

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P No.27/2018

1. Sri Dipak Biswas,
Son of Sri Dulal Biswas.

2. Sri Dulal Biswas,
Son of late Ram Gour Biswas.
All are resident of Viullage : South Chandrapur,
P/S- R.K.Pur, Udaipur, District : Gomati, Tripura.

..... **Petitioner(s).**

Versus

1. Smt. Aditi Kar (Biswas),
Wife of Sri Dipak Biswas, At present residing at
C/o. Sri Milan Chandra Kar, Rajbari, P.S.-R. K.Pur,
Udaipur, District : Gomati, Tripura.

2. The State of Tripura.

..... **Respondent(s).**

BEFORE

THE HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY

For Petitioner(s) : Mr. B. N. Majumder, Sr. Advocate.
Mr. S. C. Sen, Advocate.

For Respondent(s) : Mr. S. Ghosh, Addl. Public Prosecutor.
Mr. A. Acharjee, Advocate.

Date of hearing : 17th March, 2021.

Date of Judgment & Order : **23rd April, 2021.**

Whether fit for reporting : NO.

JUDGMENT AND ORDER

[1] Petitioner has challenged the judgment dated 02.05.2018 delivered in Criminal Appeal No. 29(2) of 2017 by the Sessions Judge, Gomati Judicial District, Udaipur affirming the judgment dated 05.06.2017 passed by the Judicial Magistrate, First Class, Udaipur, Gomati Judicial District in case No.CR(DV) 24 of 2016 whereby the Crl. Rev. P No.27/2018.

learned trial Court passed a protection order in favour of the respondent wife of the petitioner under Section 18 of the Protection of Women from Domestic Violence Act, 2005 (DV Act, for short) prohibiting the petitioner from committing any act of domestic violence on his respondent wife and directing him to return her *stridhan* in terms of Sub Section (8) of Section 19 of the DV Act.

[2] Brief facts of the case are as under:

Respondent-wife of the petitioner filed an application under Section 12 of the D.V. Act in a Court of the Chief Judicial Magistrate, Gomati Judicial District at Udaipur on 30.05.2016 alleging, inter alia, that her marriage with the petitioner was solemnized on 23.07.2014 and at the time of marriage her parents gave a sum of Rs.5,00,000/- in cash to her husband and other valuables including various items of jewellery, furniture, bed-bedding etc. Few months after marriage, her petitioner husband started demanding more cash from her parents for buying a car and respondent was subjected to torture by him for fulfillment of his demand. On 29.01.2016 she was beaten up by her husband. She informed her father to come and rescue her. Thereafter she filed a complaint under Section 498A IPC against her petitioner husband and also claimed maintenance allowance from him by filling a separate petition under Section 125 Cr. P.C. It was alleged by the respondent wife that her husband forcefully retained her *stridhan* including her jewellery. She therefore, claimed in a petition for return of her *stridhan* and a direction to her husband prohibiting him from committing any act of domestic violence on her. The respondent wife in her said petition

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furnished a list of her *stridhan* allegedly retained by her husband which is as under:

"SCHEDULE OF PROPERTIES/STRIDHAN"		
Sl. No.	Articles	Quantity
01.	Cash – Rs.5,00,000/-.	
02.	Raj Khat.	01 No.
03.	Steel Almirah.	01 No.
04.	Golden finger ring.	01 No.
05.	Golden chain.	01 No.
06.	Golden Bala.	02 Nos.
07.	Golden ear ring.	02 Nos.
08.	Golden Necklace.	01 No.
09.	Bed, pillows, Bed sheet, Mosquito net etc.	----
10.	Sharee.	20 Nos.
11.	Pital Picher.	01 No.
12.	Thala.	02 Nos.(Kash)
13.	Glass.	02 Nos.(Kash)
14.	Bati.	02 Nos.(Kash)
15.	All Official Certificates.	
16.	All of the Educational Documents from Madhyamik to M.A.	
17.	Many other valuable items.	

[3] The Chief Judicial Magistrate received the complaint and made over the case to the Court of Judicial Magistrate, First Class (Court No.2) at Udaipur. Having received summons petitioner husband and his father Dulal Biswas appeared in Court and a written statement was submitted by the father of the petitioner in which he stated that no cash was paid by the parents of the respondent wife during marriage. It was admitted that some ornaments were given to her by her parents during her marriage which were taken away by her while she left her matrimonial home on 29.01.2016. It was stated in the written statement of the father of the petitioner husband that the respondent wife was

suffering from mental disorder for which she received treatment from various mental clinics at Agartala and Manipur and also at NIMHANS in Bangalore. The trial Court also called for a domestic incident report from the concerned Protection Officer and such report was submitted in Court on 20.10.2016.

