

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR

Reserved on: 25.07.2022

Pronounced on:04.08.2022

CRM(M) No.265/2021

ADNAN HASSAN KHAN & OTHERS ... PETITIONER(S)

*Through: - Mr. Hakim Suhail Ishtiyag, Advocate.*

Vs.

IRSHAD AHMAD KAMILI & ANR. ...RESPONDENT(S)

*Through: - Mr. Naveed Gul, Advocate.*

**CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**

1) The petitioners have challenged the complaint filed by respondent No.1 against them alleging commission offences under Section 403 & 406 RPC, which is stated to be pending before the Court of learned Judicial Magistrate, 1<sup>st</sup> Class (2<sup>nd</sup> Additional Munsiff), Srinagar. Challenge has also been thrown to order dated 15.07.2021 passed by the learned trial Magistrate whereby the learned Magistrate has, after observing that prima facie offences under Section 403 and 406 RPC are made out against the petitioners and co-accused issued process, issued against the petitioners.

2) It appears that respondent No.2, who happens to be the wife of co-accused Farhan Hassan Khan, had filed the impugned complaint before the trial Magistrate impleading petitioner No.1 and 2, the brothers of her

husband, and petitioner No.3, the mother of her husband, as accused in the said complaint. It was alleged in the impugned complaint that marriage between respondent No.2 and co-accused Farhan Hassan Khan, had taken place in the month of July, 2016. It was further alleged that respondent No.2/complainant was continuously tortured and harassed by the accused persons in connection with demands of dowry and she was forced to leave the matrimonial house without allowing her to even have her additional pair of clothes. It was alleged that respondent No.2 was dragged out mercilessly and illegally from her matrimonial home by the petitioners on the directions of her husband, who wanted to desert her and grab her belongings. It was further alleged that the accused have hatched a criminal conspiracy for demanding excessive dowry from the complainant and that they intend to take away the assets and articles belonging to the complainant. According to the complainant, she had carried with her articles/assets including golden ornaments to her matrimonial home at the time of the marriage and the accused intend to deprive her of the same. She had further alleged that these articles and ornaments were given by her in trust to the accused persons and despite demands made by her, the accused failed to return these articles/gold ornaments. It was also alleged that the complainant has apprehension that the accused would misappropriate these articles by converting the same to their own use. It was further averred in the impugned complaint that the well-wishers and relatives tried their level best to settle the matter between the parties but the accused did not relent. Thus, according to the complainant, the accused persons committed the

offence of criminal breach of trust as they have taken away these articles including gold ornaments and refused to hand over the same back to her.

3) The learned trial Magistrate recorded the preliminary statement of the complainant and thereafter directed the concerned SHO to conduct enquiry/investigation in terms of Section 202 of the Cr. P. C. The SHO concerned conducted the enquiry/investigation and submitted his report before the learned Magistrate. In his report, the SHO submitted that the husband of the complainant, Farhan Hassan Khan, has proceeded to Dubai where he is employed in some company. In the report it has been submitted that in the year 2017, the complainant gave birth to a child who remains unwell. It has also been submitted that the relations between the complainant and her husband remained strained due to unknown reasons, as a consequence whereof the accused Farhan Hassan Khan, brought back the complainant from Dubai and left her at Srinagar. The report indicates that in March, 2020, the complainant lodged an FIR bearing No.12 of 2020 for offences under Section 498A and 506 of IPC against her husband and other relatives. Husband of the complainant is stated to be residing abroad and he has not joined the investigation. The enquiry officer has further submitted that as per the directions of the learned Magistrate, he along with the complainant went to the house of her husband and on the basis of demarcation of the complainant, all the articles belonging to her, excepting eight gold coins were recovered from the room of the complainant.

4) After receiving the aforesaid report, the learned trial Magistrate vide his impugned order dated 15.07.2021, observed that prima facie offences under Section 403 and 406 RPC are made out against the accused persons and, accordingly, process was issued against them.

5) The petitioners have challenged the aforesaid order as well as the complaint by invoking the jurisdiction of this Court under Section 482 of the Cr. P. C.

6) It has been contended that there are no specific allegations in the complaint against the petitioners as regards the entrustment of the property in question and its misappropriation by the petitioners. It is further contended that the complainant has only expressed her apprehension that the articles belonging to her will be misappropriated by the petitioners and on the basis of mere apprehension, the offence of criminal breach of trust is not made out. It has been contended that the respondent No.2/complainant has filed the impugned complaint only to settle her scores with her husband and his relatives.

