The Indian Law Reports

Before Surinder Singh, J.

HARJEET SINGH AHLUWALIA,—*Petitioner.*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Criminal Misc. No. 6634-M of 1985

May 20, 1986.

Code of Criminal Procedure (II of 1974)—Sections 156, 157, 177, 181(4) and 482—Indian Penal Code (XLV of 1860)—Sections 405 and 406—Marriage solemnised and dowry entrusted and retained at a certain place—Marriage breaking down and wife returning to her parental home in another city—Wife thereafter lodging First Information Report under Sections 405 and 406 against husband in parental city in relation to dowry items—Police authorities in parental city—Whether have jurisdiction to investigate the offence—Words "or was required to be returned or accounted for" appearing in Section 181(4)—How to be construed—First Information Report lodged in the parental city—Whether liable to be quashed under Section 482 of the Code.

Held, that the condition precedent to the commencement of an investigation under Section 157 of the Code of Criminal Procedure, 1974 is that the First Information Report must disclose *prima facie* that a cognizable offence has been committed. It is a necessary corollary to the same that the alleged cognizable offence must have been committed within the territorial jurisdiction of the Court to which the concerned police station is attached. Infact, there is a specific provision in this behalf available in Section 156 of the Code which prescribes that an Officer in charge of a Police Station may investigate any cognizable case which a Court having jurisdiction over a local area within the limits of such Station would have power to inquire into or try under the provisions of Chapter XIII. Section 177 of the Code prescribes that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction the offence was committed. A reading of Section 181(4) would show that the Courts at places (i) where the offence is committed (ii) where any part of the property was received and (iii) where such property was retained would have territorial jurisdiction to try the offence of criminal misappropriation or criminal breach of trust. The words "was required to be returned or accounted for" occurring in Section 181(4) have no nexus whatsoever with either the parental home of the wife or any other place where the wife chooses to

reside after the breakdown of the marriage. The requisite "requirement" referred to in Section 181(4) is to be determined on the basis of the stiplation, if any, between the parties, that is, the complaint and the accused as to where the goods are to be returned or accounted for. In the absence of any such stipulation it would be the place where the goods in question are kept in trust and a breach in respect thereof was committed. It may be reiterated that the general rule regarding the forum of trial is contained in Section 177 of the Code but certain exceptions to the general rule are embodied in Sections 178 to 184 thereof. If the legislature had intended that the offence of criminal breach of trust relating to dowry articles should be triable at the place of residence of the wife, after the breakdown of the marriage or her parental home, there could be no difficulty in making a specific statutory provision to that effect but this has not been done by the legislature. The First Information Report having been lodged in the parental city of the wife under Sections 405 and 406 of the Indian Penal Code, 1860, is, therefore, liable to be quashed under Sections 482 of the Code.

(Paras 5, 6, 7, 8, 9 and 14)

Petition under Section 482 of the Code of Criminal Procedure praying that the F.I.R. (Annexure P-1) may kindly be quashed.

The petitioner was allowed anticipatory bail and he is required to visit Amritsar frequently in connection with the aforesaid case and the challan has not been sent to the court so far. Therefore, it is further respectfully prayed that further proceedings in the matter may kindly be stayed during the pendency of the present petition.

D. S. Walia, Advocate, Arihant Jain, Advocate with him, *for the Petitioner.*

R. S. Bindra, Sr. Advocate, Baljinder Singh, Advocate with him, *for the Respondent.*

None for the State.

JUDGMENT

Surinder Singh, J.

(1) What is the true interpretation of the words "or was required to be returned or accounted for" as appearing in section 181(4) of the Code of Criminal Procedure 1973, as amended, in their application to disputes relating to dowry items, is the crucial question posed in this case. A matrimonial dispute has given rise to the present petition filed by the petitioner Harjeet Singh Ahluwalia

(father of Manjit Singh, husband) under section 482, Code of Criminal Procedure, with a prayer for quashing of First Information Report No. 149, dated May 14, 1985, under sections 405/406, Indian Penal Code, of Police Station Civil Lines, Amritsar. The question appears to be *res integra* as no direct precedent on the point has been cited before this Court by either party.

