IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 06TH DAY OF JUNE, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.4544 OF 2018

BETWEEN:

1. SRI GANESH PRASAD HEGDE
S/O VISHWANATH HEGDE,
AGED ABOUT 46 YEARS.

2. SRI VISHWANATH HEGDE
S/O MAJURU VITTAL SHETTY,
AGED ABOUT 79 YEARS.

3. SMT. AMITHA HEGDE
W/O VISHWANATH HEGDE,
AGED ABOUT 68 YEARS.

ALL ARE RESIDING AT NO.101,
PARLE GALAXY,
CO-OPERATIVE HOUSING SOCIETY LTD.,
AZAD ROAD, VILE PARLE (EAST)
MUMBAI - 400 057.

... PETITIONERS

(BY SRI S.BALAKRISHNAN, ADVOCATE (PHYSICAL HEARING))

AND:

SMT. SUREKHA SHETTY
W/O GANESH PRASAD HEGDE,
AGED ABOUT 43 YEARS,
R/AT FLAT NO.308, SURYAKIRAN,

42, NETAJI ROAD,
FRAZER TOWN,
BENGALURU - 560 005.

... RESPONDENT

(BY SMT.SHAILAJA AGARWAL, ADVOCATE FOR
SRI PRADEEP NAYAK, ADVOCATE (PHYSICAL
HEARING))

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ORDER DATED 31.03.2015 IN C.C.NO.8663/2009 PASSED BY THE LEARNED IV A.C.M.M., BANGALORE AND CONFIRMED BY THE LEARNED 55th ADDITIONAL DISTRICT AND SESSIONS JUDGE, BANGALORE DATED 22.03.2018 IN CRL.RP.NO.289/2015 AND DISCHARGE THE PETITIONERS FROM THE CASE IN C.C.NO.8663/2009 FOR THE OFFENCE P/U/S 406 OF IPC.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners are before this Court calling in question proceedings in C.C.No.8663 of 2009, in particular, the order dated 31-03-2015 by which, cognizance is taken by the IV Additional Chief Metropolitan Magistrate at Bangalore and the order dated 22-03-2018 passed in Criminal Revision Petition No.289 of 2015 dismissing the application of the petitioners seeking discharge from C.C.No.8663 of 2009, for offences punishable under Section 406 of the IPC.

2. Heard Sri S.Balakrishnan, learned counsel appearing for petitioners and Smt. Shailja Agarwal, learned counsel appearing for Sri Pradeep Nayak, learned counsel for respondent.

3. Brief facts as projected by the prosecution are as follows:-

The respondent is the complainant. The 1st petitioner/accused No.1 was the husband of the respondent. Petitioners 2 and 3 are father-in-law and mother-in-law of the complainant. Marriage between the 1st petitioner and the respondent was solemnized on 03-12-1998. It is the case of the complainant that prior to the said date of marriage certain talks between the parents of the complainant and the 1st petitioner resulted in exchange of Rs.4/- lakhs at one point in time and Rs.5/-lakhs later, which was on 21-09-1998 and 11-10-1998. The relationship between the 1st petitioner and the respondent got strained and in the month of March 2001 it appears that the respondent was forced to leave her matrimonial house. On 05.10.2001 the respondent executes an affidavit for having

received Rs.3/- lakhs as full and final settlement for a divorce on consent. On 10-10-2001 the amount was also paid to the respondent. A petition for divorce was filed under Section 13(1) and (ia) of the Hindu Marriage Act. This came to be dismissed on 10-04-2003 on the score that the respondent who was a resident of Bangalore could not appear in the mutual consent divorce proceedings before the Family Court at Mumbai and the counsel also had not appeared before the Court after which, a complaint was filed by the 1st petitioner against the respondent before the learned Magistrate with reference to a transaction by way of a cheque and it getting dishonoured proceedings were initiated under Section 138 of the Negotiable Instruments Act.

4. On 05-11-2005 the respondent communicates that she would begin to cohabitate with the 1st petitioner. Before this communication, the respondent had initiated proceedings against petitioners alleging harassment for demand of dowry for offences punishable under Section 498A of the IPC and Sections 3 and 4 of the Dowry Prohibition Act. The same was registered

as Crime No.373 of 2003. On co-habitation communication, the respondent also assured that she would withdraw the complaint in Crime No.373 of 2003. In the meanwhile, the Police after investigation filed a 'B' report in the said crime case.

5. On 04-12-2007 the 1st petitioner files a petition for divorce on the ground of cruelty against the wife which came to be dismissed. On 17-02-2009 the respondent raises a demand that Stridhana of Rs.9/- lakhs which was paid had to be returned along with interest at 9% p.a. beginning from 11-10-1998. When the petitioners failed to pay the said amount, the respondent registers a private complaint in P.C.R.6351 of 2009 before the learned Magistrate at Bangalore for offences punishable under Section 406 of the IPC alleging criminal breach of trust in not returning Rs.9/- lakhs which according to the complainant was the Stridhana that the petitioners had received in the year 1998. This was challenged before this Court by the petitioners in Criminal Petition No.2824 of 2009 seeking quashing of proceedings in P.C.R.6351 of 2009

which by then had become a Criminal case on the Police filing a charge sheet. Noticing the said fact, this Court dismissed the criminal petition by its order dated 13-08-2009.

