

centrifugal pump. In fact the electric motor is an integral part of the centrifugal pump. They are assembled on one block fitted with a common shaft. This leads to greater efficiency, more water and lesser repair charges.

(5) The State has not placed any material on the file to support its contention that monoblock pumping set is not a centrifugal pump.

(6) We find no merit in these Letters Patent Appeals (Nos. 246, 247, 248, 249, 250 and 346 of 1980) and the same are dismissed with costs. Counsel fee Rs. 200.

S. S. Sandhawalia, C.J.—I agree.

N.K.S.

Before M. M. Punchhi, J.

AJIT SINGH and another,—Petitioners.

versus

THE STATE OF PUNJAB,—Respondent.

Criminal Revision No. 1308 of 1982.

December 8, 1982.

Indian Penal Code (XLV of 1860)—Section 406—Hindu Succession Act (XXX of 1956)—Sections 15 and 16—Father giving dowry to daughter at the time of her marriage—Daughter dying soon after the marriage leaving no child—Goods given in dowry remaining with the husband of the deceased—Father claiming goods as the only heir of his deceased daughter—Husband declining to part with such goods—Husband—Whether liable to be prosecuted under section 406—Father—Whether entitled to succeed to the goods under section 15 of the Succession Act—Nature of dispute between the parties—Whether could be said to be civil in nature.

Held, that a reading of section 15 of the Hindu Succession Act, 1956 provides for general rules of succession in the case of female Hindu. The said section provides that the property of a female Hindu dying intestate shall devolve according to the rules set out in section 16, firstly upon the sons and daughters and the husband. In the absence of the aforesaid category of heirs, the property

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would then go to the heirs provided in clauses secondly to lastly of sub-section (1) of section 15 of the Act. The *non-obstante* clauses in sub-section (2) of section 15 would, in the instant case, be not applicable for the dowry gifts received by the deceased were not in the nature of property inherited by her from her father and thus, the succession would confine only to sub-section (1) of section 15 according to the rules set out in section 16. Rule (1) thereof provides that, among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously. In the absence of any children, the husband of the deceased alone would be entitled to her estate (*and as such entitled to succeed to the property of his deceased wife*). In this view of the matter no case of criminal breach of trust under section 405 of the Indian Penal Code can be said to have been made out against the husband.

(Para 3).

Held, that the matter is purely of a civil nature. Retention of articles in such a situation cannot be attributed any colour of criminality. It is more a civil cause deservedly to be settled in a civil Court. On that score as well, this is not a case in which a charge should have been framed against the petitioners on the projected facts, even if those projected facts were taken to be true.

... (Para 4).

Petition under Section 401 of Cr. P. C. for revision of the order of Shri H. S. Chawla, J.M.I.C. Patti, dated 24th August, 1982, convicting the petitioners, under section 406 I.P.C.

A. S. Kalra, Advocate and Malkiat Singh, Advocate with him for the Petitioner.

Major Manmohan Singh Advocate, for A.G. Punjab.

JUDGMENT

Madan Mohan Punchhi, J.—(Oral).

(1) This is a petition for revision against an order of Shri M. S. Chawla, Judicial Magistrate 1st Class, Patti, dated 24th September, 1982, whereby he ordered framing of charge against the petitioners (father and son) for criminal breach of trust under section 406, Indian Penal Code.

(2) The bare outline of the facts giving rise to this petition are these: Ajit Singh petitioner was married to Satinder Kaur. Kirpal Singh petitioner is his father. At the time of marriage, the father

of Satinder Kaur gave her the customary dowry which she carried to her husband's house on 19th November, 1980. About six months after the marriage, Satinder Kaur died. It is a moot point in another judicial proceeding whether the death was natural, homicidal or suicidal. On her death, the articles of the dowry presumptively were in possession of the petitioners. Surjit Singh, father of Satinder Kaur deceased, lodged a First Information Report with the police accusing the petitioners for an offence under section 406, Indian Penal Code, complaining that the articles of the dowry under the law of inheritance vested in him and those had dishonestly been misappropriated by the accused petitioners. The learned trial Magistrate, in his impugned order, observed that there was no Class I heir available in accordance with the Hindu Succession Act and, thus, the articles of the dowry must go to Surjit Singh, the first informant, as these could not be said to have been inherited by Ajit Singh petitioner. Accordingly, on the allegations that these articles were dishonestly misappropriated by the accused persons after the death of Satinder Kaur, the learned trial Magistrate took the view that these facts came within the purview of section 406 of the Indian Penal Code.

(3) It seems that the attention of the learned trial Magistrate was not drawn towards section 15 of the Hindu Succession Act which provides for general rules of succession in the case of female Hindus. The said section provides that the property of a female Hindu dying intestate shall devolve according to the rules set out in section 16, firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband. In the absence of the aforesaid category of heirs, the property would then go to the heirs provided in clauses secondly to lastly of sub-section (1) of section 15 of the Hindu Succession Act. The *non-obstante* clauses in sub-section (2) of section 15 would, in the instant case, be not applicable, for the dowry gifts received by Satinder Kaur were not in the nature of property inherited by her from her father and, thus, the succession would confine only within sub-section (1) of section 15, according to the rules set out in section 16. Rule (1) thereof provides that, among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously. Now here, in the absence of the sons and daughters, on the children of any predeceased son or daughter of Satinder Kaur, her husband alone was entitled to her estate. This was not a case of searching for heirs of Class I in the

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Schedule as has been done by the learned trial Magistrate, for that Schedule too has to operate with the aid of section 8 of the Hindu Succession Act, which provides for general rules of succession in the case of males. The view taken by the learned Magistrate in this regard is obviously faulty and deserves to be set aside.

(4) Even otherwise, the matter is purely of a civil nature. Retention of articles in such a situation cannot be attributed any colour of criminality. It is more a civil cause deservedly to be settled in a Civil Court. On that score as well, I do not think this to be a case in which a charge should have been framed against the petitioners on the projected facts, even if those projected facts were taken to be true.

(5) For the view I have taken, this petition merits acceptance and the order of charge is quashed. However, it is made clear that, since the first informant was not a party to these proceedings, nothing said herein with regard to his civil rights be taken to have been settled in his absence. The observations made herein are solely confined to the decision on the question of charge.

N.K.S.

Before I. S. Tiwana, J.

AMARJIT SINGH,—Appellants.

versus

SURINDER KAUR,—Respondent.

First Appeal from Order No. 210 of 1981.

December 8, 1982.

Code of Civil Procedure (V of 1908)—Order 5 Rules 12, 17 and 19-A—High Court Rules and Orders Volume IV, Chapter 7-B, Para (a) Rule 1(i)—Service of summons—Refusal of service alleged by the process server—Process server effecting service by affixation—Such service—Whether proper—No notice sent by registered post—Ex-parte proceedings taken in such circumstances—Whether justified—Procedure for affecting service of summons—Stated.

Held, that wherever practicable, service of summons must be affected on the defendant in person unless either he cannot be