

CR Case No.112 of 2014

Order No. 62

Dated 19.09.2022

Today is fixed for passing order with regard to an application for discharge of the accused person on the ground of non-maintainability of the case.

Complainant is present by filing hazira. Accused person is represented by his Ld. Advocate.

The case record is taken up for passing order.

The contention of the petitioner/accused in the aforesaid application is that the entire allegations of criminal breach of trust as made out in the written complaint against the accused are alleged to have been occurred at Bongaon in the district of North 24 Parganas and not within the territorial jurisdiction of this Court at Dinhata, Coochbehar and therefore this court has got no territorial jurisdiction to entertain the present complaint case or try the same. Further contention of the petitioner/accused in his application is that the articles given in marriage as gift or dowry cannot be the subject matter of breach of trust according to law. He therefore, prays for his discharge from this case.

On the other hand, Ld. Counsel for the complainant/wife has made oral submission against the aforesaid application contending that this court at Dinhata has got every jurisdiction to entertain and try the present case in view of the provision of Section 181(4) Cr.P.C. He submits that complainant/wife was compelled to take shelter at her father's house at Dinhata after being deserted by her husband/accused way back in the year 2011. He also contends that the accused person did not return the stridhan articles of the complainant, the educational qualification documents of her daughter and other valuable documents as per list appended to the written complaint even after repeated demands and therefore he is guilty of the offence of criminal breach of trust and dishonest misappropriation of property of the complainant. He further contends that complainant demanded all her stridhan articles and valuable documents from the accused person in Dinhata itself and therefore the Court at Dinhata is surely having the required territorial jurisdiction to entertain and try the present case.

In support of his contention, the Ld. Advocate for the accused/petitioner relied on the decision of the Hon'ble Apex Court cited in (2009) 3 SCC(cri) 620 and contended that offence of criminal breach of trust cannot be said to have been

committed against the allegation of taking away of dowry articles by the husband and in-laws and the wife/ complainant has the remedy only under the special legislation contained in Dowry Prohibition Act, 1961. He further contends that no part of the alleged offence of criminal breach of trust has been committed by the husband/ accused within Dinahata and the court at Dinahata is having no territorial jurisdiction to try the case. He further relied on a decision of Hon'ble Gauhati High Court reported in 2019 Cri.L.J. 1666 to contend that the stridhan properties of the complainant were allegedly given to the accused husband at the matrimonial home of the complainant at Bongaon in North 24 Parganas and the Ld. Court at Bongaon could have the jurisdiction to entertain the instant case and not the court at Dinahata. He again cited the decision of Hon'ble Patna High Court reported in 2019 Cr.L.J 1666 and argued that the written complaint do not disclose any allegation of cruelty and ill-treatment to the complainant by her husband/accused after leaving her matrimonial home or at the father's house at Dinahata and on that score also this court lacks the jurisdiction to try this case. The Ld. Counsel further cited and relied on the decisions reported in AIR 2005 SC 1989 and 2014 12 SCC 362 though it appears that the aforesaid cited decisions are mostly on the point of jurisdiction of the court to try the offence u/s 498A IPC.

In terms of section 181(4) CrPC, any offence of criminal misappropriation or criminal breach of trust may be enquired into or tried by a court within whose local jurisdiction the offence was committed or any part of the property which is the subject of the offence was received or retained or was required to be returned or accounted for, by the accused person.

In the present petition of complaint filed before this court it has been asserted that the marriage between the complainant/wife and the accused husband was solemnized as per Hindu rites and customs on 08.08.1997 and at the time of marriage she was given 25 bhories of gold ornaments, furnitures and utensils. It is contended that after her marriage the petitioner/wife was subjected to physical and mental torture by the accused person and after the birth of her daughter the degree of torture was only intensified. Further contention is that all the stridhan articles and valuable documents of the petitioner have been entrusted with the accused person and she was forced to leave her matrimonial home with her daughter on 16.01.2011. It is contended that on 06.02.2011 the petitioner lodged complaint against the accused at Dinahata PS vide PS case no. 101/2011 dated 06.02.2011 corresponding to GR case no. 115/2011 and during the pendency of this case and the

