IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 507 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAGINIBEN GUNVANTSINH TANK

Versus

GUNVANTLAL KESHAVLAL TANK

Appearance:

1. Criminal Revision Application No. 507 of 2001

MR JB PARDIWALA for Petitioner No. 1

MR YM THAKKAR for Respondent No. 1-4

PUBLIC PROSECUTOR for Respondent No. 5

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 27/12/2002

CAV JUDGEMENT

1. The petitioner and respondent are the original complainant and ori. accused of Criminal Case No. 1887

of 1999 filed in the Court of Ld. J.M.F.C., Halol, respectively. The petitioner is a legally wedded wife of respondent no. 1-Gunvantlal Keshavlal Tank. Respondents no. 2, 3 and 4 are father-in-law, mother-in-law and sister-in-law, respectively.

2. According to the petitioner, at the time of marriage, stridhan was given to her by her parents, relatives and friends which she has taken with her at her matrimonial home. Therefore, she was forced to leave the matrimonial home and she left the matrimonial home with empty hands. With a view to get her stridhan back from the accused, attempts were made but as no heed was paid by the accused to the request made by the petitioner, she ultimately was compelled to file criminal complaint in the Court of Ld. J.M.F.C., Halol for the offence punishable under sec. 406 of IPC. The complaint was sent for police investigation under sec. 156(3) of CrPC and ultimately on 13.12.1999 the Investigating Agency has filed the charge-sheet in that Court.

3. On 22.11.2000, the respondents i.e. accused persons preferred an application Exh. 9 stating that the complaint filed is a false and concocted complaint and in the facts and circumstances of the case, the ld. J.M.F.C., Halol has no territorial jurisdiction to try the case. Ld. J.M.F.C. after hearing the parties, rejected the said application vide order dated 16.5.2001. The said decision of the ld. J.M.F.C. was challenged by way of filing a Revision Application in the Court of Ld. Sessions Judge, Panchmahals at Godhra. The Ld. Sessions Judge vide judgment and order dated 14.8.2001 allowed the revision application and set aside the order passed by the Ld. J.M.F.C., Halol and further directed to issue the notice to the complainant and to return the complaint to the complainant for presentation of the same in the proper court as per the provisions of section 201 of CrPC. The Original complainant has therefore, now assailed the said decision of the ld. Sessions Judge by way of this Criminal Revision Application.

4. Some other facts being relevant are required to be stated. Undisputedly, the respondent no. 1 has got married as per Hindu rites with the petitioner at Vadodara on 16.5.1985. After marriage, the petitioner started residing with the respondent no. 1 at Adipur, Dist. Kutchh and within a very short period of time, the complainant was forced to leave her matrimonial home and to go back to her parental home. The petitioner had approached the Court of Ld. J.M.F.C., Halol with an application under sec. 125 of CrPC for maintenance and

this application has been granted and maintenance of Rs. 500/ has been fixed and ordered to be paid to the petitioner by the respondent no. 1 every month. Simultaneously, the respondent no. 1 also preferred an application under sec. 13 of the Hindu Marriage Act in the Court of Ld. Extra Assistant Judge, Bhuj praying for divorce. This Hindu Marriage Petition No. 28 of 1991 preferred by the respondent no. 1 for divorce was allowed and the decree for divorce was granted. The appeal preferred against the decree of divorce by the petitioner-wife is pending. During all this time, the petitioner was requesting the accused persons to return her stridhan and ultimately in the year 1999 pending her appeal against the decree of divorce, she filed the above criminal complaint. There is one civil suit pending between the petitioner and respondent no. 1-hunsband in the Court of Civil Judge (SD) Vadodara under sec. 18 of the Hindu Adoption and Maintenance Act and the same has been resisted by the respondent no.1 husband. In response to the query raised by the Court, ld. counsel for the respondent no. 1 Mr. Thakkar, after referring the relevant documents has stated before this Court that in the civil suit filed by the petitioner, the petitioner-wife has shown some other address of Vadodara as place of residence and not the address which has been shown in the criminal complaint filed in the Court of Ld. J.M.F.C., Halol.

