

IN THE COURT OF JUDICIALMAGISTRATE FIRST CLASS, TEZPUR, SONITPUR

CR Case No: 84/2013

U/S 406/506/34 IPC

**Musstt. Shinu Behum**

W/o Md. Mir Hussain

R/o Patidoi Bherela , P.S. Missamari

.....Complainant

versus

**Md. Mir Hussain**

S/o Late Kalasan Hussain

R/o Bindukuri , P.S. Tezpur

..... Accused

Present : Bijaya khakhlary ,Judicial Magistrate First Class ,Tezpur

Advocates for the complainant: Mr. P. Biswas, Ms. P. Chakravarty, Mr. P.P. Baruah, Mr. I. A. Fanazi

Advocates for the accused: Mr. A. Aziz.

Evidence recorded on: 24.06.2014, 12.02.2015, 08.01.2015

Argument Heard on: 09.04.2015, 23.04.2015

Judgment delivered on: 15.05.2015

## **JUDGMENT**

1. This is a case instituted under section 406 of IPC against the accused person Md. Mir Hussain.

2. The brief facts giving rise to the institution of this complaint case is that the complainant got married to the accused Md. Mir Hussain on 13.09.2002 as per Muslim Shariat and in her marriage the articles mentioned in the complaint petition were given from her father's house. After marriage a few days they lived happily and she became the mother of two children. After three years of their marriage the accused started to torture her physically without any rhyme and reason. The accused often used to misbehave with her even on small pretext and used to torture her mentally and physically. Gradually the accused person started to stay away from the complainant and was ignoring to pay the educational expenses of their children. In such a situation the complainant was completely depressed and was bound to leave her matrimonial house and had to take shelter in her father's house. In the mean time the accused contracted a second marriage . When she left her husband's house she left her wedding gifts there. Since then the accused person has not looked after her nor has given any maintenance to her. That on 25.04.2013 at about 10:00 a.m. the complainant along with Smt. Purnima Rabha, Smt. Anjali Das, Smt. Dipali and Musstt. Raj Rahman went to the house of the accused to get back her articles but the accused person restrained them and did not allow them to enter the compound and threatened them with a rod to cause their death if they entered his compound. He also threatened them to not to come in future to get the articles back and stated that he would never give her back the articles given by her father. The complainant therefore prayed to give her back the Stridhan articles.

3. The accused person was called upon to enter trial and after recording evidence before charge, finding sufficient ground to proceed u/s 406 IPC against the accused person, a formal charge under the said section was framed which was read over and explained to the accused person to which he pleaded not guilty and claimed to be tried.

4. The complainant examined five witnesses; and the defence side adduced no evidence and pleaded for total denial.

5. I have heard the learned counsels for both the parties.

6. Upon hearing and on perusal of record I have framed the following point for determination in order to arrive at a definite finding as regards the dispute in this case-

(1) Whether the accused person entrusted with the Stridhan property of the complainant dishonestly misappropriated or converted the same to his own use, committed criminal breach of trust in respect of the said entrusted property and thereby committed an offence punishable u/s 406 IPC ?

**DISCUSSION, DECISION AND REASONS FOR THE DECISION:**

7. PW1, Musstt. Shinu Begum who is the complainant deposed that on 13.09.2002 she got married to the accused as per Muslim Shariat Law. At the time of her marriage her father gifted her gold ornaments, household articles and she took all those gifted articles along with her to her husband's house. PW1 has also stated that in her marriage she was given necklace, earrings, fingerings and many other gift items which she took with her to her husband's house. She stated that since after the 'athmangala' of their marriage her husband started to torture her. In the mean time she became the mother of a girl child. One day the accused made her to drink phenyl. After having drunk the accused used to torture her physically. When she was pregnant, one day the accused poured kerosene on her body. Finally not being able to bear the tortures of the accused she had to inform her mother and then her mother , brother and sister in-law took her to her father's house. At that time she was pregnant for the second time. She stated that she has mentioned about her Stridhana properties in the schedule of the complaint petition. She stated that on 25.04.2013 she along with some members of Mahila Committee who are Dipali Das, Anjali , Purnima and Raju Rahman went to the house of the accused. But the accused did not allow them to enter his house and asked to bring Court order for her articles. After that PW1 lodged a complaint in the Court. Exhibit-1 is the said complaint and exhibit-1(1), (2), (3), (4) and (5) are her signatures. She stated that she has submitted the purchase receipts of her articles in the court. Exhibit-3 is the receipt issued by 'Ajay Furniture' for her articles and exhibit-4, 5 and 6 are receipts issued by 'B.K. Jewellers' .

