

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE BARAMULLA  
AT SOPORE

\*\*\*\*\*

CNR NO: JKBA060026212022

File No: 195/M

Date of Institution: 23.11.2022

Date of Order: 08.03.2023

In the case of:

Mst. Shahnaza Dar W/o Mohammad Ashraf Malik

D/o Gh. Ahmad Dar

R/o Dangerpora Sopore

*...Complainant.*

*Adv. Sameer Dar for the complainant*

*Versus*

Mohammad Ashraf Malik S/o Gh. Nabi Malik

R/o Charlipora Bomai

*...Accused*

*Nemo for Accused who yet not has entered appearance.*

In the matter of: Complaint against above named accused under section 406  
and 506 of IPC.

**ORDER**

**CORUM: AADIL MUSHTAQ AHMAD JK00163**

1. This file has come up for hearing today.
2. A complaint has been filed by the complainant under section 406 and 506 of IPC. It is averred in the complaint that the

Shahnaza V/S Mohd Ashraf Malik  
CNR NO JKBA060026212022

complainant is the legally wedded wife of the accused and the marriage between the two was solemnized in accordance with shariya. The relation as per the complaint between the two spouses remained cordial for some time after the marriage but, suddenly the attitude of accused changed drastically for some reasons unknown to the complainant, and accused along with his family members began to harass, humiliate, ill treat and severely beat the complainant day in and day out, without any rhyme, reason or justification and the complainant was shunted out of the matrimonial home.

3. From the index of the case, it transpires that complaint has been filed for offence under section 406 and 506 of IPC. Criminal breach of Trust is defined under section 405 IPC

**“405. Criminal Breach of Trust**

*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 of 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 willfully suffers any other person so to do, commits "criminal breach of trust",*

4. On perusal of the material on record including complaint and the inquiry report, it transpires that there are no allegations of entrustment with the accused. It is the beaten law that for constituting an offence under section 405 IPC, accused should have been entrusted with domain over the property and must have converted it to its use. The essential constituent of entrustment is missing in the matter. It is beaten law that for constituting offence of criminal's breach of trust, it is necessary in the first instance there should be an entrustment of property with the accused and same should have been misappropriated or converted to its own use. The case in hand appears to be one where the relations between the parties have turned sour on account of

matrimonial discord. On perusal of the record in the matter, I am of the considered opinion that the dispute is not of criminal liability, while as, complainant has attempted to bring alleged matrimonial discord within the domain of criminal offences, for which she is at liberty to approach the court of competent jurisdiction for redressal of his grievances.

5. In the facts and circumstances of the instant complaint, Para 14 to 21 of Judgment titled "M/s GHCL Employees Stock Option Trust vs M/s India Infoline limited" of the Apex Court in a Criminal Appeal No. 488 of 2013, are relevant and are reproduced as below:

*14. Be that as it may, as held by this Court, summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. The order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record.*

*In the case of M/s Thermax Ltd & Ors vs K.M. Johnny & Ors. 2011 (11) SCALE 128 & Ors, while dealing with a similar case, this Court held as under:*

*"20. Though Respondent No. 1 has roped all the appellants in a criminal case without their specific role or participation in the alleged offence with the sole purpose of setting his dispute with appellant-Company by initiating the criminal prosecution, it is pointed out that appellant No.s 2 to 8 are the Ex-Chairperson, Ex-Directors and Senior Managerial Personnel of appellant No. 1-Componay, who do not have any personal role in the allegations and claims of Respondent No. 1. There is also no specific allegations with regard to their role.*

21. Apart from the fact that the complaint lacks necessary ingredients of Section 405, 406, 420 read with section 34 IPC, it is to be noted that the concept of 'vicarious liability' is unknown to criminal law. As observed earlier, there is no specific allegations made against any person but the members of the Board and senior executives are joined as the persons looking after the management and business of the appellant-company."

6. It has been time and again cautioned by the Apex Court as also the High Courts of the Country that criminal action should not be initiated for civil disputes in between the parties. The action on criminal side would involve liberty of an individual, which is the most cherished right enshrined in constitution. The complainant by filing the complaint in hand has attempted to bring civil dispute within the arena of criminal jurisdiction which is not permissible under law. As such, I am of the considered opinion that there are no good grounds to proceed against the accused in the matter and complaint is liable to be dismissed. Therefore, in terms of section 203 Cr.PC there appears no sufficient grounds for proceeding against the alleged accused, as such, complaint in hand is dismissed as not maintainable. Complainant is at liberty to approach the court of competent jurisdiction for redressal of his grievances. Complaint is accordingly disposed of and shall form part of the main record.

Announced:

08.03.2023

  
Chief Judicial Magistrate Baramulla  
H. Q. Sopore