5. Ld. Counsel appearing for the parties have mainly concentrated their arguments in reference to the provisions of sec. 177 and sub-section 4 of section 181 of CrPC. Mr. Pardiwala has submitted that the ld. Sessions Judge has seriously erred in recording a finding that the Ld. J.M.F.C., Halol has no territorial jurisdiction to try the case against the accused persons and ld. Sessions Judge has lost sight of the fact that the use of the word "Ordinarily" reflected in sec. 177 of CrPC indicates that the provision is general one and must be read subject to the special provisions contained in the Code. It is argued that the Apex Court has taken a view that exception implied by word "Ordinarily" need not to be limited to those specifically provided for by the law and exceptions may be provided by law on consideration of convenience or may be implied from other provisions of law permitting joint trial of offence by the same court. According to Mr. Pardiwala, undisputedly, the petitioner resides at Halol at her parental home. Even before the marriage, the petitioner was also residing at Halol. After marriage when the petitioner was forced to leave her matrimonial home, she came down to Halol and has been residing with her parents

at Halol. According to Mr. Pardiwala, ld. Sessions Judge has misinterpreted the sub-section 4 of Sec. 181 of CrPC. While allowing the revision application, ld. Sessions Judge has observed that any offence of criminal breach of trust may be enquired into or tried by the Court within whose local jurisdiction the offence was committed or any part of the property which is subject to the offence was received or retained and as the accused persons reside at Adipur and the stridhan is alleged to have been retained at Adipur, the Court at Halol has no territorial jurisdiction. Mainly Mr. Pardiwala has hammered that sub-section 4 of section 181 of CrPC says that any offence of criminal breach of trust may be enquired into or tried by the court within whose local jurisdiction the offence was committed or any part of the property which is subject to the offence was received or retained or was required to be returned or accounted for by the accused persons. In the present case, according to Mr. Pardiwala, the petitioner-complainant is residing at Halol and the stridhan property is being retained by the accused persons wrongfully at Adipur and the accused persons are under obligation to return this stridhan property to the complainant at Halol which they have failed for which the complaint has been lodged in the court of Ld. J.M.F.C., Halol. So, it would not be legal or correct to say that the ld. J.M.F.C., Halol has no territorial jurisdiction to try the case. On the contrary, according to Mr. Pardiwala, the ld. Sessions Judge ought to have dismissed the revision application holding that the ld. J.M.F.C., Halol can definitely try the criminal case instituted by the petitioner.

6. The second main grievance of Mr. Pardiwala is that the only issue before the Ld. Sessions Judge, Godhra was whether the Ld. J.M.F.C., Halol has territorial jurisdiction to try the offence or not. Ld. Sessions Judge ought not to have commented on the truthfulness or genuineness of the allegations levelled against the petitioner-complainant because such observation is likely to prejudice the cause brought by the complainant. The logic developed by the ld. Sessions Judge in para-9 of the impugned judgment is also not much relevant. The reasons for filing application under sec. 13 of the Hindu Marriage Act praying for divorce is because it is the Court at Bhuj which has jurisdiction to adjudicate Hindu Marriage Petition under the Hindu Marriage Act after Vadodara because the normal place of the residence of the married couple was falls within the territorial jurisdiction of district Kutchh-(Bhuj) and the other place is Vadodara, the place of marriage. So, according to Mr. Pardiwala, it cannot

be said that because the divorce petition was preferred at Bhuj the complaint filed by the petitioner-complainant also ought to have been filed at Bhuj. While developing his oral submissions, Mr. Pardiwala has placed reliance on the following decisions:

1) 1996 Cr.L.J. p. 732 (Orissa High Court)
Rajaram Pattnaik vs. Indian Metal and Ferro Alloys Ltd.

2) I(1991) D.M.C. 253 (P & H High Court)
Ram Pal @ Ram Lal & Anr vs. State of Haryana & Anr.

3) 1995(3) Crimes p. 326 (Allahabad High Court)
Dinesh Kumar & Ors. vs.Lalita Mor & Anr.

7. Learned counsel appearing for respondents Mr. YM Thakkar has submitted that the finding recorded by the ld. Sessions Judge is absolutely in accordance with law because the same is supported by several legal pronouncement including one unreported decision of this court in Criminal Misc. Application No. 4515 of 1996 decided on 5.11.1996 (Coram: S.D. Pandit, J.). Mr. Thakkar has submitted that the petitioner -wife is not residing at Halol and no satisfactory evidence was available on record that she is, on the date of filing of the complaint, was residing at Halol. On the contrary, one civil litigation is pending between petitioner and respondent no. 1 at Vadodara which indicates that she is residing somewhere at Vadodara.This civil proceeding has been instituted by this very petitioner where she has claimed maintenance as Hindu Divorcee under sec. 18 of the Hindu Adoption and Maintenance Act. The complaint at Halol has been filed only with a view to harass the respondents. It was open for the petitioner to pray for return of stridhan in the divorce proceeding initiated at Bhuj. Undisputedly, the parties were residing at Adipur. It is her admission that the stridhan properties were taken at her matrimonial home at Adipur. Evaluation of available facts has been rightly made by the ld. Sessions Judge in para-9 of the impugned judgment. According to Mr. Thakkar alleged incident of refusal to return the stridhan property has occurred at Bhuj when the demand was made and it would not be legal to say that the accused persons are obliged to return the stridhan property at the place where she (i.e. wife) initiates the proceedings. Evidence of residence can be created. According to Mr. Thakkar if the say of the otherside is accepted, than each vindictive wife can drag the husband,