6. Certain other proceedings that were pending between the parties were one which was before the High Court of Bombay against an order passed by the Family Court at Mumbai. The Bombay High Court in Family Court Appeal – F.C.A. 76 of 2008, which was an appeal filed by the 1st petitioner observed that a sum of Rs.4/- lakhs had been paid by the 1st petitioner to the respondent as alimony and the issue of maintenance to be paid to the respondent was kept open. Bombay High Court delivered this judgment on 10-12-2014.

7. In the proceedings before the learned Magistrate at Bangalore charges were framed against the petitioners on 31-03-2015 against which, petitioners filed criminal revision petition in Crl.R.P.No.289 of 2015 before the Sessions Judge. The learned Sessions Judge by his order dated 22-03-2018 dismissed the revision petition and affirmed the order passed by

the learned Magistrate framing charges against the petitioners. Challenging the said order, criminal revision petition was filed by the petitioners before this Court in Cr.R.P.No.475 of 2018 which was permitted to be converted as criminal petition on a memo filed by the petitioners by order dated 8-06-2018. Pursuant to the said order pleadings are filed in the criminal petition format invoking the inherent jurisdiction of this Court under Section 482 of the Cr.P.C calling in question the order dated 31-03-2015 and dismissal of the revision petition dated 22-03-2018 which is now numbered as Criminal Petition No.4544 of 2018.

8. The learned counsel appearing for the petitioners would vehemently argue and contend that nothing is left to be paid to the respondent as it was agreed upon for divorce the permanent alimony was to be in full and final settlement towards annulment of marriage. The High Court of Bombay in Family Court Appeal had clearly indicated that the marriage between the 1st petitioner and the respondent was dissolved by mutual consent towards which permanent alimony of Rs.4/- lakhs was

paid. The issue that was left open was with regard to claim of maintenance and, therefore, would submit that there cannot be an offence for criminal breach of trust in the teeth of the order passed by the High Court of Bombay. Both the orders seeking to frame charge and dismissal of the revision petition seeking discharge of the petitioners are erroneous in law and would seek that the petition be allowed and all proceedings be quashed.

9. On the other hand, the learned counsel appearing for the respondent would vehemently refute the submissions to contend that permanent alimony of Rs.4/- lakhs did not contain the said amount which was paid prior to marriage. The petitioners, after divorce, cannot hold on to Stridhana which was given on two occasions one Rs.4/- lakhs and the other Rs.5/- lakhs and would submit that it does amount to criminal breach of trust for not returning the money despite notice being issued to them.

10. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

11. The afore-narrated sequence of events happening on respective dates are not in dispute and are, therefore, not reiterated. If transfer of amount of Rs.4/- lakhs and Rs.5/- lakhs on two dates is to be accepted what happens after the said dates is also required to be noticed. M.J.Petition No.769 of 2001 was filed before the family Court at Mumbai invoking Section 13B of the Hindu Marriage Act seeking annulment of marriage that took place between the 1st petitioner and the respondent. This was a petition filed for divorce by mutual consent. The pleadings in the petition with regard to the disputed amount are as follows:

> *"7. The petitioner No.1 shall pay to the Petitioner No.2 a total lump sum amount of Rs.4,00,000/- (Rupees Four Lakhs only) by a demand draft of a nationalised Bank payable at Mumbai immediately before the passing of the judgment and order by this Hon'ble Court dissolving the marriage between them. The petitioners state that in view of the undertaking of the Petitioner No.1 to make the aforesaid payment, the Petitioners have mutually decided that they shall not have any claim nor shall make any*

claim of whatsoever nature against each other, monetary or otherwise. The Second Petitioner also states that in view of the aforesaid payment she will not claim any past or future maintenance from the First Petitioner at any time nor shall the First Petitioner make any claim of any past or future maintenance from the Second Petitioner."

Since the respondent did not appear, the Court was constrained to dispose of the petition. Another proceeding filed by the husband/1st petitioner against the wife seeking divorce on the ground of cruelty came to be dismissed on 04-12-2007. The respondent had initiated other proceedings seeking maintenance at the hands of the husband. Both these proceedings landed in the Family Court Appeal No.76 of 2008 which was disposed of by the High Court of Bombay on 10-12-2014 wherein the entire spectrum of facts were noticed by the Bombay High Court. The Bombay High Court also noticed alimony being granted in full and final settlement where the amount noticed is as follows:

"9. The respondent filed her written statement and denied various allegations. In paragraph 8, the respondent alleged that the appellant's father used to be under the influence of liquor and used to utter unwarranted words and used to threaten the respondent. Her case is that as there was a fight between the appellant and the

respondent, her parents were called for discussion. In presence of the respondent's parents it was agreed that the respondent will stay with her parents and she would return after she is informed that the appellant has arranged for a separate accommodation. As regards the case made out regarding the refusal to give back the amount of Rs.3,00,000/- to the appellant, she contended that the said fact is not relevant.