7) The petition has been resisted by the respondent on the ground that at the stage of issuing process against the accused, a Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint. It has been further contended that the defence of the petitioners cannot be taken into account while determining the legality of the impugned complaint. It is further contended that once it is shown that the complainant had entrusted the property to the accused persons and there is an averment that the same has not been returned to the

complainant, the offence of criminal breach of trust is made out. In order to support his contentions, the learned counsel for the respondents has relied upon the judgments of the Supreme Court in the case of **Sau Kamal Shivaji Pokarnekar vs. State of Maharashtra and others**, AIR 2019 SC 847, **Sonu Gupta v. Deepak Gupta and others**, (2015) 3 SCC 424, and **Rashmi Kumar (Smt) v. Mahesh Kumar Bhada**, (1997) 2 SCC 397.

8) Heard learned counsel for the parties and perused the material on record including the trial court record.

9) If we have a look at the contents of the impugned complaint, in the said complaint, respondent No.2/complainant has alleged that after her marriage with Farhan Hassan Khan, she brought with her articles and gold ornaments which she gave in trust to the accused persons, who, despite demand, failed to return the said articles. She has further alleged that this has created an apprehension in her mind that the accused persons have misappropriated the whole or part of the articles entrusted to them by her. She has also alleged that her husband/accused No.1 wants to desert her and grab her belongings and that other accused are acting at his behest. In her preliminary statement recorded on oath by the Court she has stated that she was thrown out of her matrimonial house by the accused and thereafter she went to her matrimonial house to collect her belongings but the accused persons refused to return those articles/belongings to her. In his report, the enquiry officer has stated that all the belongings of the complainant excepting eight gold coins

were found lying in the room of the complainant in the house of her husband. In the report it has been submitted that for unknown reasons, the relation between the complainant and her husband remained strained.

10) As is clear from the material that was available before the trial Magistrate at the time of passing of the impugned order whereby process has been issued against the petitioners, the complainant has not made any specific assertion as to on which date she had entrusted the articles to the accused. She has not indicated, either in the complaint or in her preliminary statement, as to who amongst the accused had taken over the custody of these articles nor she has given the particulars of the accused who refused to return these articles.

11) In order to lodge a proper complaint, mere mention of the sections and language of these sections is not all that is needed. What is required to be brought to the notice of the court is the particulars of the offences committed by each and every accused and the role played by each and every accused in commission of those offences. When we see the impugned complaint, the same is absolutely vague. It does not show as to what exact role has been played by each of the accused. While in the impugned complaint, it has been alleged that the husband of the complainant intends to grab her property but no specific allegations have been made by her against other accused i.e. the petitioners herein.

12) The Supreme Court has, while dealing with a similar issue in the case of **Neelu Chopra and Ors. Vs. Bharti**, (2009) 10 SCC 184, made the following observations:

*“6. We have seen the complaint very carefully. From a bare reading of the complaint it is apparent that the problem started barely after six months of the marriage. In Para 3 of the complaint, it is stated that all the accused came to the complainant's parents' house at Gidderbaha and asked her parents to give the complainant more gold and other articles as dowry otherwise they would leave the complainant there and Rajesh would be married second time. In Para 4, the complaint is against Rajesh in the sense that the accused Rajesh asked the complainant to hand over the ornaments and clothes to his parents lest they are lost in the way. On reaching Delhi when the ornaments were asked back by the complainant, they were not returned back.*

*7. When we see the complaint as a whole it is basically against the accused Rajesh. All the allegations are against Rajesh. There is undoubtedly some reference to the present appellants, but what strikes us is that there are no particulars given as to the date on which the ornaments were handed over, as to the exact number of ornaments or their description and as to the date when the ornaments were asked back and were refused. Even the weight of the ornaments is not mentioned in the complaint and it is a general and vague complaint that the ornaments were sometime given in the custody of the appellants and they were not returned. What strikes us more is that even in Para 10 of the complaint where the complainant says that she asked for her clothes and ornaments which were given to the accused and they refused to give these back, the date is significantly absent.*

*8. It seems from the order taking cognizance that the learned Magistrate has mentioned about the version of the complainant is supported by Bhagwati and Dharampal to the fact that the ornaments were entrusted to Krishan Saroop and Rajesh while clothes were entrusted to Rakhee and they refused to hand over the same. Even their statements could not be better than the vague complaint. Even about the clothes, the date on which they were handed over to Rakhee who happens to be the daughter of the present appellants and the other details are very significantly absent. It was also the version of the complainant that she was beaten in support of which she has filed a certificate from AIIMS Hospital, New Delhi. However, in the complaint, it is not seen as to on which date she was beaten and by whom. It is significant to note that the matter against Rakhee,*

*the fourth original accused has already been dropped as she was in fact not even the resident of the same house.*