as well as her in-laws to the farthest corner of the country. While developing points of his submissions, Mr. Thakkar has placed reliance on the following decisions:

1) 1986 Cri.L.J. p. 2070
(Harjeet Singh Ahluwalia vs. State of Punjab & Anr.)

2) 1997(2) GLH p. 432
(Girdharlal Tenumal Motwani vs. The State of Gujarat & Anr.)

3) 1999 Cri.L.J. p. 4566
(Satvinder kaur vs. State (Govt. of N.T.C. of Delhi) & Anr.)

4) 2000 Cri.L.J. p. 3762
(Mohan Lal & Ors. vs. State)

5) 2000 Cri.L.J. p. 4116
(Vijay Kumar and Anr. vs. Sunita and Ors.)

6) 2000 SC p. 594
(S.I. Rooplal & Anr. vs. Governor through Chief Secretary, Delhi & Ors.,)

8. Both the learned counsel appearing for the parties have submitted that they have made reasonable attempts to locate the direct decision interpreting the scope and ambit of sub-section(4) of sec. 181 of CrPC, especially in reference to the stridhan property, but they are not in a position to point out any decision of this Court on the said point.

9. This decision cited by Mr. Pardiwala in case of Rajaram Pattnaik (supra) propounds the principle that sec. 177 of CrPC adopts the common law of England that all crimes are local and justiciable only by the local court within whose jurisdiction they are committed. This is a general rule and exception to that are found in various Acts. Sub-section 4 of section 181 of CrPC is one of such provision. The Court held that :

"In accordance with ordinary rules of construction, special provision in section 181(4) is to ordinarily receive effect unqualified of general provision of section 179. The accused may be prosecuted in terms of section 181 (4) in a Court within whose jurisdiction (a) offence was committed, or (b) any part of property which is the subject to the offence was received or

retained, or (c) property was required to be returned or accounted for by the accused person. The three requirements under sub-section (4) are disjunctive, i.e., Court at any one of those places would have jurisdiction to try such an offence. These aspects were highlighted by me is Shri Dhirubhai Hirachand Ambani vs. Shri Tulsi Bhayana (1995)8 OCR 22. In view of the accusations, I find no substance that the learned J.M.F.C., Bhubaneswar lacks territorial jurisdiction."

10. In the case of Rampal @ Ram Lal & Anr., (supra) cited by Mr Pardiwala deals with the scheme of sub-section 4 of section 181 of CrPC. The cited case deals with the articles of dowry which were entrusted to In-laws when the marriage took place. On the point of jurisdiction, the Court held that according to sub-section 4 of section 181 of CrPC, the offence of criminal misappropriation or criminal breach of trust may be enquired into and tried by a Court within whose local jurisdiction the offence was committed or any part of the property was received or retained or was required to be returned or accounted for by the accused person. The case before the Punjab & Haryana High Court was at pre-trial stage and the accused-petitioners had approached for quashing of FIR on the ground of vagueness and also on the point of the lack of jurisdiction. SO, the Court while rejecting the petition treating it to be a premature observed that "at this stage, it cannot be said that the property was not received at Kalanwadi and that it was not required to be returned at village Kalanwadi where the complainant at present resides." In this cited case the investigation was going on but the finding in para-7 of the decision is relevant for our purpose. In the third decision in case of Dinesh Kumar & Ors., vs. Lalita Mor & Anr., (supra), the Allahabad High court deals with the similar important point and it has been held that the court of the place where the wife demands return of her stridhan property will also have territorial jurisdiction to try offence of criminal breach of trust. In this cited case, the Allahabad High Court was concerned with the criminal breach of trust of stridhan property. It is now settled by the decision of the Apex court in case of Pratibha Rani vs. Suraj Kumar & Ors., reported in AIR 1985 SC 628 that the gifts made at the time of marriage of Hindu woman is her stridhan property and the husband though living together with his wife is not entitled to convert the property to his own use without the consent if it was placed in his custody.