10. The appellant examined himself by filing his affidavit in lieu of examination-in-chief. The appellant was cross examined by the Advocate for the respondent on two different dates. The cross examination was deferred on 21st March 2007. Thereafter, on the next date, the respondent and her Advocate were absent. On 2nd June 2007, evidence of the appellant was closed. No evidence was adduced by the respondent.

11. The learned Judge of the Family Court came to the conclusion that the alleged incidents of cruelty taken place till the date of filing of the petition under section 13-B of the said Act will have to be ignored as the same were condoned. The learned Judge rejected the prayer for grant of maintenance made by the respondent in her written statement on the ground that she had retained the sum of Rs.3,00,000/- with her without refunding the same. The learned Judge held that she cannot enrich herself in this unjust way. However, the learned Judge has declined to pass a decree of divorce on the ground of cruelty as prayed by the appellant.

12. The submission of the learned counsel for the appellant is that the evidence of the appellant as regards various instances of cruelty has gone virtually unchallenged even going by his cross examination made by the Advocate for the respondent. She submitted that the respondent has not stepped into the witness box to deny the said

allegations. Her submission is that apart from allegations of cruelty, after having solemnly agreed to give divorce by mutual consent, the respondent backed out. Her submission is that by signing the petition for grant of divorce by mutual consent the respondent accepted incompatibility, but subsequently declined to agree for grant of divorce. She went to the extent of unlawfully retaining a sum of Rs.3,00,000/- received by her in terms of the settlement. Her submission is that such conduct caused mental cruelty to the appellant. She, therefore, submitted that interference is required to be made with the decree passed by the Family Court.

13. We have given careful consideration to the submissions. In paragraph 15 of the petition for divorce filed by the appellant, he has stated that on 10th October 2001, a petition was filed by the appellant and the respondent for seeking a decree of divorce by mutual consent being MJ Petition No.769 of 2001. He has stated that he has paid a sum ofRs.3,00,000/- to the respondent for which a receipt has been issued. Reliance is placed on the affidavit filed by the respondent in which she assured to refund the amount of Rs.3,00,000/- to the appellant in the event she backs out. In paragraph16, he stated that initially the respondent attended the Family Court in the said petition on one or two dates and thereafter, she failed to attend the Court. Therefore, by order dated 10th April 2003, Family Court dismissed the petition.

14. In the examination-in-chief of the appellant and in particular paragraph 22 thereof, he has stated that a cheque was issued by the respondent in the sum of Rs.3,00,000/- towards the refund of the amount paid by the appellant in terms of the settlement. The said cheque was dishonoured with remark of the Bank that the account of the respondent was closed. He

thereafter served a notice under section 138 of the Negotiable Instruments Act, 1881 to the respondent. The aforesaid facts have not been seriously challenged in the cross examination of the appellant. A suggestion was given to the appellant that he had agreed to pay a lump sum alimony of Rs.7,00,000/-. The correctness of the said suggestion was denied by him. In the cross examination, he stated that the sum of Rs.3,00,000/- was paid by him to the respondent a day before filing of the petition under section 13-B of the said Act.

15. Along with a list of documents, the appellant filed three documents. Endorsement on the list of documents shows that the originals were produced which were returned to the Advocate for the appellant after the verification of the photo copies by the Court Official. Verification is recorded on all the three documents. The first document is the receipt dated 10th October 2001 issued by the respondent acknowledging payment of a sum of Rs.3,00,000/- by the appellant. The receipt specifically mentions that the said amount was towards the part payment of the total amount ofRs.4,00,000/- payable to her as per the consent terms filed by the parties. There is an affidavit dated 10th October 2001 executed by the respondent before the Family Court. In the said affidavit she stated that she received a sum of Rs.3,00,000/- in cash towards part payment of total amount ofRs.4,00,000/- as set out in the petition for seeking a decree of divorce by mutual consent. She has stated that in the event of her withdrawing or not agreeing to go through the divorce proceedings, she will return the said amount of Rs.3,00,000/- to the appellant. A certified copy of the order dated 10th April, 2003 passed by the Family Court in M.J.Petition No.769 of 2001 was also placed on record. The certified copy was verified and returned to the Appellant by taking a photo copy on record. The documents on record show that both the

appellant and the respondent jointly applied for decree of divorce under section 13-B of the said Act. As the respondent was absent from 15th December 2001, on completion of period of 18 months, the petition was disposed of without passing a decree for divorce.

16. All the aforesaid facts are not in dispute in the written statement. There is no challenge to the same in the cross examination of the appellant. There is no challenge to the three documents to which a reference is made above. In view of section 10 of the Family Court Act, 1984, strict rules of evidence are not applicable to the proceedings before a Family Court.

