioner No. 1 who is aged lady suffering from eye sight problem and the attending doctor has advised her for medication. Since, the petitioner No.1 is not at Dibrugarh with the respondent from 2021 as such, the allegation of misappropriation of golden ornaments of the respondent is absolutely false. It is further submitted that on a plain reading of the complaint, it appears that the ingredients of the alleged offence is missing against the petitioners as such, the impugned proceeding in CR Case No. 91^C/2023 is liable to be set aside and quashed.

8. In support of his submission, learned counsel has relied on the following case laws:-

- a. 1992 Supp.(1) SCC 335 (State of Punjab –vs- Bhajanlal)
- b. (2017) 13 SCC 369 (Vineet Kumar & Ors –vs State of Uttar Pradesh & anr.)

9. In response, the learned counsel for the respondent has submitted that the petitioner No. 1 is the mother-in-law of the respondent. After her marriage with the son of petitioner No. 1, the respondent used to live with petitioner No. 1 along with her husband and father-in-law. After the demise of father-in-law of the respondent, the petitioner No. 1 started to live with her daughter at Goa.

10. It is further submitted that the respondent had filed a complaint case against the petitioners alleging that her mother-in-law took away the golden ornaments gifted in her marriage such as gold bangles (set of four pieces), one gold necklace, one pair ear rings, 2 gold rings, one gold nose ring etc.

11. According to learned counsel for the respondent, in spite of repeated requests made

by the respondent to her mother-in-law she did not return her streedhan property. Hence, the complaint was filed against the petitioners. However, the learned counsel for the respondent submits that the respondent has no objection if the complaint case is quashed against the petitioner No.2.

12. Having heard the learned counsel for the parties, it reveals that as per complaint petition, the allegation against the petitioner No. 1 is that at the time of marriage in addition to receiving streedhan in the shape of aforesaid gold ornaments, the respondent was also gifted with golden ornaments from her in-laws side but her mother-in-law i.e. the petitioner No. 1 kept the same with her after completion of marriage ceremony. It also appears from the complaint petition that in the meantime out of wedlock between the respondent and her husband, she gave birth to a female child and even at the time of celebration of religious function of both the daughters, the petitioner No. 1 handed over golden ornaments but after completion of respective functions, the petitioner No. 1 again took back the gold ornaments of the respondent in her custody.

13. In the light of the above facts, now the question is whether Section 406 IPC would be attracted in the fact of the instant case. Section 405 IPC defines criminal breach of trust which reads as under:

“Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes off that property 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.”

14. The essential ingredient of the offence of criminal breach of trust are:

- a. *The accused must be entrusted with the property or with dominion over it.*
- b. *The person entrusted must use the property or*
- c. *the accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation,*
 - (i) *of any direction of law prescribed in the mode in which such trust*

is to be discharged or

(ii) of any legal contract made touching the discharge of such trust.

15. Entrustment of property under Section 405 IPC is pivotal to constitute an offence under the above penal provision. The words used are in any manner entrusted with property. So it extends to entrustment of all kinds, whether to clerks, servants, business partners or other persons provided they are holding a position of trust. It ought to be noted that the crucial word used in Section 405 IPC is 'dishonestly' and therefore, it pre-supposes the existence of mens rea. In other words' mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust. Unless there is some actual use by the accused in violation of law or contract, coupled with dishonest intention, there is no criminal breach of trust. The second significance expression is 'misappropriates' which means improperly setting apart for one's used and to the exclusion of the owner (see **Raghavender N –vs- State of Andhra Pradesh**, AIR 2022 SC 836).

16. In **Sudhir Santilal Mehta –vs- CBI** (2009) 8 SCC 1, it was observed that the act of criminal breach of trust would, inter alia mean using of disposing of the property by a person who is entrusted or has otherwise dominion there over. Such an act must not only be dishonestly but also in violation of any direction of law or any contract, express or implied, relating to carrying of the trust.

17. In the case in hand, the allegation against the petitioners is that the petitioner No. 1 who is the mother –in- law of the respondent took away her golden ornaments with an assurance to return back the same. But after the death of her father- in-law, the petitioner No. 1 went to Goa and started to live with her daughter, the petitioner No.2.

18. Knowing such fact of the petitioner No. 1 who left for Goa with an intention to live with her daughter i.e. the petitioner No. 2 at Goa, the complainant as such, after waiting for a considerable period on 26.06.2021 had telephonic message enquired her mother-in-law i.e. petitioner No.1 regarding her golden ornaments as to where the same has been kept by her and she replied that all the gold ornaments of the complainant were kept with her safely and she would return the same as and when she would return back to Dibrugarh.

19. After 26.06.2021, complainant on many times by telephonic conversation wanted to

know when the petitioner No. 1 would return back to Dibrugarh because the complainant was feeling in much necessity to use and wear the gold ornaments on her relatives' function and marriage ceremony. The petitioner No.1 only gave false assurance for her returning to Dibrugarh, never returned from Goa and this way more than one year has been elapsed . It is further stated by the complainant that on 07.10.2022, the petitioner No. 1 informed her that she was unable to come at Dibrugarh and did not give satisfactory and proper reply regarding her golden ornaments without assigning any reason thereafter. From the very conduct and denying of returning back to Dibrugarh, the complainant realized that the petitioner No. 1 in connivance with her daughter has either dishonestly misappropriated her golden ornaments or converted to their own house or has disposed of the said ornaments which is the exclusive streedhan property of the complainant. Lastly on 22.02.2023, on a contact with telephonic conversation, petitioner Nos. 1 an 2 flatly denied the complainant to return her golden ornament by challenging her to do what she could do. Thereafter, the complainant has filed the instant case against the petitioner Nos. 1 and 2 as aforesaid.

20. Now the question is whether this Court will be justified in terminating the proceeding in the light of the above conclusion.

21. The Apex Court in the case of State of *Haryana–VS- Bhajan Lal & Ors* [(1992) Supp 1 SCC 335] has laid down the scope of the High Court under Section 482 CrPC or Article 226 of the Constitution of India to quash the FIR and refer to several judicial precedence and hold that High Court should not embark upon an enquiry into the merit and demits of the allegation and quashing the proceeding without allowing the investigating agency to complete its task. At the same time, Hon'ble Supreme Court identified the following cases in which FIR/complaint can be quashed.

“102.(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a

non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

22. In *Inder Mohan Goswami & anr. –vs- State of Uttaranchal & Ors*, (2007) 12 SCC 1, the Apex Court has observed thus:

“27. The powers possessed by the High Court under section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.”

23. Having considered the facts of the instant case, in the light of the principles laid down by the APEX Court in the aforesaid legal mandates, this court is of the view that prima facie there is a material against the petitioner No. 1 i.e. mother in law of the complainant. So, prayer of the petitioner No.1 is rejected. Learned Magistrate will proceed with the case against the petitioner No. 1 in accordance with law. However, the case against the petitioner No. 2 is hereby quashed.

24. In the result, the criminal petition is partly allowed.

The criminal petition stands disposed of.

JUDGE

Comparing Assistant