So, this stridhan property of the complainant entrusted to the accused, if is dishonestly misappropriated or converted to his own huse, he would be guilty of having committed criminal breach of trust as defined in sec. 405 of IPC and would be liable for punishment under sec. 406 of IPC. The legislature has enacted provisions regarding venue of trial of an offence of criminal breach of trust. Sub-section 4 of section 181 of CrPC provides that any offence of criminal misappropriation or criminal breach of trust may be enquired into or tried by a court within whose local jurisdiction the offence was committed or any part of property which is the subject matter of the offence was received or retained or was required to be returned or accounted for by the accused persons. It was argued before the Court that in absence of agreement between the parties, their properties are required to be retained or accounted for at a particular place, than the rule reflected in sub-section 4 of section 181 of CrPC would not apply, but it would be important to refer the report of the Law Commission and also objects and Reasons enacting this sub-section 4 of section 181 in the CrPC in the year 1974. The report says that :

> ".....In view of the conflicting decisions of various High Court, we recommend that sub-section (2) of S. 181 (now sub-section(4) be amended thus...(same as sub-section (4). We do not think it necessary to limit the additional alternative venue, namely the local area where the property was required (by law or contract) to be returned or accounted for by the accused persons, to cases where there is no evidence of the offence other than the failure to return or account for the property."

11. According to me, para-8 and 9 of this decision are very important and relevant because they go to the root of the merits and the submissions made before this court. So, I would like to quote the relevant para-8 and 9 in case of Dinesh Kumar (supra):

> Para-8:- "It is not a sound principle of construction to brush aside the words of statute as being inapposite surplusage, if they can have appropriate application in the circumstances conceivably within the contemplation of the statute. It is

incumbent on the Court to avoid a construction, if reasonably permissible on the language, which would render a part of statute devoid of any meaning or application (See Aswani Kumar Ghosh vs. Arbinda Bose and Rao Shiv Bahadur Singh vs. State of U.P.). The Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons (See J.K. Cotton Spinning and Weaving Mills v. State of U.P. and State of U.P. vs. Radhey Shyam). Therefore, the last part of the sub-section namely was required to be returned or accounted for has to be given some meaning even where the territorial jurisdiction of a Court is to be ascertained with regard to an offence of criminal breach of trust of stridhan-property is concerned. Another settled principle is that in selecting out of different interpretations the Court will adopt that which is just, reasonable and sensible rather than that which is none of these things as it may be presumed that the Legislature has used the words in that sense which least offends our sense of justice. If the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity and inconsistency (See Holmes vs. Bradifield Rural District Council and Nasiruddin v. State Transport Appellate Tribunal). Therefore, in order to give full meaning and sense to the last part of sub-section(4) of Section 181, it will be proper to hold that without there being any prior agreement to that effect the Court at the place where the property is required to be returned will also have territorial jurisdiction to try the offence.

Section 6 of Dowry Prohibition Act provides that where any dowry is received by any person other than the woman in connection with whose marriage it is given that person shall transfer it to the woman within a specified period and the failure to do so makes the person liable for punishment. In P.T.S. Sai Baba v. P. Mangatayaru, the Andhra Pradesh High court held that a woman can file comlaint under section 6 of the Dowry Prohibition Act at the place where she is residing on the ground that it was the duty of her husband to return the dowry, after the specified period at the place where she was residing and the contention that the complaint can only be filed at the place where the dowry was given was repelled. Similarly , in Bhim Singh v. State of Punjab and Surendra Kumar vs. Suman Arora, it has been held that the Court of the place where the woman was residing and had demanded return of her Stridhan-property, would have territorial jurisdiction to try the offence of criminal breach of trust. Hansraj vs. Smt. Savita 1992 All. Cr. R. 265 cited by the petitioners has no bearing on the point in issue as challenge to the jurisdiction of the court to take cognizance of an offence under section 406 IPC at the place where marriage was performed and dowry was given was repelled on the ground that entrustment of property had been done at that place.

Para-9:- "Learned Counsel has urged that on the view taken the wife can demand return of the property any where in India and file a complaint there which would cause great harassment to the husband and his relations. In my opinion the difficulty posed is more imaginary thana real. The wife is not likely to demand return of the property at a place where she is not residing as it will be equally inconvenient and difficult for her to prosecute a criminal case at a third place. In view of the reasons discussed

earlier the irresistible conclusion is that the place where the wife demands return of her Stridhan-property will also have territorial jurisdiction to try the offence of criminal breach of trust."