8. In cross examination PW1 stated that when she went to her mother's house she was pregnant with the second child. She stated that she went to her mother's house for delivery of her child with permission of her husband, but after delivery of the child she did not come back. She stated that her husband came to take her back and she was also ready to come back but she wanted her child to become little older. She stated that at present her younger child has become ten years old. She stated that in the mean time her husband came to take her back and she was also willing to come back but she did not come back as her husband has already contracted second marriage. She stated that she made prayer for search warrant but the Court issued summon to accused. She stated that at the time of marriage the accused persons acknowledged the receipt of the gifted articles but did not sign in any list of articles. She denied the suggestion that the receipts exhibited by her in the present case do not have any connection with the case. She denied the suggestion that she had not brought any article as mentioned in the list of articles to her husband's house. She stated that she went to the house of the accused along with Purnima Rabha, Dipali, Anjali Das , Raju Rahman , her mother and sister in-law. She admitted that she had love affair with the accused and they did Court marriage.

9. PW2, Smt. Dipali Hazarika deposed that on 13.09.2002, PW1 got married to the accused as per Muslim Shariat Law and she was present at the marriage. She stated that at the time of marriage PW1's father gifted many articles right from box bed to gold ornaments and other articles which she herself had seen. She stated that after the marriage the people of M.E.S., sent the articles to the house of the accused by arranging a vehicle. She stated that after marriage the complainant and the accused lived happily for one and half a year, after that there was quarrel between the complainant and the accused and sometimes the complainant used to come to her parents' house. The complainant told her that one day the accused poured kerosene on her body. She stated that during pregnancy of three months, the complainant came back to father's house. She stated that she along with Raju Rahman, Purnima Rabha, the complainant, Anjali and some other persons went to the house of

the accused but the accused did not allow them to enter the house and closed the gate . She stated that the accused has not returned back the articles of the complainant .

10. In cross examination PW2 stated that though a list of the gifted articles was prepared at the time of marriage but no any signature was taken from either party. She stated that she has not seen the said list of articles in the Court. She admitted that though she knew that due to quarrel the complainant came back to her parents' house but she had not seen any quarrel between them. She admitted that she had not seen the accused pouring kerosene on the body of the complainant. She stated that on 25.04.2013 she went to the house of the accused for conciliation and to ask about the articles of the complainant. She stated that at first the accused did not allow them to enter his house but when they stated that they had come to discuss, the accused made them to sit and when they asked about the articles of the complainant, the accused replied that he would not give the articles back even though they bring order from Court .

11. PW3, Smt. Anjali Das deposed that she went to the marriage ceremony of PW1, she attended the marriage and returned home. She stated that as she went to the marriage at day time, she had not seen the gifted articles given to the complainant. She stated that she along with PW1's mother, PW2, Purnima Rabha and Raju Begum went to the house of the accused to know whether the accused has contracted second marriage or not , they sat in his house and returned back.

12. In cross examination PW3 stated that PW1 did not go to the house of the accused. She stated that they had tea in the house of the accused and he behaved well with them . She stated that except this they did not have any other discussion.

13. PW4, Musstt. Raju Rahman deposed that she was present at the marriage ceremony of the complainant and had seen the gifted articles. She stated that due to some differences PW1 left the house of the accused in the year 2005. She stated that she along with some women went to the house of the

accused, the complainant though went with them she did not go to the house of the accused and was sitting in the car. She stated that they went there to see whether the accused contracted second marriage or not, but they did not talk about the articles. In cross examination, PW4 stated that she went to the marriage at day time and therefore could not say whether any article was given or not. She stated that the accused offered them tea and behaved well with them, beside this they did not talk about any other matter.