(2) A First Information Report bearing No. 149, dated May 14, 1985, was registered at Police Station Civil Lines, Amritsar, on an application moved by respondent No. 2 (wife). A copy of the First Information Report has been produced along with the present petition as Annexure P/1. The case of the petitioner in the present petition is that the First Information Report aforesaid had been got registered at Amritsar with *mala fide* intention and ulterior motive, by concealing the fact that the marriage between Manjit Singh and respondent No. 2 was solemnised at Delhi and the articles of dowry were also entrusted to the petitioner and his co-accused (including Manjit Singh husband) at Delhi. The averment is that this concealment was done with a view to dodge the Police Authorities at Amritsar into registering a case there. It is not disputed on both hands that the marriage of the couple was solemnised at Delhi on April 15, 1984 (wrongly mentioned in the petition as April 15, 1985). In regard to the articles of dowry, the allegation in the First Information Report is that these were given at the time of the marriage. However, the stand now taken up in the reply filed on behalf of the respondent-wife, to the present petition is that a Draft of Rs. 10,000 and two big V.I.P. Bags containing valuable sarees and ornaments were delivered to the petitioner at Amritsar on April 1, 1984 i.e. about 2 weeks before the marriage, when the alliance was settled and the remaining articles were agreed upon to be delivered at the time of the marriage which was solemnised at Delhi. It is further stated in the petition that a Police Party of Police Station Civil Lines, Amritsar, went to the house of the petitioner at Delhi and took into possession all the household articles belonging to the petitioner, as per Recovery Memos (Copies Annexures P/2 and P/3). The petition makes a reference to certain persons, who are aware of the facts of the matter and copies of their affidavits have been annexed. The substance of these affidavits is that the marriage between the parties was solemnised at Delhi and the dowry articles were also delivered at Delhi, without any special demand having been made. It may be observed

here that it is not disputed that a petition under section 13 of the Hindu Marriage Act, 1955 filed by the husband against the respondent-wife for the grant of a decree of divorce is pending in the Court of the Additional District Judge, Delhi. The crux of the grievance made in the petition is that the impugned First Information Report could not be registered at Amritsar as the marriage between the parties was solemnised at Delhi, the alleged articles of dowry were given at Delhi and the couple never resided at Amritsar. The contention is that the alleged offence of criminal breach of trust, if at all, was committed at Delhi and not at Amritsar and the Courts at Amritsar having no territorial jurisdiction in the matter, the forum of adjudication could not be shifted to Amritsar by registration of the impugned First Information Report at that place. The prayer made in the petition is for the quashing of the said First Information Report.

(4) During the course of the arguments in this case, the learned counsel for the respondent-wife urged that the copy of the First Information Report (Annexure P 1) produced on behalf of the petitioner was not a correct copy. The learned counsel produced a copy of the complaint filed by respondent No. 2 before the Senior Superintendent of Police, Amritsar, which has been placed on the record as Mark 'X'. In view of this fact, the learned counsel for the petitioner also prayed for placing on record a certified true copy of the First Information Report, Mark 'Y'. The prayer was allowed with a view to clear up any confusion in this behalf. However, a perusal of all these documents brings out that a complaint was filed by respondent No. 2 to the Senior Superintendent of Police, Amritsar. An endorsement appears to have been made by the Senior Superintendent of Police directing the Station House Officer, Police Station Civil Lines to register a case for investigation. It is also apparent from a perusal of the certified copy of the First Information Report Mark 'Y' that a case under sections 405/406, Indian Penal Code, was registered on the basis of this First Information Report.

(5) It is well settled that the condition precedent to the commencement of an investigation under section 157 of the Code of Criminal Procedure is that the First Information Report must disclose, *prima facie*, that a cognizable offence has been committed. While laying down the law on the point, their Lordships of the Supreme Court observed in *State of West Bengal and others* v.