12. In case of P.T.S. Sai Baba vs. P. Mangatayaru, reported in 1978 Cr. L.J. p. 1362 referring the provisions of sec. 6 of the Dowry Prohibition Act. The Andhra Pradesh High Court has held that the complainant wife can file the comlaint where she is residing. This finding is recorded by placing reliance on the full Bench decision of the Madras High Court reported in 1960 Cr.L.J. p. 242. Of course the scheme of section 6 of the Dowry Prohibition Act is a special legislation and the scheme indirectly indicates that when the woman (wife) is entitled to property under sub-section (1) can file complaint where she is residing. The present case is not a case of an offence punishable under sec. 6 of the Dowry Prohibition Act and it is a case of criminal breach of trust. But sub-section 4 of section 181 of CrPC has not been considered by the ld. Sessions Judge while dealing with the revision application.

13. One unreported decision of this Court in the case of Girdharlal Tenumal Motwani vs. State of Gujarat & Anr., dated 5.11.1996 (Coram: S.D. PANDIT, J.) is relevant and is placed before the Court by the ld. Counsel appearing for the otherside. The applicant had approached this court for quashing of a complaint registered and process issued by the J.M.F.C. in an offence punishable under sec. 498A, 406, 323, 506920 & 114 of IPC and under sec. 4 and 7 of the Dowry Act, and all the accused were asked to appear on the returnable date. The Court held that the order of issuance of process was without application of mind. On the averments made in the complaint itself, it was clear that the incident had occurred at Ahmedabad where the accused are residing and when the complaint was filed, she was residing at her matrimonial house. As per complainant, the property alleged to have been misappropriated at Ahmedabad and that misappropriation had also taken place at Ahmedabad as per the complaint. The Court held that 'thus the averment made in her complaint clearly disclose and show that all the alleged offence had taken place at Ahmedabad and therefore, in the circumstances the learned Magistrate had no jurisdiction to entertain the said complaint and to issue process. "The order of issuance of process passed by the ld. J.M.F.C., Vadodara, therefore, was held to be "without jurisdiction, illegal and invalid." The complainant was asked to institute the

complaint to the appropriate court and ld. J.M.F.C. was directed to return the complaint to the complainant for that purpose as per the provision of sec. 201 of CrPC. In this decision, the complaint was not only for as regards to the offence punishable under sec. 406 of IPC for which the provisions of sub-section 4 of sec. 181 of CrPC would be relevant. The nature of the offence committed qua the complainant were different and for this main offence i.e. for the offence punishable under sec. 498A, 323, 506(2) read with sec. 114 of IPC, the general rule reflected in sec. 177 of CrPC would apply. This Court, of course, could have held that the complaint for the offence punishable under sec. 406 and other offence punishable under the Dowry Prohibition Act can be proceeded with by ld. J.M.F.C., Vadodara but in view of the averments made in the complaint and the nature of the allegations, the court took the view that the complaint can be filed at Ahmedabad. This decision would not go against the present petitioner because it is on different set of facts.

14. Mr. Thakkar has drawn the attention of this Court to a decision in the case of S.I. Rooplal and Anr. vs. Lt. Governor through Chief Secretary, Delhi & Ors., reported in AIR 2000 SC 594 and has submitted that this Court should take a consistent view which has taken in the case of Girdharilal Tenumal Motwani (supra) which is a fundamental principle that every Presiding Officer of a Judicial Forum should know and follow the consistency in interpretation of law and this alone can lead to public confidence in the justice delivery system. A coordinate bench of a Court cannot pronounce judgment contrary to declaration of law made by another bench and it can only refer it to a larger bench if the Presiding Judge is in disagreement with the view expressed or pronouncement made earlier. But in view of the different set of facts and the fact that a wife has prosecuted the accused for the offence punishable under sec. 406 of IPC only, this court is able to look at the law from another angle and with different dimension. The accused of the offence of misappropriation and/or criminal breach of trust can be prosecuted in terms of sec. 181 (4) of CrPC in a court within whose jurisdiction the property so misappropriated or converted to the use of the accused dishonestly are lying, the property was required to be returned or accounted by the accused persons. It is settled legal position that all the three requirements under sub-section 4 of section 181 of CrPC are disjunctive. There is Court at one place would have jurisdiction to try such offences. Undisputedly, the complainant had married to accused no. 1 at Vadodara and, thereafter,

