

Dhan Raj Thapar and others *v.* State of Punjab and another
(Ujagar Singh, J.)

of eviction is passed under sections 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, no Court shall have jurisdiction to entertain any suit in respect of such eviction of any person who is in unauthorised occupation of the public premises, as provided under section 15 of this Act. Suit of the present kind after order of eviction has been passed by the Collector (D.D.P.O.), Amritsar on August 19, 1985 *prima facie* would be barred. Thus, it cannot be said that merely because the respondent-plaintiffs are in possession, though unauthorised, of such public premises they can approach the Court to defend their possession when they are being evicted in due course of law by the Gram Panchayat.

(7) In the facts and circumstances of the present case, there is no question of balance of convenience being in favour of the plaintiff-respondents. The lower appellate Court thus was not justified in setting aside the well-considered order of the trial Court dismissing miscellaneous application filed under Order 39, Rules 1 and 2 read with section 151 of the Code of Civil Procedure declining to grant the *ad interim* injunction during pendency of the suit. This revision petition is, therefore, accepted. The order of the lower appellate Court is set aside and that of the trial Court is restored. However, there will be no order as to costs.

R.N.R.

Before Ujagar Singh, J.

DHAN RAJ THAPAR AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Cr. Misc. No. 2204-M of 1988.

August 31, 1988.

Indian Penal Code (45 of 1860)—Ss. 406, 420 & 498-A—Code of Criminal Procedure (II of 1974)—S. 482—Matrimonial disputes compromised by money settlement—Divorce by mutual consent—Husband under compromise delivering draft in the name of third party for payment to wife—Draft encashed—Factum of such payment pleaded

in joint petition—Husband filing complaint against third party and wife on ground that under compromise money was to be tendered to wife on passing of decree of divorce and not before—No such term in the compromise—Breach of trust, cheating—Whether made out against third party and wife—Summoning order—Whether liable to be quashed.

Held, that in the absence of any allegation that any amount has been misappropriated by the third party or has been converted to his own use and also as there is no evidence to show that the third party dishonestly used the said amount or part thereof or that the said amount was disposed of in violation of the agreement, it cannot be said that the person has committed an offence under Section 406 of the Code since there is no contravention of the contract as there is no such term in the compromise as to when the amount of rupees two lakhs was to be paid to the wife. Even taking this term to be one of the terms of the agreement although there is no offence has been committed by the third party under Section 406 of the Code as there is no dishonesty proved on his part. The word 'dishonesty' has been defined in Section 24 of the Code and the requirement thereof is that the intention of causing wrongful gain to any person or wrongful loss to another person has to be proved. In this transaction, neither there was any intention nor any proof thereof. The amount had to be paid to the wife by the husband and it was to be paid through third party and this payment has been made and there is no loss to the husband nor any gain to the third party or the wife.

(Para 8).

Held, that because the payment by the husband was made in accordance with the compromise and no body induced the husband to deliver the demand draft by any unlawful means, it cannot be said that any offence under Section 420 of the Code is made out against the wife or the third party.

(Para 9).

Petition under Section 482 of the Code of Criminal Procedure praying that this petition may be accepted and the complaint under Sections 406/420/383 of the Indian Penal Code dated 9th June, 1987, reproduced in para 8, may kindly be stayed.

It is further prayed that during the pendency of this petition, further proceedings in pursuance of the complaint dated 9th June, 1987 may kindly be stayed.

R. L. Batta, Senior Advocate with G. C. Tangri, Advocate, for the Petitioners.

S. P. Soni, Advocate, for A. G. Punjab.

Ashok Aggarwal, Advocate, for Respondent No. 2.

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JUDGEMENT

Ujagar Singh, J.