17. Therefore, what is brought on record is that the appellant agreed to pay a lump sum amount of Rs.4,00,000/- by way of alimony to the respondent. Subject to receipt of the said amount she agreed for obtaining a decree of divorce under section 13-Bof the said Act by mutual consent. A sum of Rs.3,00,000/- as agreed was received by the respondent from the appellant at the time of the filing of a petition under section 13-B of the said Act. The petition was disposed of as the respondent repeatedly remained absent. Admittedly, the respondent did not refund the sum of Rs.3,00,000/-.The cheque issued by her towards the said amount was dishonoured and the appellant was required to initiate proceedings under section 138 of the Negotiable Instruments Act, 1881 by issuing a notice."

The Bombay High Court clearly holds on consideration of entire facts that the amount of Rs.3/- lakhs was in full and final settlement of the claim for annulment of marriage. In those

proceedings before the Bombay High Court, the respondent/wife remained absent. It is in that light, the Court with regard to her claim passed the following:

> *"25. As the respondent is not represented, this court cannot go into the question of exercising power under section 25 of the said Act. However, the remedy of the respondent to apply under section 25 of the said Act is kept open. But we have made no adjudication on the question whether the respondent is entitled to relief under section 25 of the said Act."*

Later, it passed an order of dissolution of marriage between the 1st petitioner and the respondent herein. The order reads as follows:

> *"26. In the circumstances, we pass the following order:*
>
> *(I) Impugned Judgment and Decree dated 15th December 2001 is quashed and set aside;*
>
> *(II) The marriage solemnised between the appellant and the respondent on 3rd December 1998 is hereby dissolved by a decree of divorce under clause (ia) of sub-section (1) of section 13 of the Hindu Marriage act, 1955;*
>
> *(III) Petition No.A-843 of 2003 stands decreed to the aforesaid extent;*
>
> *(IV) We make it clear that it will be open for the respondent to take out appropriate application invoking the power of the Family Court under section 25 of the Hindu Marriage Act, 1955. However, all rights and the contentions of the appellant on such application are expressly kept open;*

(V) The appeal is allowed on above terms. There will be no order as to costs."

During the pendency of these proceedings, the complainant registers private complaint on 02-04-2009. It is these proceedings that have landed the petitioners before this Court.

12. In all the aforesaid proceedings what can be unmistakably gathered is that annulment of marriage did take place on the settlement between the parties for an amount of Rs.4/- lakhs. The issue herein is not with regard to the amount of alimony, its enhancement or rejection. The issue is with regard to whether all the aforesaid proceedings did cover Stridhana. It is not in dispute that an amount of Rs.4/- lakhs was paid on 21-09-1998 and the manner in which it was paid is narrated in the document itself and another chunk of Rs.5/- lakhs was paid on 11-10-1998. Totally about Rs.9/- lakhs was paid to the petitioner as Stridhana. This figure is not in dispute. The defence of the petitioners is that annulment of marriage took place on a settlement arrived at, which would include

Stridhana amount as well, as it is full and final settlement of claims mutually agreed between the husband and the wife. On 17-02-2009 the respondent/wife causes a legal notice raising a demand for Rs.9/- lakhs which was Stridhana amount along with interest from 11-10-1998. Not acceding to the said demand led to registration of crime in C.C.No.8663 of 2009 for the offence punishable under Section 406 of the IPC.

13. The contention of the learned counsel appearing for the respondent is that at the time of solemnizing marriage Rs.9/- lakhs was entrusted to either the husband or his family which ought to have been returned. Failure to return the said amount would become criminal breach of trust as it satisfies every ingredient that is needed to allege criminal breach of trust.

14. Before embarking upon consideration of the fact in the case at hand, I deem it appropriate to notice the line of law as laid down by the Apex Court and that of different High Courts with regard to the concept of Stridhana and its retention being

an ingredient of Section 406 of the IPC. The earliest of the judgments of the Apex Court was in the case of ***PRATIBHA RANI v. SURAJ KUMAR AND ANOTHER***[1]. A three Judge Bench of the Apex Court while considering the very issue as to whether Stridhana can be retained either by the husband or his family has held as follows:

> *"11. A perusal of the allegations made in the complaint undoubtedly makes out a positive case of the accused having dishonestly misappropriated the articles handed over to them in a fiduciary capacity. To characterise such an entrustment as a joint custody or property given to the husband and the parents is wholly unintelligible to us. All the ingredients of an offence under Section 405 IPC were pleaded and a prima facie case for summoning the accused was made out. In such circumstances, the complainant should have been given an opportunity by the High Court to prove her case rather than quashing the complaint. Such an exercise of jurisdiction under Section 482 CrPC is totally unwarranted by law. We might also mention that along with the complaint, a list of valuable articles had also been given, the relevant portion of which may be extracted thus:*
>
> *"I. Jewellery*
>
> *1. Nine complete gold sets*
>
> *2. One complete diamond set*
>
> *3. Three gold rings*
>
> *4. Two golden bahi (baju bandh)*

[1] ***(1985) 2 SCC 370***

5. One golden chain

6. One shingar patti with golden tikka

7. One golden nath (Nose ring)

8. Twelve golden bangles

II. Silver articles

1. Six glasses and one jug

2. Two surma danies

3. One tagari

4. Two payals

III. Clothes

Fifty-one sarees, twenty-one suits along with petticoats, blouses, nighties, shawls, sweaters, night suits, gowns and woollen coat, etc. six complete beds with sheets etc."

