

REVISIONAL CRIMINAL

Before Bhopinder Singh Dhillon, J.

SURINDER SINGH—Petitioner.

versus

RAJINDER KAUR—Respondent.

Criminal Revision No. 600 of 1971.

November 8, 1971.

Dowry Prohibition Act (XXVIII of 1961)—Section 6—Code of Criminal Procedure (Act No. V of 1898)—Section 181(2)—Retention by the husband of articles of dowry beyond the prescribed period or mis-utilization thereof within that period—Whether amounts to offence of breach of trust—Articles of dowry received by the husband at the place of the solemnisation of marriage—Magistrate of that place—Whether has jurisdiction to try a case under section 6.

Held, that sub-section (1) of section 6 of the Dowry Prohibition Act, 1961, while providing for the transfer of dowry, clearly states that a husband receiving it has to hold the same in trust for the benefit of the wife. The articles of dowry remain as a trust with the husband for one year and he is enjoined by law to hand over the same to the wife. Retention of the articles beyond the prescribed period of one year or mis-utilization thereof within that period by the husband amounts to breach of trust. The provisions of section 181(2) of the Code of Criminal Procedure will apply to a trial under section 6 of the Act. According to this section of the Code, offence of criminal mis-appropriation or criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence is received or retained by the accused person, or the offence is committed. Hence where, according to the allegations in the complaint, articles of dowry were handed over to the husband at the place where the marriage was solemnised, the Court of the Magistrate of that place has jurisdiction to try a case under section 6 of the Act. (Para 3)

Petition under Section 435/439 of Criminal Procedure Code for revision of the order of the Court of Shri Jagwant Singh, Additional Sessions Judge, Jullundur, dated 10th June, 1971. affirming that of Shri T. N. Gupta, Judicial Magistrate 1st Class, Jullundur, dated 22nd January, 1971, holding that he had jurisdiction to hear the case at Jullundur.

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R. K. Chhibber, Advocate, for the Petitioner.

H. S. Sangha, Advocate, Sukhdev Khanna, Advocate for Advocate-General, Punjab, for the Respondent.

JUDGMENT

Dhillon, J.—(1) The petitioner is being prosecuted by the respondent wife for a charge under section 6 of the Dowry Prohibition Act, 1961. The parties were married at Jullundur on 14th October, 1969 and the amount as mentioned in para 3 and the articles as given in list 'A' attached with the complaint were allegedly demanded by the petitioner at the time of the marriage and were given in dowry. On 14th May, 1970, as alleged, the petitioner turned out the respondent from his house in wearing apparel. It was alleged that the articles mentioned in the complaint given in the dowry were not returned to the complainant-wife as required by law and, therefore, the petitioner has committed an offence under section 6 of the Dowry Prohibition Act.

(2) The only contention of Mr. Chhibber, the learned counsel for the petitioner, is that the Court of the Magistrate at Jullundur had no jurisdiction to try this complaint because, according to the admitted facts as given in the complaint, the complainant was turned out from the house of the petitioner at Shahabad in District Karnal on 14th May, 1970. The learned counsel contends that if the misappropriation of the dowry articles has taken place at Shahabad, the jurisdiction would only vest with the Court there **and not with the Court** at Jullundur. For this the learned counsel relies on an authority reported in *Emperor v. Kashi Ram Mehta*, (1), and *Hussain Bakhsh v. Khuda Bakhsh*, (2). Both these reported cases are not relevant for determining the present controversy. In *Hussain Bakhsh's case* (2) (*supra*), it was held on facts that the promissory note in question came into possession of the accused at Amritsar and he obtained the

(1) 56(1934) I.L.R. Allahabad 1047.

(2) A.I.R. 1937 Lahore 85.

amount at Amritsar and, therefore, the Amritsar Court had jurisdiction for trying the offence under section 403 of the Indian Penal Code. Similarly, in *Kashi Ram Mehta's case* (1) (*supra*) the question before the Court was whether the provisions of section 179 of the Code of Criminal Procedure would be applicable or not, and it was held that the said section was not applicable.

(3) In order to determine the present controversy the provisions of section 6 of the Dowry Prohibition Act, 1961, have to be kept in view and the same are as follows:—

“6. Dowry to be for the benefit of the wife or her heirs—

(1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman—

(a) if the dowry was received before marriage, within one year after the date of marriage; or

(b) if the dowry was received at the time of or after the marriage, within one year after the date of its receipt; or

(c) if the dowry was received when the woman was a minor within one year after she has attained the age of eighteen years;

and pending such transfer, shall hold it in trust for the benefit of the woman.

(2) If any person fails to transfer any property as required by sub-section (1) and within the time limited therefor, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both; but such punishment shall not absolve the person from his obligation to transfer the property as required by sub-section (1).

(3) Where the woman entitled to any property under sub-section (1) dies before receiving it, the heirs of the

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woman shall be entitled to claim it from the person holding it for the time being.

- (4) Nothing contained in this section shall affect the provisions of section 3 or section 4.

It may be observed that sub-section (1) of this section clearly provides the transfer of the dowry, a person receiving the dowry has to hold the same in trust for the benefit of the woman. Thus the articles of dowry were with the petitioner as a trust for one year and after the passing of one year he had been enjoined by law to hand over the said articles to the wife. In a way, not returning the articles, after one year or misutilising them within one year, would amount to a breach of trust, and there is no doubt that the provisions of the Code of Criminal Procedure would apply to the trial of the case under section 6 of the Dowry Prohibition Act, 1961. The relevant provision under the Code of Criminal Procedure is section 181(2), which provides that the offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed. This section gives concurrent jurisdiction to the Court where the property was received or where it was retained or where the offence was committed. In the present case, if the allegations mentioned in the complaint are correct, the dowry in question was handed over to the petitioner at Jullundur at the time of the marriage of the petitioner. Therefore, it is idle to contend that the Court of the Magistrate at Jullundur has no jurisdiction to try the case.

(4) The contention of the learned counsel for the petitioner that the Courts below have erred in bringing the principle that the debtor must seek the creditor, into play, is of no consequence, as I have already found that the provisions of section 181(2) of the Code of Criminal Procedure govern the present case and in that situation, the Court of the Magistrate at Jullundur, had jurisdiction to try the complaint.

(5) For the reasons recorded above, there is no merit in this petition and the same is hereby dismissed.

B.S.G.