(1) Shrimati Rajni, petitioner No. 3 lodged First Information Report No. 30 dated 23rd February, 1987, u/ss 406/498A of the Indian Penal Code (the Code in short), in Police Station Division No. 3, Jalandhar. A petition for quashing was filed in this Court and the FIR was quashed on 14th January, 1988 on the basis of a compromise. An application u/s 125 of the Code of Criminal Procedure had also been filed by petitioner No. 3 against respondent No. 2 Yogesh Kumar. On 27th February, 1987 a compromise was entered into between the parties and the same has been reproduced in paragraph 4 of the petition. The relevant terms of the compromise were that the said case : FIR No. 30 dated 23rd February, 1987 and the application filed under section 125, Code of Criminal Procedure were to be withdrawn by petitioner No. 3 and in lieu of the dowry articles, an amount of Rs. 2,00,000 was to be given by respondent No. 2 to petitioner No. 1 for onward transmission to petitioner No. 3. Petitioner No. 1 took the responsibility of implementing the compromise between the parties. Petitioner No. 3 swore an affidavit on 7th March, 1987 and the same is Annexure P1. According to this affidavit, petitioner No. 3 was paid the said amount of Rs. 2,00,000 by her husband and she had abandoned all claims in respect of dowry and past and future maintenance. Yogesh Kumar, respondent No. 2 also swore an affidavit which is Annexure P2 and therein he stated that in pursuance of the said agreement, he had handed over a demand draft No. 950040 BN/9 dated 27th February, 1987, issued by the State Bank of India, Ludhiana, drawn in the name of Dhan Raj Thapar, in the amount of Rs. 2,00,000 which was to be paid to petitioner No. 3 Smt. Rajni, on the passing of final decree for divorce on the basis of a joint petition under section 13B of the Hindu Marriage Act, 1955 and in case no such decree was passed, the amount of the demand draft had to be returned to respondent No. 2 Yogesh Kumar. It is further averred that petitioner No. 3 was to withdraw criminal cases and respondent No. 2 was to withdraw the civil suit pending in a Civil Court at Jalandhar.

(2) A joint petition for a divorce by consent was filed in the Court of the District Judge, Jalandhar and it was specifically averred in paragraph 5 thereof that a sum of Rs. 2,00,000 through Dhan Raj Thapar, petitioner No. 1 herein, was paid,—vide the said demand

draft in full and final settlement of the dowry articles and no claim was left for any performance against each other and petitioner No. 3 had accepted the same and had waived all her rights, as already mentioned above. This consent decree for divorce was granted on 17th December, 1987. The order and decree are Annexure P4.

(3) Respondent No. 2 on 9th June, 1987 filed the impugned criminal complaint against the petitioners on the allegations that according to the compromise, the amount of Rs. 2,00,000 was to be delivered after the decree for divorce by consent was passed under section 13B of the Hindu Marriage Act and in case it was not granted, the money in question was to be refunded to respondent No. 2. Further allegations are that the amount of Rs. 2,00,000 was paid even before consent decree for divorce by mutual consent was passed and thereafter, petitioner No. 3 was not agreeing to divorce by consent and was, rather, demanding an amount of Rs. 1,00,000 more before agreeing to a divorce decree by mutual consent. Certain other facts in this respect have been mentioned in the complaint and in a *nut-shell*, the complaint states that the complainant-respondent No. 2 ultimately came to know that much against the conditions, petitioner No. 1 got the demand draft encashed on 2nd March, 1987 and delivered the amount to petitioners No. 2 and 3 and refused to give the same to the complainant. This complaint was filed u/ss 406, 420 and 383 of the Code.

(4) I have been shown the summoning order, according to which, after recording the evidence of the complainant-respondent No. 2, the learned trial Court came to the conclusion that offence u/s 406 of the Code was made out against petitioner No. 1 and offence u/s 420 of the Code was made out against all the petitioners and they were directed to be summoned for 9th October, 1987.

(5) This petition was filed on 16th April, 1988 for quashing of the complaint, as also of the summoning order.

(6) Respondent No. 2 has filed a reply by way of an affidavit and the allegations in the complaint are reiterated. Counter-replies of petitioners No. 2 and 3 have been filed.

(7) I have heard the learned counsel for the parties in detail. I have also gone through the file.