Swapan Kumar Guha and others and State of West Bengal and others v. *Sanchaita Investments and others* (1) that it is wrong to suppose that the police have an un-fettered discretion to commence investigation under section 157 of the Code. It was further held that their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence. Their Lordships also held that if a *prima facie* case for the commission of such an offence is disclosed in the First Information Report, the Court should not stop the investigation. These observations clearly indicate that for the purpose of deciding as to whether a First Information Report should be quashed or not, it is the contents of the First Information Report itself which have to be perused to find out if a *prima facie* case of commission of a cognizable offence is disclosed therein. A necessary corollary to the same is that the alleged cognizable offence must have been committed within the territorial jurisdiction of the Court to which the concerned Police Station is attached. In fact, there is a specific provision in this behalf available in section 156 of the Code of Criminal Procedure which prescribes that an Officer in charge of a Police Station may investigate any cognizable case which a Court having jurisdiction over a local area within the limits of such Station would have power to inquire into or try under the provisions of Chapter XIII. The contents of the First Information Report will have to be seen in the light of these facts.

(6) In the First Information Report, it is stated that the marriage between the parties was solemnised on April 15, 1984. The place where the marriage was solemnised is, of course, not mentioned but there is no dispute in regard to the fact that the marriage was performed at Delhi. The allegation in the First Information Report is "That at the time of the marriage my father and brothers had given sufficient dowry amounting to Rs. one lac and had also spent about Rs. 25,000 at the time of marriage and other ceremonies". The learned counsel for the petitioner has, therefore, submitted that if the dowry articles were admittedly given at the time of the marriage, the entrustment could be only at Delhi and not at Amritsar. As already noticed, the stand now taken up by respondent No. 2 in the reply filed in this Court is that some cash and other articles were given to the petitioner at Amritsar on April 1, 1984 in connection with the settlement of the marriage. However for the

(1) A.I.R. 1982 S.C. 949.

purpose of determining as to whether the First Information Report reveals a *prima facie* case for the commission of a cognizable offence, it is only the contents of the First Information Report which have to be seen and not the case as set up now in the written reply filed in this Court. The learned counsel for the respondent-wife has also urged that there was a reference of some threats having been issued by the petitioner and his son at Railway Station, Amritsar, on August 12, 1984 on which day they had left the respondent at the station. It is significant to note that this part of the allegation contained in Para 10 of Mark 'X' does not find place in the First Information Report at all. In fact, that appears to be the reason why the Police registered the First Information Report only for offences under sections 405/406, Indian Penal Code, as shown in copy mark 'Y'. Even at the end of the complaint Mark 'X', an endorsement has been made to the effect that First Information Report No. 149 of 1985 had been registered under sections 405/406, Indian Penal Code, at Police Station Civil Lines, Amritsar. It is in the wake of these facts that it has to be considered whether the impugned First Information Report could be registered at Police Station Civil Lines, Amritsar, or whether the alleged offence of criminal breach of trust pertained to Delhi where alone such a First Information Report could be lodged and registered.

(7) The relevant statutory provision for determining the forum of adjudication is section 181(4) of the Code of Criminal Procedure. The above provision finds place in Chapter XIII of the Code. The very first section of the said Chapter is section 177 which prescribes that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. This is indeed the normal rule of procedural law. The other sections, i.e. sections 178 to 184 are specific provisions providing for the forum of trial which may be different from the general rule contained in section 177. The special provisions contained in sections 178 to 184 have, therefore, to be strictly construed. As regards the present controversy, we are concerned only with the interpretation of section 181(4) which runs as follows :

> '181(4). Any offence of criminal misappropriation or of criminal breach of trust may be inquired 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."

(8) There is no controversy to the extent that the Courts at the places i.e. (1) where the offence is committed, (2) where any part of the property was received and (3) where such property was retained, would have territorial jurisdiction to try the offence of criminal misappropriation or criminal breach of trust. However, the point which has been mooted is the meaning to be attached to the words 'was required to be returned or accounted for'. The contention on behalf of the petitioner is that in the absence of a stipulation to the contrary, the goods in regard to which the criminal breach of trust is alleged to have been committed, are required to be returned or accounted for only at the place where the said offence has been allegedly committed. It is further submitted that even according to the allegation of respondent No. 2, the misappropriation or conversion to his own use of the property, i.e. the dowry items, was committed by the petitioner and his co-accused at Delhi, where the entrustment of the articles was made at the time of the marriage and where the couple lived together after their marriage. The submission, therefore, is that such an offence was triable only by a Court at Delhi and a First Information Report with an allegation of commission of such an offence could be lodged only at Delhi and not at Amritsar. On the other hand, the interpretation sought to be placed by the learned counsel for respondent No. 2 on the words 'was required to be returned or accounted for' is that after the break-down of the marriage, the wife having gone back to her parental home at Amritsar, the articles of dowry are required to be returned and accounted for at Amritsar. I am afraid, the latter interpretation is quite fallacious. Let us test the logic of this argument by considering a hypothetical case. After the solemnisation of the marriage at Delhi and before the break-down of the said marriage, the parents of the wife, due to circumstances, which can be many, have to shift to a place like Madras. With the break-down of the marriage, the wife would naturally join her parents at Madras. Can it be said then that the dowry articles are required to be returned or accounted for at Madras? The answer certainly is in the negative. The hypothetical situation may be stretched further to test the tenacity of the interpretation placed on behalf of the respondent. The husband and/or his parents etc. decide to return the dowry articles at Madras but before they are able to do so, the wife and her parents are obliged to shift to Calcutta. Would in such a situation a duty be cast upon the husband and his parents etc. to