Misc Case 14/2011 u/s 125 Cr.P.C she made several demands to the accused person for return of her stridhan articles and all valuable documents but he refused. Lastly on 11.06.2014 during the hearing of Gr 115/2011 before the Court of Ld. JM, Dinhata, she interacted with the accused person and demanded return of her stridhan articles but he misbehaved with him and flatly refused to return it. This refusal of the accused person gave rise to the cause of action for filing of the present complaint before the court.

In the case of **Prativarani vs Suraj Kumar AIR 1985 SC 628**, Hon'ble Apex Court observed that entrustment of sridhan to husband or in-laws does not change wife's absolute ownership in it to co-ownership or partnership; husband and in-law's are trustees and are bound to return as and when demanded by the wife. Consequently criminal proceeding for misappropriation against husband or in-law's are maintainable.

Again, in the case of **Rashmi Kumar Vs Mahesh Kumar (1997) to SCC 397**, Hon'ble Supreme Court revisited the earlier decision in Prativa Rani case and observed that dishonest misappropriation or conversion to own use of stridhan property by husband or such other persons by itself amounts to criminal breach of trust.

In the case of **Krishna Bhattacharya v Sarathi Choudhury and Anr. 2015 SCC Online SC 1229**, Hon'ble Apex Court quoted with approval the observations of earlier two cases and decided the question whether retention of stridhan by the husband or any other family members is a continuing offence or not. It was observed that there can be no doubt that wife can file a suit for realisation of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust. The Court also observed that the status between the parties is not severed because of the decree of dissolution of marriage. The concept of "continuing offence" gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act.

As per section 181 (4) of Cr.P.C., the offence u/s 406 of IPC would be triable not only where the property which is the subject matter of offence was received but also at a place where it was required to be returned or accounted for by the accused

persons. In the present case, as there is clear averment in the written complaint that the stridhan articles were required to be returned or accounted for by the accused persons at Dinhata during the pendency of Misc case no. 14 of 2011 and hearing of GR case no. 115 of 2011 at Dinhata, the present court at Dinhata surely has got the territorial jurisdiction to entertain and try this case. The present petitioner/wife being allegedly deserted by her husband and made to leave her matrimonial home with daughter cannot be expected to run after her husband for return of her stridhan. Stridhan articles should be returned by her husband at the place where she presently resides.

The issue as regard the territorial jurisdiction of the court taking cognizance of the offence has to be decided on bare perusal of the complaint petition and the documents annexed herewith. Once cognizance has been taken the issue of territorial jurisdiction of the court cannot be re-opened. (**Bijoy Kumar Jalan v State of Assam (2018) Cr LJ 523 (Gau)**). In this complaint case, this court has already taken cognizance of the offence and after examination of Complainant under section 200 Cr PC and conducting an inquiry as contemplated in section 202 CrPC, proceeded to issue summons upon the accused under section 406 IPC. Therefore, at this stage, the issue regarding want of territorial jurisdiction of the court to entertain and try the case cannot be allowed to raise by the accused person.

Even if we see the case in the perspective of section 245 CrPC, there appears sufficient materials to suggest that the accused person was entrusted with the stridhan articles of the complainant/wife and other valuable documents and he has the possession of those articles on as a mere custodian having no right to appropriate the same for his own benefit. Therefore, cogent evidence has been put forward against the accused person to frame charge against him for the commission of offence under section 406 IPC and in no circumstances, it can be considered that no case against the accused person has been made out on the basis of evidence already on record.

In view of discussion made in foregoing paragraphs, the application filed by the accused challenging the maintainability of the present case and praying for discharge of the accused is rejected on contest but without cost.

Fix 15.11.2022 for consideration of charge.

A.C.J.M.
2nd Court, Dinhata.

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2nd Court, Dinhata.