(8) During arguments, I asked the learned counsel for respondent No. 2 as to how the complaint had been filed u/s 383 of the

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Code. It goes to his credit that he frankly conceded that no offence under the said provisions was made out. As a matter of fact, the summoning order also discloses that the petitioners have not been summoned to face trial under section 383 of the Code. Commission of a Criminal breach of trust has to be proved. Commission of criminal breach of trust has been defined under section 405 of the Code and it requires that 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,—or of any legal contract. Admittedly, petitioner No. 1 was paid the said amount of Rs. 2,00,000 and instead of paying the same to petitioner No. 3 after the passing of the decree of divorce by consent, paid the said amount to petitioner No. 3 on 2nd March, 1988, i.e. 3 months before petition for divorce by mutual consent was filed. There is no allegation that any amount has been misappropriated by petitioner No. 1 or has been converted to his own use. There is also no evidence to show that petitioner No. 1 dishonestly used the said amount or a part thereof dishonestly. There is also no evidence that the said amount was disposed of in violation of the agreement. The allegation against him does not show any contravention of the contract, i.e. the compromise entered into between the parties on 27th February, 1987. There is no such term as to when the amount of Rs. 2,00,000 was to be paid to petitioner No. 3. It is only by way of receipt executed by petitioner No. 1 on 27th February, 1987, according to the reply of respondent No. 2 that this terms was brought in. This receipt is also attested by Sub-Inspector Karam Singh, Station House Officer, Police Station Division No. 3, Jalandhar City with his official seal, showing thereby that this receipt was executed by petitioner No. 1 and respondent No. 2. It is not necessary to find out as to when this term of payment to petitioner No. 3 after the decree for divorce by consent was ushered in as there is no mention of the same in the compromise itself. This term, as indicated in the receipt, is also not mentioned in the petition for divorce by mutual consent, Annexure P3. In paragraph 5 thereof, it is mentioned that respondent No. 2 had paid a sum of Rs. 2,00,000 through petitioner No. 1 (herein),—vide the said demand draft in full and final settlement of the dowry articles and petitioner No. 3 (herein) had accepted the same and had given up all her rights, as mentioned above. Thus, it is an admitted fact that according to the petition for divorce by mutual consent, present petitioner No. 3 had surrendered her rights before petition for divorce by mutual consent was to be filed and

therefore, there was no question of delaying the payment to her till the said decree was passed. This term in the receipt executed by petitioner No. 1 seems to have been embodied either without any intention on the part of petitioner No. 1 or without his knowledge. In any case, there was no intention either of respondent No. 2 or of petitioner No. 1 to enforce this term in the receipt. Even taking this term to be one of the terms of compromise, although it is not, there is no offence committed by petitioner No. 1 under section 406 of the Code, as there is no dishonesty proved on his part. The word 'dishonesty' has been defined in section 24 of the Code and the requirement therein is that the intention of causing wrongful gain to any person or wrongful loss to another person has to be proved. In this transaction, neither there was any intention nor any proof thereof. The amount had to be paid to petitioner No. 3 by respondent No. 2 and it was to be paid through petitioner No. 1 and this payment has been made and there is no loss to respondent No. 2, nor is there any gain to respondent No. 3.

(9) The offence under section 420 of the Code requires cheating of one by the other and thereby dishonestly inducing the other to deliver any property. In this case, firstly, there is no cheating either alleged or proved, because the payment by respondent No. 2 was made in accordance with the compromise and no body induced respondent No. 2 to deliver the demand draft by any unlawful means, rather, respondent No. 2 gave the demand draft to petitioner No. 1. It was paid by petitioner No. 1 to petitioner No. 3 in accordance with the compromise and this fact has been corroborated in paragraph 5 of the joint petition for divorce by mutual consent under section 13B of the Hindu Marriage Act.

(10) In view of the foregoing discussion, I do not find any offence having been made out against the petitioners. This criminal miscellaneous is, therefore, accepted and in the result, the complaint and the summoning order are quashed.

R.N.R.

PARTAP SINGH,—*Petitioner.*

versus

STATE OF PUNJAB and another,—*Respondents.*

Criminal Writ Petition No. 1264 of 1988.

August 31, 1988.

National Security Act (LXV of 1980)—Ss. 3(2), 14(12)—Constitution of India, 1980—Art. 22(D)—Confessional statement