12. A perusal of the list reveals that so far as the jewellery and clothes, blouses, nighties and gowns are concerned they could be used only by the wife and were her stridhan. By no stretch of imagination could it be said that the ornaments and sarees and other articles mentioned above could also be used by the husband. If, therefore, despite demands these articles were refused to be returned to the wife by the husband and his parents, it amounted to an offence of criminal breach of trust. In mentioning the articles in the list, we have omitted furniture and utensils which though also belonged to the complainant yet there is some room for saying that these were meant for joint use of the husband and wife.

… … …

19. These observations no doubt support the contention of the learned Counsel for the respondent but we find it impossible to agree with the aforesaid observations for the reasons that we shall give hereafter. We fail to understand the logic of the reasoning adopted by the High Court in investing the pure and simple stridhan of the wife with the character of a joint property. We are surprised that the High Court should have taken the view that a woman's absolute property though well recognised by law is interpreted by it as being shorn of its qualities and attributes once a bride enters her matrimonial home,

20. We are clearly of the opinion that the mere factum of the husband and wife living together does not entitle either of them to commit a breach of criminal law and if one does then he/she will be liable for all the consequences of such breach. Criminal law and matrimonial home are not strangers. Crimes committed in matrimonial home are as much punishable as anywhere else. In the case of stridhan property also, the title of which always remains with the wife though possession of the same may sometimes be with the husband or other members of his family, if the husband or any other member of his family commits such an offence, they will be liable to punishment for the offence of criminal breach of trust under Sections 405 and 406 of the IPC.

21. After all how could any reasonable person expect a newly married woman living in the same house and under the same roof to keep her personal property or belongings like jewellery, clothing etc., under her own lock and key, thus showing a spirit of distrust to the husband at the very behest. We are surprised how could the High Court permit the husband to cast his covetous eyes on the absolute and personal property of his wife merely because it is kept in his custody, thereby reducing the custody to a legal farce. On the other hand, it seems to us that even if the personal property of the wife is jointly kept, it would be deemed to be expressly or impliedly kept in the custody of the husband and if he dishonestly misappropriates or refuses to return the same, he is certainly guilty of criminal breach of trust, and there can be

no escape from this legal consequence. The observations of the High Court at other places regarding the inapplicability of Section 406 do not appeal to us and are in fact not in consonance with the spirit and trend of the criminal law. There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import. It is not at all intelligible to us to take the stand that if the husband dishonestly misappropriates the stridhan property of his wife, though kept in his custody, that would bar prosecution under Section 406 IPC or render the ingredients of Section 405 IPC nugatory or abortive. To say that because the stridhan of a married woman is kept in the custody of her husband, no action against him can be taken as no offence is committed is to override and distort the real intent of the law.

… … …

60. Taking all the allegations made above, by no stretch of imagination can it be said that the allegations do not prima facie amount to an offence of criminal breach of trust against the respondent. Thus, there can be no room for doubt that all the facts stated in the complaint constitute an offence under Section 406 of the IPC and the appellant cannot be denied the right to prove her case at the trial by pre-empting it at the very behest by the order passed by the High Court."

In the light of the judgment of the Apex Court afore-quoted, what would emerge is, articles that form Stridhana cannot be retained by the family or the husband as they are in temporary possession of them and have to be returned.

15. A Full Bench of Punjab and Haryana High Court in the case of ***VINOD KUMAR SETHI AND OTHERS v. STATE OF PUNJAB AND ANOTHER***[2] considering the concept of Stridhana has held that retention of Stridhana would attract ingredients of an offence under Section 406 of the IPC, relevant paragraphs of which are as follows:

> *"80. In the light of the aforesaid principles one may now turn to the terra-firma of facts which have been already briefly delineated in paragraphs 2 and 3 of this judgment. In pursuance of the first information report lodged by respondent No. 2 Smt. Veena Rani, the police authorities arrested the petitioners on the 1st of July, 1981, and they were related to police custody for four days. As already noticed, the stand of the petitioners is that they were tortured to the maximum during this period and extortionate demands were made upon them in pursuance whereof they had to shell out Rs. 50,000/- in cash and 30 tolas of gold to the police. However, according to the investigating agency the three petitioners made disclosure statements under section 27 of the Evidence Act leading to the recovery of the alleged articles of dowry.*

