

ALLAHABAD HIGH COURT

Kailash nath Agarwal

Vs

Prem Pal Agarwal

(R.C.Deo Sharma ,CJ.)

22.12.1983

JUDGEMENT

R.C.Deo Sharma , CJ.

(1.) These two connected applications under section 482 CrPC raise several common questions of law and fact and consequently they have been heard together and are proposed to be disposed of by a common judgment. The main parties in the applications are also common.

(2.) KUMARI Sunita (now Smt. Sunita Agarwal) daughter of opposite party no. 1 Prem Pal Agarwal was married to Pradeep Kumar Agarwal who is an applicant in both these cases and is son of Kailash Nath Agarwal/applicant no. 1. This marriage had taken place on 10-10-1978 at Lucknow. Prior to that the usual ceremonies of engagement and Tilak had also taken place. The matrimonial alliance, however, could not continue for long and it was alleged on behalf of opposite party no. 1 that the husband, father-in-law and mother- in-law of his daughter had been ill-treating and rather torturing his daughter with a view to elicit more dowry than was paid before, during or after the marriage. She was accordingly sent back to her parents' house with ordinary clothes on her person and a few more Sarees etc. but all the ornaments and other presents as also the cash offered to her and the bride-groom and the parents either as consideration of the marriage or otherwise had been retained. A demand was said to have been made by the opposite party no. 1 and his daughter for the return of the ornaments and other articles given in the dowry but nothing was returned and consequently alleging that the husband, father-in-law and mother-in-law of his daughter had mis-appropriated the property and had converted the same to their use, a complaint was filed under section 406 IPC by the opposite party no. 1 arraying all the aforesaid three persons as accused. This was registered as a Criminal Case No. 3021 of 1979 and the matter was pending in the court of Sri K. M. Lal Agarwal Special Judicial Magistrate, Lucknow. It is this complaint which the applicants in Criminal Misc. Case No. 676 of 1981 have sought to be quashed. The contention was that no offence whatsoever has been made out on the allegations made and it was abuse of the process of the court if the proceedings were allowed to continue. In the other case, namely, Criminal Misc. Case No. 2753 of 1981 the complaint filed by the opposite party was under sections. 3 and 4 of the Dowry Prohibition Act. After stating the facts relating to the marriage and disruption of the family life the complainant alleged that specific demands were made by the husband, his parents, sisters and

other relations and almost under coercion and threat of displeasure during the performance of the marriage and thereafter the complainant had to meet the illegal demands and pay cash and offer various other articles as consideration for the marriage. The various types of property including the ornaments and clothes given as dowry or as presents were detailed in the schedules appended to the complaint. The applicants in this application therefore, alleged that the allegations made in the complaint did not make out a case under sections 3 and 4 of the Dowry Prohibition Act. It was also denied that any such demand was made as a matter of fact and contending that by filing the complaint the complainant was abusing the process of the court it was prayed that the complaint may be quashed. Counter affidavits have been filed in both the cases on behalf of the opposite party no. 1 and a rejoinder-affidavit has also been filed in Cr. Misc. Case No. 2753 of 1981 relating to the Dowry Act. Learned counsel appearing in both these cases have been heard at considerable length.

(3.) THE main stress of the learned counsel appearing for the applicants in these cases has been on the point that assuming what the complainant had stated was correct and various ornaments, clothes and other articles had been given as presents to the bride, bride-groom and other members of the family, no case of entrustment of these articles to the accused persons could be said to have been made out on the allegations made in the complaint with the result that an offence under section 406 IPC could not be made out against them. It has not been denied that the ornaments, Sarees and other property which are meant for the exclusive use of the bride may constitute property belonging to her. But as regards the necessary ingredients for constituting an offence under section 406 IPC it was contended that there was no entrustment of these properties either to the husband or the father-in-law or mother- in-law of the bride and consequently any question of breach of trust or misappropriation of property could not arise. In other words, the contention was that even if any of the properties belonged exclusively to the bride she could have claimed to recover the same in a civil suit on proof of the necessary facts but the applicants could not be prosecuted for the offence under section 406 IPC. Reliance was placed on a Full Bench decision of the Punjab and Haryana High Court in Vinod Kumar Sethi v. State of Punjab, AIR 1982 Punjab and Haryana 372 (FB). After considering a large number of authorities on the point the court had held in that case that the concept of entrustment of property belonging to the bride or to the bride and husband jointly or to other members of the husband's family is absolutely incompatible with the true nature of the conjugal relationship between the husband and the wife and the concept of matrimonial home. Articles given at the time of the marriage or before or after the marriage as presents to the bride, the bridegroom or the parents of the bride-groom could fall into three categories. THE first category related to the property given to the bride and meant for her exclusive use and to this category would belong the ornaments, Sarees and other articles of personal use meant for the bride. THE second category related to property given for the joint use of the wife and the husband or even of the spouse and other members of the husband's family. This was like furniture, electrical gadgets and similar other things of common use. THE third category could be of presents to the husband or the parents-in-law or other members of the family which would be in the nature of articles given for their respective exclusive use. Now the third category of articles could very well constitute the individual property of the persons for whose use it was given. On this property the ownership or domain of the bride could be negated. The rest of the property falling under categories nos. 1 and 2 was according to the Full Bench decision meant for the use of the bride or other members of the family as the case may be and over that the . family would be considered to be in joint possession. This would be so even in

respect of the property exclusively meant for the use of the bride and over which she had exclusive ownership because that was considered to be the true concept of matrimonial home. Even though the ownership in the ornaments and Sarees of the bride may remain with her but so far as possession was concerned, if it was brought to the family home the possession would be joint unless by express written agreement there was an entrustment of the property of the bride to other members of the family. The main emphasis was about the true concept of matrimonial home and it was because of the very nature of things in a matrimonial home that the possession should be regarded as joint and not exclusive possession of any one member even though the physical custody of the property may remain with any one or more of the members for the time being. The nature of custody and possession of the property could change by a specific mutual agreement indicating specific entrustment of the property to any particular member of the family. ;