the complainant accused no. 1 prohibited and stayed at Adipur, Dist.. Kutchh. There was litigation between them at Kutchh-Bhuj, as proceedings for divorce were initiated by accused no. 1 at Kutchh-Bhuj. On 7.1.1995 a decree for divorce has been passed and the appeal on the day on which ld. Judicial Magistrate First Class decided the application Exh. 9 was pending. Prior to the date of decree of divorce, the complainant had initiated maintenance proceedings under sec. 125 of CrPC in the Court of Ld. J.M.F.C., Halol and in the application Exh. 9 preferred by the accused persons in the criminal complaint filed by the petitioner-wife they have accepted that on 23.5.1994, the maintenance application was allowed and the complainant wife was granted maintenance of Rs. 500/ per month and the said amount was being paid by accused no. 1. In the divorce proceedings between the complainant and the accused no. 1, the complainant had not filed any application under sec. 27 of the Hindu Marriage Act. It is one of the say of the accused that the complainant wife had never issued any notice to return her Stridhan and other personal properties. It is not the say of the accused persons that Stridhan properties and other personal properties of the complainant wife has been returned to her during the proceedings pending in the Court of J.M.F.C., Halol dealing with the maintenance application under sec. 125 of CrPC or divorce proceedings before the Court of Assistant Judge, Kutchh-Bhuj. It is true that denial to return such Stridhan properties etc. was made at Bhuj during the pendency of the divorce proceedings and the date of filing of the complaint in the court of Ld. J.M.F.C., Halol for the offence under sec. 406 of IPC may look a delayed complaint. But the question brought before this Court by the revisioner - wife is limited. The grievance of the complainant is that the ld. Sessions Judge by impugned order has erroneously held that the Ld. J.M.F.C., Halol dealing with the Criminal Case No. 1877 of 1999 has no jurisdiction and the ori. complaint be returned to the complainant directing her to present it in appropriate court. Ld. counsel appearing for the accused Mr. Thakkar has tried to submit that this comlainant-wife has filed a civil suit for maintenance in the Court of Civil Judge (SD) at Vadodara under sec. 18 of the Hindu Adoption and Maintenance Act and in that suit, the address of the petitioner-complainant is shown to be a place located within the city of Vadodara. Certified copy of such civil suit or say the declaration of address has not been brought before this Court. Even if it is accepted for the sake of arguments that the civil suit filed in the Court of Civil Judge (SD) Vadodara would not affect the

merits of this matter. Undisputedly, the marriage has taken place at Vadodara. So, for the sake of convenience, the complainant of that suit may give the local address convenient to her and the parties. One important aspect should not loose sight of that the accused no. 1-respondent husband had appeared and contested the proceedings initiated in the Court of Ld. J.M.F.C., Halol. There are positive averments in the complaint that the complainant wife is residing with her parents and her ordinary place of residence is shown to be Kanjari Road, Halol, Dist.. Panchmahals. So, it would be wrong to say that this address has been wrongly shown by the complainant only with a view to harass the accused persons and to drag them to a litigation on false averments to a distant and inconvenient place. It is neither the say nor the submission that dispute as to the territorial jurisdiction to try and deal with the maintenance proceedings was raised. On the contrary, it transpires that the order, granting maintenance was complied with by the accused. Mr. Thakkar during the course of oral submissions has attempted to give some examples whereby he demonstrated that in absence of specific contract or understanding between the parties, the Court, where the accused reside or the property is required to be returned or accounted for by the accused persons should not assume jurisdiction which invite tremendous hardship and inconvenience and it may tempt the complainant wife to come and settle in the farthest corner of the country only with a view to file some complaints. This court is not able to agree with the hypothetical premises put forward by Mr. Thakkar. With increase of mobility and other social-redical-changes and fast mode of transportation, it is possible that in some exceptional cases, the accused may be dragged to litigation at a distant or an inconvenient place. But it is always obligatory on the part of the complainant to establish to the satisfaction of the court that he or she is resident of a particular place and that the property was required to be returned or accounted for to him/or her by the accused persons. When the Court is not in an agreement that the town Halol is not an ordinary place of resident of the present complainant than the hypothetical submission cannot be accepted. On the contrary, the averments made by the accused persons in the application Exh. 9 indicate that the ordinary place of resident of the complainant is town Halol only. Revision Application filed before the ld. Sessions Judge, Godhra, also indicates that the address of the present petitioner complainant is Kanjari Road, Halol.