[2] ***1982 SCC OnLine P & H 96***

Curiously enough the case is that a sum of Rs. 24,750/- in cash and about 27 tolas of gold were also recovered which were identified to be the same which had been given to respondent No. 2 at the time of her marriage. In accordance with the view expressed in the earlier part of this judgment, we had called upon the respondent-State with regard to any subsequent collection of materials in pursuance of the first information report. In this context this basic reliance of the learned Additional Advocate General Mr. Sethi was on the written statement in the form of an affidavit filed by Shri Bhagat Ram, Sub-Inspector, S.H.O. of Police Station Kotwali, Bhatinda, dated the 16th of August, 1981. Therein the stand of the investigation is that an offence is jointly made out against the three petitioners under section 406 read with section 34 Penal Code, 1860 and a synopsis of the steps taken during the course of the investigation till it was stayed under the orders of the Court is given in the affidavit.

81. Adverting now to the first information report what first catches the eye is para 2 thereof in the following terms:—

"That at the time of my marriage I received substantial presents of ornaments, valuable clothes, furniture and other household articles besides Rs. 21000/- from my parents, relations, my husband and mother in-law as consideration of the marriage."

82. It would be plain from the above that oh respondent No. 2's own showing substantial parts of the alleged dowry are said to have been given by the relations of her husband and mother-in-law. It is equally with regard to these that the charge of entrustment is laid at the door of the husband and his relations as also her mother-in-law. These allegations, however, look even more incongruous in the context of the under quoted allegation in paragraph 5 of the complaint to the effect that the alleged entrustment was done on the very day of the wedding itself.

83. Apart from the above, the rather ambivalent allegations of entrustment to the husband and the parents-in-law jointly

are then contained in paragraphs 4, 5, and 6 of the first information report as under:—

> *"4. That as dutiful wife and daughter in law I had reposed full faith in my husband and in my parents-in-laws and entrusted all the properties aforesaid to them as mentioned in annexure A and B.*
>
> *5. That the above mentioned articles as shown in annexures 'A' and 'B' were entrusted at Bhatinda to accused persons in the presence of Sarvshri Jas Raj, Bhagla, Sham Sunder son of Ramji Dass, Raipal and Dr. S.K. Arora on the same day, i.e. 28th January, 1979.*
>
> *6. That immediate after the marriage, all the abovesaid accused started mal treating me for not fulfilling the lust of the accused for more dowry which they were demanding repeatedly from time to time. It was ultimately about 3 months back that all the accused expelled me in my wearing apparels and deprived me of all the articles in annexures 'A' and 'B'"*

84. What would be manifest from the above is that an omnibus and equivocal allegation of entrustment jointly to the husband and his mother and father is suggested. What calls for pointed notice is that the alleged date and time of entrustment is said to the very day of the wedding itself on the 28th of January, 1979. Plainly enough the import of the allegation herein is that the factum of the marriage on that date was tentamount to the entrustment of the dowry to the husband as also the latter's mother and father. The subsequent specific entrustment of any property thereafter is even remotely alleged in the first information report. It is then the complainant's own case that for full two years thereafter from the date of the marriage till her alleged expulsion from the home of her husband and in laws around January-February 1981, she continued to live in the matrimonial home even though unhappily. It was not disputed before us that the firm case of the prosecution itself is that the alleged articles of dowry were taken from Bhatinda to the matrimonial home at

Malout and were allegedly taken in possession from there in July, 1981, by the police.

85. Even accepting the first information report as the gospel truth it would appear that when tested on the anvil of the principles laid earlier the allegations therein cannot amount to entrustment stricto sensu within the meaning of section 405, Penal Code, 1860 As has been said earlier there is a jointness of control and possession of the property of the spouses within the matrimonial home which negates the very concept of entrustment by the husband to the wife or the "wife to the husband therein. As has been held above in paragraph 50 the factum of the marriage itself does not in any way raise a presumption that dowry is thereby entrusted to the husband or the parents-in-law or put under their dominion per se. It bears repetition that the allegation herein is that the entrustment jointly to the husband and the parents-in-law took place on the wedding day itself. Equally the mere factum of taking the dowry and the traditional presents into the family home of the husband does not and cannot in law constitute entrustment or passing of dominion to either the husband or his close relations. Lastly, the admitted fact of this dowry having been kept in the matrimonial home for well-nigh two years (from the alleged date of entrustment on the wedding day of 28th of January, 1979) which inevitably brings in the strongest presumption of the jointness of possession and control negates the very concept or continuance of any such entrustment. It has been held expressly above that either the irate walking of from the matrimonial home by anyone of the spouses or even his or her alleged expulsion therefrom would not saddle the other with beings entrusted with or dominion over the property in the matrimonial home within the meaning of section 405, Penal Code, 1860.