take the dowry items and account for them at Calcutta merely because the wife has taken up residence in that town along with her parents? To my mind, the answer is again in the negative. Still another hypothetical situation may be visualised in this context. The wife, after the break-down of the marriage, instead of returning to her parental home, decides to live with another relative at a far-off place, say Bombay. Would it be a rational interpretation to say that merely because the wife had chosen to settle down at Bombay, the articles of dowry are required to be returned or accounted for at Bombay? There is hardly any need to answer the query. The forum of adjudication and for the matter of that, the place where the Police have to investigate the commission of the alleged offence, cannot therefore depend upon the sweet will of the complainant who may choose to shift to a place other than the place where the alleged offence of criminal breach of trust is said to have been committed. It is, thus, quite obvious that the words 'was required to be returned or accounted for' have no nexus whatsoever with either the parental home of the wife or any other place where she chooses to reside after the break-down. Neither of the Courts at those places would therefore have jurisdiction to try the offence of criminal breach of trust by virtue of the clause which is the subject-matter of interpretation. It is, however undisputed that the Courts at those places can have jurisdiction to try the offence by virtue of other clauses of section 181(4) if the case can fall under any of those clauses.

(9) What then is the true import of the words 'was required to be returned or accounted for' in the relevant provision? To my mind, the requisite 'requirement' is to be determined on the basis of the stipulation, if any, between the parties, i.e., the complainant and the accused as to where the goods are to be returned or to be accounted for. In the absence of any such stipulation, it would be the place where the goods in question were kept in trust and a breach in respect thereof was committed.

The matter may be examined from another angle. The legislative intent is to be gathered from the frame of the statute. As already noticed, under Chapter XIII of the Code of Criminal Procedure, the general rule regarding the forum of trial is contained in section 177. However, certain exceptions to the general rule are embodied in sections 178 to 184. For instance, in the case of an offence relating to possession of stolen property, section 181(5) prescribes that such an offence may be tried not only at the place where

the offence was committed but also at any other place/s where the stolen property was possessed by someone knowing it to be stolen or having reason to believe so. It has, therefore, been legitimately contended that if the Legislature had intended that the offence of criminal breach of trust relating to dowry articles should be triable at the place of residence of the wife, after the breakdown of the marriage or her parental home, there could be no difficulty in making a specific statutory provision to that effect but this has not been done by the Legislature. This circumstance, therefore, supports the view taken by me as above regarding the interpretation of the words 'was required to be returned or accounted for'.

(10) On behalf of the petitioner, his learned counsel has sought to place reliance upon a Division Bench decision of this Court in *Gobind Parsad Lath* v. *Shri Paul* (2) which is a case relating to territorial jurisdiction as provided under section 181(2) and (4), Code of Criminal Procedure. It was held in that case that the accused had failed to deposit the sale proceeds in the Company account at Calcutta where alone the prosecution under sections 405 and 409, Indian Penal Code could be launched and not at Ludhiana where the Company's office was located. The case, though not directly relating to a dispute regarding dowry items, does support the interpretation, discussed above. Another authority cited on behalf of the petitioner is *Ram Saroop Rastogi and others* v. *State and another* (3) wherein it was held that if the Magistrate summoning the accused after taking cognizance of a complaint, did not possess the territorial jurisdiction over the alleged offence, the summoning order and the proceedings pending before the Magistrate should be quashed, under the inherent powers of the High Court vested in it under section 482, Code of Criminal Procedure. This again is not a case relating to the return of dowry items but the ratio can be considered with advantage.