14. PW5, Smt. Purnima Rabha deposed that she attended the marriage of the complainant and had seen the gifted articles given to the complainant. She stated that she did not know for what reason the complainant had quarrel with the accused and she returned back to her parent's house. She stated that she along with four other women went to the house of the accused. She also stated that though the complainant went with them but she did not go to the house of the accused, she stayed back in the car. She stated that they talked about the articles but the accused has not yet returned back the articles. In cross examination PW5 stated that they went there to ask the accused whether he has solemnised second marriage or not. She stated that at first the accused told them to have discussion in the outside of the house only but later on the accused made them to sit in his house.

15. The contention of the prosecution is that it is very usual that the parents of a bride gift her almost all necessary household articles, ornaments, dresses in her marriage which she takes with her to her husband's house. No parents would send their daughter to her husband's house without any gift. The Learned Counsel for the complainant stated that the parents of the complainant gifted all the articles mentioned in the schedule of the complaint petition and the receipt of which was acknowledge by the accused and took the articles to his house. Due to torture the complainant had to leave the house of the accused leaving her articles there, which, the accused later on, refused to return back.

16. The Learned defence counsel argued that admittedly the complainant and the accused had love affair and they did court marriage and hence the complainant did not bring any article with her, that the exhibited receipts do

not have any connection with this case as they were not issued in the name of the complainant and that in exhibit-5 and exhibit-6 the date of orders are 29.09.2003 and 03.09.2003 respectively and dates of delivery are 08.10.2003 and 15.09.2003 respectively i.e., one year later, after the marriage and thus the complainant failed to prove entrustment of property on the accused and that the accused converted them to his own use or misappropriated them.

17. To warrant conviction u/s 406 IPC, the essential ingredients are:-

(i) entrusting any person with property or with any dominion over property;

(ii) the person entrusted dishonestly misappropriating or converting to his own use that property; or dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract made touching the discharge of such trust.

18. It is a settled Law that the properties gifted to the wife(bridge) before the marriage, at the time of marriage or at the time of giving farewell or thereafter are her stridhana properties. It is her absolute property with all rights to dispose at her own pleasure. Her husband has no control over her stridhana property.

19. Generally in a marriage the parents and relatives gift many articles to the bride which she takes with her to her husband's house. It is also unlikely that thinking about future consequences any list of the articles is made and signatures of either parties are taken. But to establish that the accused(husband) was entrusted with stridhana property it is necessary to specify those articles. In the present case, perusal of the list of articles mentioned in the schedule of the complaint petition reveals that the complainant has mentioned fifty seven(57) No. of articles and has furnished four purchase receipts of only a few articles. Exhibit-3 purchase receipt issued by "Ajoy furniture" in the name of Yakub Hussain, Exhibit-4, 5, and 6 were issued by B.K. Jewellery in the name of Ringku. None of the purchase receipts are issued in the name of PW1. It is possible that they might have been purchased by her relatives on her behalf, but there is no

any explanation regarding this. In absence of any explanation regarding these it can not be held that those receipts have connection with the instant case. Again PW1 has stated in her evidence as well as in the complaint petition that all those articles were given at the time of her marriage. But on perusal of exhibit-5 and 6 it is seen that the dates of orders are 29.09.2003 and 03.09.2003 and the dates of delivery are 08.10.2003 and 15.09.2003 respectively i.e., one year later than her marriage. Regarding this also there is no any explanation either in the complaint petition or in the evidence of PW1 or any other witness.

20. Again perusal of the list of the articles reveals that article No.14 in the list is written as Seluwar Kamij over 50 in number, article No.23 is written as blouse and petticoat over 29 in number, this shows that the complainant herself does not know the actual number. Thus the complainant has failed to specify actually what were the articles of entrustment.