86. It would thus be plain that oven accepting the allegations in the first information report as wholly true they would not amount to any entrustment or passing of dominion over the dowry to the husband and his mother and father jointly Inevitably, therefore, the first information report does

not even remotely disclose any offence under section 406 read with section 34, -Penal Code, 1860

87. Once that finding is arrived at this Court is entitled to consider the quashing of the first information report in the light of the principles enunciated in paragraph 20 above. It has already been held that the allegations, considered in detail above, even at their face value, would not in the eye of law, amount to any entrustment or parsing of dominion over property within the ambit of Section 405, Penal Code, 1860. Consequently, the first information report would not and cannot indicate any reasonable suspicion of the commission of the cognizable offence of criminal breach of trust punishable under section 406, Penal Code, 1860. Despite the lodging of the aforesaid report on the 18th of April, 1981 and the subsequent investigation of the same, till the matter was stayed by this Court in July, 1981, no material collected by the investigating agency further discloses the commission of any such cognizable offence either Indeed, the alleged recoveries o property from the matrimonial home itself and the stance taken by the investigating agency in the affidavit of the investigating officer, seem to detract from the allegations originally made rather than in any way add to them. The averments made in this Criminal Miscellaneous Petition, even if not accepted as wholly true atleast indicate clearly that the whole matter is an unseemly aftermath of a broken marriage with its inevitable bitterness and in this context the further continuation of the police investigation cannot, but amount to an abuse of power which eminently calls for interference by this Court in the ends of justice. I am, therefore, of the view that the case is one which clearly calls for the exercise of inherent jurisdiction under section 482, Criminal Procedure Code. Even whilst sharply keeping in mind the some-what exceptional nature of the exercise of such a power. I am constrained to hold that the Criminal Miscellaneous Application No. 4022-M/1981 must necessarily be allowed and the criminal proceedings initiated against the petitioners be and are hereby quashed."

16. A learned single Judge of the High Court of Delhi in the case of ***KARISHMA KHOSLA v. STATE OF DELHI***[3] following the judgment of ***PRATIBHA RANI*** *(supra)* holds as follows:

> *"3. Summing up the position in respect to the stridhan of a married woman and the applicability of Section 406 IPC, Supreme Court in the decision reported as (1985) 2 SCC 370 Pratibha Rani v. Suraj Kumar held:*
>
> > *"27. In the instant case, there is also no question of the wife constituting herself a partner with her husband merely by allowing him to keep the articles or money in his custody. There is neither any pleading nor any allegation that after her marriage, the appellant transferred all her properties to her husband for carrying on a partnership business in accordance with the provisions of the Partnership Act. Thus, in our opinion, it cannot be said that a bare act of keeping stridhan property in the custody of the husband constitutes a partnership and, therefore, a criminal case under Section 406 IPC is not maintainable. It is not necessary for us to multiply cases on this point on which there does not appear to be any controversy. We have already pointed out that the stridhan of a woman is her absolute property and the husband has no interest in the same and the entrustment to him is just like something which the wife keeps in a bank and can withdraw any amount whenever she likes without any hitch or hindrance and the husband cannot use the stridhan for his personal purposes unless he obtains the tacit consent of his wife. When the essential conditions of a partnership do not exist the mere act or factum of entrustment of stridhan would not constitute any co-ownership or legal*

[3] ***2016 SCC OnLine Del. 5639***

partnership as defined under Section 4 of the Partnership Act.

28. To sum up, the position seems to be that a pure and simple entrustment of stridhan without creating any rights in the husband excepting putting the articles in his possession does not entitle him to use the same to the detriment of his wife without her consent. The husband has no justification for not returning the said articles as and when demanded by the wife nor can he burden her with losses of business by using the said property which was never intended by her while entrusting possession of stridhan. On the allegations in the complaint, the husband is no more and no less than a pure and simple custodian acting on behalf of his wife and if he diverts the entrusted property elsewhere or for different purposes he takes a clear risk of prosecution under Section 406 of the IPC. On a parity of reasoning, it is manifest that the husband, being only a custodian of the stridhan of his wife, cannot be said to be in joint possession thereof and thus acquire a joint interest in the property."

4. The Supreme Court in its decision reported as (2008) 2 SCC 561 Onkar Nath Mishra v. State (NCT of Delhi) explaining the ambit of offence of criminal breach of trust defined under Section 405 IPC and punishable under Section 406 IPC held:

"16. According to Section 405 IPC, the offence of criminal breach of trust is committed when a person who is entrusted in any manner with the property or with any dominion over it, dishonestly misappropriates it or converts it to his own use, or dishonestly uses it, or disposes it of, in violation of any direction of law prescribing the mode in which the trust is to be discharged, or of any lawful contract, express or implied, made by him touching such discharge, or wilfully suffers any other person so to do. Thus in the commission of the offence of criminal breach of trust, two distinct parts are involved.

"10. … The first consists of the creation of an obligation in relation to the property over which dominion or control is acquired by the accused. The second is a misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created."

(See Supdt. & Remembrancer of Legal Affairs v. S.K. Roy [(1974) 4 SCC 230. 1974 SCC (Cri) 399], SCC p. 234, para 10.)