15. It is not on record that an application under

sec. 27 of the Hindu Marriage Act was even moved by either parties in the divorce proceedings nor the court had directed the complainant-petitioner to collect a stridhan property from the accused persons or accused no. 1-husband on termination of divorce petition filed by the husband. A deserted wife residing with her parents immediately after separation or desertion is supposed to receive her properties from her In-laws smoothly and conveniently. The attempt to misappropriate such property is condemned by this court and the Apex Court in number of decisions in the proceedings initiated before the Criminal court or Civil Court under relevant laws. Why a wife should be asked to prosecute husband in a court located in the area or place which she might have been compelled to leave, merely because the wife has not prayed any relief either under sec. 26 or sec. 27 of Hindu Marriage Act ? This point is not fully answered by way of the cited decision. As per social set up she has to live with husband at a place which may be fully unknown to her. During the pendency of the proceedings under that Act, her right to take appropriate remedy would not be adversely affected. Sec. 27 of the Hindu Marriage Act, on the contrary, provides that while passing a decree in a petition filed under the Act, the court can pass an orders for return of articles, if any. It is true that the complainant-wife could have prayed for Stridhan and her personal properties by filing an application or by praying appropriate relief in the written reply filed in the divorce petition merely because complainant-wife could have prayed so or it was possible for her to file a similar complaint in the Court of J.M.F.C., Bhuj where the accused persons have refused to return of her Stridhan and other personal property or in the Court of J.M.F.C, Adipur where she was residing with the accused no. 1 after her marriage would not affect the right of complainant-wife to invoke the jurisdiction of the Court where she resides or in other words, where the accused is required to return her Stridhan and personal property, she has rightly invoked the jurisdiction vested with the Court of Ld. J.M.F.C., Halol in reference to sub-sectin(4) of sec. 181 of CrPC. Chapter-XIII of the CrPC deals with the jurisdiction of the criminal courts in enquiry and trial. The ld. Sessions Judge should have read and analyzed the latter part of sub section (4) of Sec. 181 of CrPC in light of the provisions of sec. 177 of CrPC.Sub-sectin (4) of sec. 181 of CrPC is an exception to the ordinary place of enquiry and trial made in sec. 177 of CrPC.

16. In the case of Harjeet Singh Ahluwalia vs. State of Punjab and Anr., reported in 1986 Cri.L.J., p.2070,

the Punjab & Haryana High Court has observed that the forum of adjudication for the matter of that place where the police has to investigate the commission of the alleged offence cannot therefore depend upon the sweet will of the complainant-wife who may choose to shift to a place other than the place where the alleged offence of criminal breach of trust is said to have been committed. It is, thus, quite obvious that the words " was required to be returned or accounted" have no nexus whatsoever with either the parental home of the wife or any other place where she chooses to reside after the break-down. Neither of the Courts at those places would therefore have jurisdiction to try the offence of criminal breach of trust by virtue of the clause (4) of Section 181 of CrPC. It is, however, undisputed that the Courts at those places can have jurisdiction to try the offence by virtue of the other clauses of sec. 181(4) if the case can fall under any of those clauses. The requisite 'requirement' is to be determined on the basis of the stipulation, if any, between the parties, i.e. the complainant and the accused as to where the goods are to be returned or to be accounted for. In the absence of any such stipulation, it would be the place where the goods in question were kept in trust and a breach in respect thereof was committed. Mr. Thakkar has placed reliance on this observation and facts of this cited decision. The question before the Punjab & Haryana High Court was res integra and no direct precedent on the point was cited before the Court by either parties. The Punjab & Haryana High Court was dealing with a petition moved under sec. 482 of CrPC and the FIR registered with the Civil Lines Police Station, Amritsar under sec. 154 of CrPC. Marriage is a social institution and it would not only be illogical but imprudent to imagine that there is scope between the parties to marriage i.e. husband and wife, that they may determine the point of requirement or there can be any stipulation between them, anticipating the status of complainant and the accused, as to where the goods, in the eventuality is to be returned. Stridhan being offered to at any time immediately prior to marriage, during marriage ceremony and in immediate subsequent days or weeks of performance of marriage ceremony. Normally, Indian wives are receiving the gifts from close relatives and friends during these days only. So, what would happen to these properties in the event of break-down, cannot be anticipated in advance and therefore, existence of any such stipulation cannot be expected. Considering the social experience and the relevant social set up, it can be inferred that in the event of a separation of husband and wife resulting into a break-down, normally wife is at

a receiving end. Victimisation, she being a weaker vessel by social force is an accepted out come. So, the interpretation of sub section (4) should be harmonious to the legislative intent. There may be more than one parallel interpretation of a same legal cause depending upon the nature of event or transaction. In a commercial transaction, one can expect a stipulation so as to the property entrusted to or is to be accounted for. In socio economic transaction, anticipation of such stipulations when a wife has been defrauded or her property has been dishonestly misappropriated or converted for their own use by In-laws, the expectation of existence in stipulation that where the property is required to be returned by the accused persons may result into miscarriage of justice. The ratio of the above cited decision of Punjab & Haryana High Court has only persuasive value and it is not possible for me to record my agreement with the same.