21. In the case of stridhana property, the title always remains with the wife, if the husband or any other member of his family who are in possession of such property, dishonestly misappropriate or refuse to return the same, they will be liable to punishment for the offence of criminal breach of trust under Sections 405 and 406IPC.(MANU/MP/1223/2013)

22. The Hon'ble Punjab & Haryana High Court in Avtar Singh and Anr. v. Kirpal Kaur Criminal Misc. No. 2144-M of 1979, 2nd Criminal Misc. No. 2145 of 1979, decided on 16 8.79) held "where certain thing is lying in trust with a person, offence of dishonest misappropriation would be committed on a date the demand for return of the entrusted articles is made and the same is declined.... According to the complaint, the first demand for the return of the articles was made on January 27, 1976 and it was that date when the demand was declined. Hence, the offence of misappropriation of the dowry articles lying in trust was committed on January 27, 1976."

23. If the husband who is only the custodian of stridhanana property dishonestly misappropriates or refuses to return those properties, it amounts to dishonest misappropriation. In the present case the complainant(PW1) has

alleged that the accused refused to return back her stridhana property. As per the evidence of PW1, on 25.04.2013 she along with some members of Mahila Committee who are Dipali Das, Anjali , Purnima and Raju Rahman went to the house of the accused, but the accused did not allow them to enter his house and asked to bring Court order for her articles. Again PW2 has stated in her examination in chief that she along with Raju Rahman, Purnima Rabha, the complainant, Anjali and some other persons went to the house of the accused but the accused did not allow them to enter the house and closed the gate , but in her cross examination she stated that at first the accused did not allow them to enter his house but when they stated that they had come to discuss, the accused made them to sit and when they asked about the articles of the PW1, the accused replied that he would not give the articles back even though they bring order from Court . PW3 has stated that they talked about the articles but the accused has not yet returned back the articles.

24. Again PW3 and PW4 who went with PW1 to the house of the accused on 25.04.2013 have stated that they went to the house of the accused just to know whether the accused had contracted second marriage or not and the accused behaved well with them, they did not talk about the articles there. PW3 has stated that PW1 did not go with them to the house of the accused. Again PW4 and PW5 have stated that though PW1 went with them she stayed in the car and did not go to the house of the accused. PW3 and PW4 have not at all supported PW1 regarding the fact that they asked the accused about her stridhana properties but the accused declined . PW2 and PW5 though have stated that they talked about the articles, but there are lot of discrepancies. PW1 has stated that the accused told her to bring court order, on the other hand as per the evidence of PW2 the accused refused to return back the articles even though they bring count order. Thus the prosecution failed establish that on 25.04.2013 demand for stridhana properties was made and the accused declined. Hence it is not proved that on 25.04.2013, the accused committed the offence of misappropriation of the stridhana articles lying in trust.

25. Under the above facts and circumstances I am of the opinion that the prosecution has failed to establish the charge u/s 406 IPC against the accused person. Hence the accused person is acquitted of the charge u/s 406 IPC and set at liberty forthwith.

26. Bail bond and affidavit furnished by the bailor is extended for a period of six months from today.

Given under my hand and seal of this Court on the 15<sup>th</sup> day of May, 2015  
at Tezpur, Sonitpur.

Smti Bijaya Khakhlary

JMFC, Tezpur

**APPENDIX**

**Prosecution witnesses:**

PW1— Musstt. Shinu Begum

PW2— Smt. Dipali Hazarika

PW3— Smt. Anjali Das

PW4—Musstt Raju Rahman

PW5—Smt. Purnima Rabha

**Exhibits for the prosecution:**

Ext.1.....complaint petition

Ext.2.....Affidavit

Ext.3.....purchase receipt of Ajoy Furnitures

Ext 4.....purchase receipt of B.K. Jewellery

Ext 5.....purchase receipt of B.K. Jewellery

Ext 6.....purchase receipt of B.K. Jewellery

**Defence witness :**

Nil

**Exhibits for defence**

Nil

Smti Bijaya Khakhlar

JMFC,Tezpur