17. ….

18. In the present case, from a plain reading of the complaint filed by the complainant on 8-11-1994, extracted above, it is clear that the facts mentioned in the complaint, taken on their face value, do not make out a prima facie case against the appellants for having dishonestly misappropriated the stridhan of the complainant, allegedly handed over to them, thereby committing criminal breach of trust punishable under Section 406 IPC. It is manifestly clear from the afore extracted complaint as also the relevant portion of the charge-sheet that there is neither any allegation of entrustment of any kind of property by the complainant to the appellants nor its misappropriation by them. Furthermore, it is also noted in the charge-sheet itself that the complainant had refused to take articles back when this offer was made to her by the investigating officer. Therefore, in our opinion, the very prerequisite of entrustment of the property and its misappropriation by the appellants are lacking in the instant case. We have no hesitation in holding that the learned Additional Sessions Judge and the High Court erred in law in coming to the conclusion that a case for framing of charge under Section 406 IPC was made out."

5. Thus the two essential ingredients for offence punishable under Section 406 IPC are entrustment and

refusal to return on demand. As noted in the impugned order, the complainant is not physically residing at the matrimonial home. Thus on the one hand the complainant wants to prosecute the respondent No. 2 on the ground that on demand her istridhan articles have not been returned and at the same time insist that those articles should be retained in the matrimonial home and she be not compelled to receive them. In a prosecution for an offence punishable under Section 406 IPC the accused would be within his right to return the articles demanded because a failure to do so would attract the penal provision.

6. Learned counsel for the petitioner has not been able to point out any decision wherein recovery of articles pursuant to a complaint under Section 406 IPC by the investigating officer is not a part of the investigation. Once the complainant has sought dominion over her articles, the investigating officer is entitled to recover the same and hand over the dominion of the same to the complainant. Had the complainant been residing in a clearly marked portion of the matrimonial home, she could have insisted that the articles recovered be kept over there. As noted above the complainant is not residing at the matrimonial home and thus while seeking prosecution of the respondent No. 2 for offence punishable under Section 406 IPC, she cannot at the same time claim that no recovery of the articles be made. If after demanding the goods, the complainant fails to receive the same it will be for the Court to draw an adverse inference if the facts so warrant."

In the light of the judgments rendered by the Apex Court and that of learned single Judges of different High Courts, the allegation in the case at hand is required to be noticed.

17. The allegation now is for criminal breach of trust as obtaining under Section 406 of the IPC. The offence to become punishable under Section 406 of the IPC must have its ingredients as obtaining under Section 405 of the IPC which deals with criminal breach of trust. Sections 405 and 406 of the IPC read as follows:

> *"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 wilfully suffers any other person so to do, commits "criminal breach of trust".*
>
> *Explanation 1.—A person, being an employer 3 [of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.*

> *Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.*
>
> *406.* ***Punishment for criminal breach of trust****.— Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."*

Section 405 mandates that whoever being in any manner entrusted with property dishonestly misappropriates or converts to his own use such breach of trust is to be considered as criminal breach of trust.

18. The amount involved in the *lis* is Rs.9/- lakhs which according to the complainant had been paid as Stridhana in the year 1998. With the settlement entered into between the parties seeking annulment of marriage as permanent alimony, the amount of Rs.9/- lakhs that was paid at the time when the

respondent was given in marriage to the 1st petitioner was a separate and distinct Stridhana. Annulment of marriage takes place on a settlement arrived at Rs.4/- lakhs to be in full and final settlement. No judicial *fora* have determined this amount to include Rs.9/- lakhs of Stridhana as this was never the claim in the divorce proceedings between the parties. The settlement was arrived at only for the purpose of annulment of marriage. Annulment of marriage cannot mean that all the articles that the respondent carried to the matrimonial house can be retained by the family of husband. The charges have been framed in the case at hand against the petitioners.

19. It is also the contention of the learned counsel appearing for the petitioners that earlier complaint was filed and without disclosing the said complaint becoming final the next complaint is filed. The said complaint registered was alleging offence punishable under Section 498A of the IPC. That having ended in closure by the Police filing a 'B' report and the respondent not challenging the 'B' report would not be a bar for

registration of a complaint subsequently for the offence punishable under Section 406 of the IPC. The claim with regard to Stridhana was never put forth by the respondent and for the first time it was in the notice in the year 2009 the claim was made. Therefore, none of the submissions made by the learned counsel appearing for the petitioners is tenable, as the facts obtaining in the case at hand, the undisputed fact is that Stridhana of Rs.9/- lakhs was paid to the petitioner and his family and that amount which is retained by them would necessarily be a matter for trial against the petitioners for offence punishable under Section 406 of the IPC and it is for the petitioners to come out clean in the trial.

20. For the aforesaid reasons, Criminal Petition lacks merit and is dismissed.

Sd/-
JUDGE

bkp
CT:MJ