17. In the case of Vijay Kumar & Anr. vs. Sunita & Ors., reported in 2000 Cri.L.J. p. 4116, the Madhya Pradesh High Court has held that the offence punishable under sec. 406 of IPC i.e. criminal breach of trust is triable by the Court within whose jurisdiction the offence is complete. Stridhan property was given to the respondent-wife at the time of her marriage at Place-A, which was dishonestly misappropriated by her In-laws at place-B where she entrusted to them. Mere the entrustment of property with no dishonest misappropriation does not make the offence complete. It is held by the Court on facts that the place-B where the dishonest misappropriation of entrusted property was done had jurisdiction to try the mater and not the place of marriage where she was given stridhan property. This decision would not help the respondent-accused because it deals with the law in reference to the entrustment and its dishonest misappropriation by the persons entrusted with the property in question. So, the place where the property has been dishonestly misappropriated can have jurisdiction. In the complaint itself, it is mentioned that her stridhan properties were entrusted for the sake of safe custody to the accused persons. But, on plain reading of the cited decision, it transpires that it was not the case of the complainant that these stridhan properties were required to be returned to her by the accused persons where she resides. The finding of the Madhya Pradesh High Court is that, as observed above, the offence was committed at Jhansi (U.P.), the natural corollary therefore, follows that the jurisdiction would lie with the Court at Jhansi (U.P..) and not at Pichore, Dist. Shivpuri." This Pichore was a place where the

marriage had taken place. This cited decision does not deal with the interpretation of latter part of sub-section (4) of sec. 181 of CrPC.

18. In the case of Satvinder Kaur vs. State (Govt. of N.T.C. of Delhi) & Anr., reported in 1999 Cri.L.J. p. 4566, the Apex Court has held that in exercise of inherent powers under sec. 482 of CrPC, FIR cannot be quashed on that ground that police station where the complaint was lodged did not have territorial jurisdiction to investigate the offence. Para-8 of the decision, on the contrary helps the present petitioner. The Delhi High Court had quashed the complaint on the ground that the alleged cruelty punishable under sec. 498A of IPC was committed at Patiyala where the victim Satvinder Kaur was thrown out of her matrimonial home with four weeks baby girl having only wearing apparels. This decision deals with altogether a different aspects and the Apex court ultimately held that it was open for the police of Paschim Vihar Police Station, New Delhi to investigate the crime. The Court is supposed to think about the social stability and social order are required to be regulated by proceeding against the offenders wherein it is found that a one single offence is an offence against the society as a whole. The decision of the Delhi High Court in the case of Mohan Lal & Ors. vs. State, reported in 2000 Cri.L.J. p. 3762 also would not help the respondent-accused because the decision deals with the interpretation of sec. 178 of CrPC and the Court has decided pointed issue in reference to the facts and held that cruelty is a continuous offence and these acts of cruelty came to an end as soon as the complainant left the matrimonial home and came to her parents house. So,the Court at Delhi had no territorial jurisdiction to try the offence of cruelty. Obviously, the provisions of sub-section (4) of sec. 181 of CrPC would not be attracted.

19. The marriage between the complainant-wife and the respondent no. 1-accused had taken place at Vadodara. It would not be proper or legal to dismiss the present criminal revision application merely on the ground that the petitioner-complainant wife has filed a suit for maintenance at Vadodara. The complaint cannot be thrown out on assumption that the petitioner-wife is trying to misuse privilege emerging from sub-section (4) of section 181 of CrPC by initiating the proceedings to terrorise the earning spouse who has obtained a decree of divorce from competent court, or to harass him. So, the arguments advanced on this line are not found acceptable.

20. This Criminal Revision Application is therefore, allowed. The impugned judgment and order passed by the ld. Sessions Judge, Panchmahals at Godhra dated 14.8.2001 is hereby quashed and set aside and it is held that the Ld. J.M.F.C. Halol has jurisdiction to try the Criminal Case No. 1887 of 1999 in respect of the Stridhan in view of the provisions of Section 181(4) of Cr.P.C. Rule is made absolute accordingly.

(C.K. BUCH, J.)
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