*9. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence.*

*10. When we see the complaint, the complaint is sadly vague. It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already expired. Under such circumstances, it would be an abuse of the process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein, on the basis of a vague and general complaint which is silent about the precise acts of the appellants.*

*11. The High Court has merely mentioned that the allegations in the complaint are of retaining jewellery articles in possession of the husband and the petitioners. Now if the articles were in the possession of the husband, there is no question of the present appellants being in possession of the jewellery. This is apart from the fact that it has already been expressed by us that there is no mention of the date on which the said ornaments, if any, were entrusted to the appellants or even the date when they were demanded back and were refused to be given back by the appellants or any one of them.....”*

**13)** From the foregoing enunciation of law on the subject, it is clear that unless specific allegations are made against the accused, it cannot be stated that they are involved in the alleged offences. It has become a fashion in the present times that whenever a matrimonial discord takes place, relatives of the husband are being roped in whether or not they are actually involved in the alleged offences. The Supreme Court has deprecated this trend in the case of **Kahkashan Kausar Alias Sonam vs.**

**State of Bihar and others**, (2022) 6 SCC 599. It would be apt to quote the following observations of the Supreme Court made in the aforesaid case:

*“17.The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.”*

14) In the same judgment, the Supreme Court has laid down that in the absence of any specific role attributed to the accused, it would be unjust if they are forced to go through the tribulations of a trial. The Court has further observed that general and omnibus allegations cannot manifest in a situation where the relatives of the complainant’s husband are forced to undergo trial. The Court went on to observe that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused and such an exercise must, therefore, be discouraged

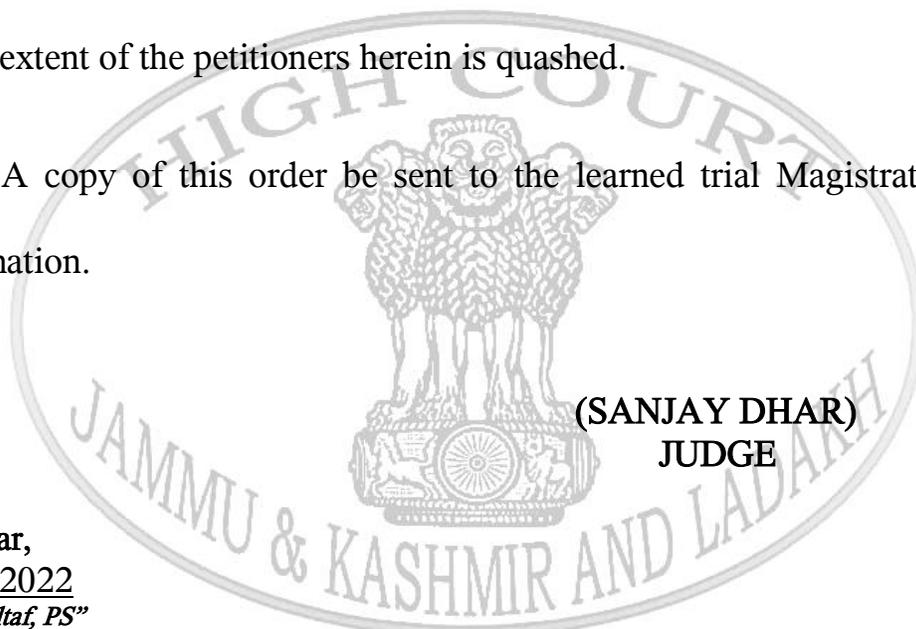
15) There can be no dispute to the proposition of law propounded by learned counsel for the respondents that at the time of issuing process in a criminal complaint, the Magistrate is not expected to evaluate the merits of the material or evidence in support of the complaint but then issuance of a process by a Magistrate against an accused is a serious business and the same cannot be issued in a mechanical manner. Before issuing a process against an accused, a Magistrate has to apply his

judicial mind to the material on record and thereafter record his prima facie opinion as to which offence is made out against the accused. In the instant case, the learned Magistrate, though, has passed a detailed order which is impugned herein, yet it has not occurred to the mind of the learned Magistrate that the allegations against the petitioners in the impugned complaint as well as in the material before him are absolutely vague and lacking in material particulars. The said order, therefore, is not sustainable in law.

**16)** For what has been discussed hereinabove, the petition is allowed and the impugned complaint as well as the order of issuance of process to the extent of the petitioners herein is quashed.

**17)** A copy of this order be sent to the learned trial Magistrate for information.

Srinagar,  
04.08.2022  
"Bhat Altaf, PS"



(SANJAY DHAR)  
JUDGE

*Whether the order is speaking: Yes/No*  
*Whether the order is reportable: Yes/No*