(11) On behalf of the respondent-wife, her learned counsel has not been able to cite any direct authority on the point in issue but he has made certain submissions which may be noticed. The contention in the first instance is that though in cases relating to marriage, there could not be any stipulation between the parties at the time of the marriage as regards the place where the articles of

(2) 1975 P.L.R. 575.
(3) 1979 C.L.R. (Delhi) 78.

dowry were to be returned, but an implied stipulation should be presumed to exist that after the marital break-down, the articles shall be returned and/or accounted for at the place where the wife has returned, i.e., her parental home. The logic of this argument has been tested in the earlier part of this judgment and found to be untenable. If at all there can be an implied stipulation, as urged by the learned counsel, the same would be that the dowry articles shall be returned and/or accounted for at the marital home where they were entrusted to the husband and his parents, etc., for safe custody and use by the wife as and when required by her. It is obvious that from the very nature of things, there could never be any stipulation for the return of the dowry articles at another place because such a stipulation would mean that the parties to the marriage had apprehended the break-down even at the time of the solemnisation of the marriage, which can never be. The contention of the learned counsel in this behalf is, therefore, repelled.

(12) Learned counsel has also advanced some general arguments, and one of them is that the investigation of the F.I.R. should be allowed to continue as during the course of this investigation, some other offence, triable by the Courts at Amritsar, may come to light. The argument is, however, contrary to the dictum of the Hon'ble Supreme Court as noticed in the earlier part of the judgment to the effect that it is wrong to suppose that the police have an unfettered discretion to commence investigation under section 157 of the Code. The investigation cannot, therefore, be permitted with a view to dig out some offence in regard to which there is no *prima facie* allegation in the First Information Report. Lastly, the learned counsel pressed into service the general rule that the power to quash a First Information Report should be sparingly used. Indeed, this is so, but at the same time there can be no better ground for quashing an FIR of which the very foundation is hollow, i.e., lack of territorial jurisdiction.

(13) Before parting with this judgment, it may be observed that with the ultimate aim of eradicating the evil of dowry, suitable Legislation has been enacted and certain existing provisions of law have been interpreted so as to provide succour and relief to the victims of this evil. But the law is not a respector of persons. It provides for even handed justice to one and all. A wife or husband cannot claim any special privilege except to the extent as specifically provided under the law. However, such a privilege is not to be

misused by an erring spouse as a weapon of offence to terrorise, harrass or subjugate the other marital partner and his/her family members. No one can shut his eyes to reality that this ugly trend is fast emerging like a Frankenstein (a monster created by a scientist with aid of modern science) which if not chained and immobilised soon enough, would imperil the very social system, causing in its wake, misery and torture to innumerable lives. It is time for the Legislature to take remedial measures, like a provision for an additional ground of divorce, i.e. "irretrievable break-down of marriage", especially in cases where the spouses have lived apart and have been litigating for more than two years on account of such breakdown. In fact, the Law Commission in its 71st Report, 1978 made a recommendation for the enactment of the above Clause as an additional ground for divorce. In consequence of this recommendation, "The Marriage Laws (Amendment) Bill 1981" was introduced to Lok Sabha, on February 27, 1981. The measure has yet to acquire the status of law. It is for the makers of law to appreciate the expediency of such legislation. These observations shall not, however, be deemed to be an expression of opinion in regard to any aspect of the present case.

(14) In view of what has been discussed above, the impugned First Information Report No. 149, dated May 14, 1985 of Police Station, Civil Lines, Amritsar, registered in consequence of the complaint filed by respondent No. 2, is quashed.

H.S.B.

Before P. C. Jain, CJ and S. S. Kang, J.

HARYANA BRIQUETTES INDUSTRIES,—*Petitioner.*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 3262 *of* 1985

July 8, 1986.

Central Sales Tax Act (LXXIV of 1956)—*Section* 14 (1*a*)—*Coal briquettes manufactured by mixing coal dust, molasses and clay—Whether fall within the definition of 'coal' in Section* 14(1*a*)—*Said*