[4] During trial of the case, respondent wife examined herself as PW-1. Her father, Sri Milan Chandra Kar as PW-2, a goldsmith namely, Sri Arun Kumar Bhowmik as PW-3 and Smti Sikha Deb, Sub-Inspector of Police of R. K. Pur Women Police Station as PW-4. All these four witnesses were cross examined on behalf of the petitioner husband.

[5] Petitioner husband on the other hand examined his father Dulal Biswas as OPW-1.

[6] In the course of trial following issues were framed by the learned trial Court.

(i) Whether respondent No.1 committed domestic violence on his wife?

(ii) Whether the articles claimed by the wife as her *stridhan* were actually lying in the possession of the husband?

(iii) Whether the aggrieved wife was entitled to the recovery of her *stridhan* and if so to what extent?

(iv) Whether she was entitled to any other relief/reliefs?

[7] On appreciation of evidence, the trial Court held that the allegation of the wife with regard to commission of domestic violence

against the husband was true. The learned trial judge therefore, prohibited the petitioner husband from committing any act of domestic violence on his wife. This apart, the learned trial Court also held that the wife was entitled to her *stridhan* which was retained by her husband and directed to return the following *stridhan* to the aggrieved wife.

SL. NO.	ARTICLES NAME	QUANTITY
1.	Gold finger ring	1(one)
2.	Gold chain	1(one)
3.	Gold Bala	2(two)
4.	Gold ear ring	2(two)
5.	Gold necklace (weighing 12 ¹ / ₂ vori)	1(one)
6.	Raj Khat	1(one)
7.	Steel Almirah	1(one)
8.	Bed and beddings	--
9.	Saree	20(twenty)
10.	Pital Pitcher, thala of brass	2(two)
11.	Glass of brass	2(two)
12.	Bati of brass	2(two)

[8] Aggrieved by and dissatisfied with the order of the learned trial Court, the husband and his father filed an appeal in the Court of the learned Sessions Judge in Gomati Judicial District, Udaipur challenge the said judgment.

[9] The learned Sessions Judge by the impugned judgment affirmed the judgment of the trial Court and held as under:

“11. That being the position of the evidence of the Pws and the defence evidence being lacking in substance and clarity so as to re but the evidence of the PWs, I find that the learned Trial court was right in directing the appellant husband to return

the *stridhan* and gold ornaments to the petitioner-respondent as mentioned in details in his order.

As such I am of the view that the order of learned Trial Court does not suffer from any infirmity and thus calls for no interference.”

[10] As noted, the petitioner husband has challenged the said judgment of the learned Sessions Judge by means of filing this criminal revision petition mainly on the following grounds:

(i) Proof of the commission of domestic violence is a *sine qua non* for passing any protection order under the DV Act.

(ii) The learned trial Court passed protection order including the order to the husband for return of *stridhan* without any proof of the commission of the domestic violence on the wife.

(iii) The Trial Court had erroneously viewed that filing of a case under Section 498A IPC against the husband is a proof of the commission of the domestic violence on the wife. The learned trial Court did not appreciate the evidence properly and passed an erroneous judgment holding the husband guilty of commission of domestic violence.

[11] It was pleaded by the petitioner husband that his wife had taken away her jewellery while leaving her matrimonial home. The petitioner husband however, agreed to return the following articles to his

respondent wife: (i) Raj Khat, (ii) Steel Almirah, (iii) Bed and Bedding, (iv) Mosquito net, (v) Sarees, (vi) Pital Pitcher, Thala, Glass and Bati etc.

[12] Heard Mr. B. N. Majumder, learned Sr. Advocate appearing for the petitioner husband along with Mr. S.C. Sen, learned Advocate. Also heard Mr. A. Acharjee, learned Counsel appearing for the respondent wife.

[13] Counsel appearing for the petitioner submits that an order under Sub Section (8) of Section 19 of the DV Act directing the husband to return *Stridhan* to the aggrieved wife can be passed only when it is proved that domestic violence has taken place. It is argued by Mr. B.N. Majumder, learned Sr. Advocate that in the given case there is no proof of commission of domestic violence and in absence of such proof, order directing the husband to return *stridhan* to the wife is completely erroneous. It is also argued by learned counsel of the petitioner that the jewellery which the wife got as her bridal gifts during marriage were taken away by her while she left her matrimonial home and in such circumstances the husband cannot be asked to return the same to his wife. Learned counsel therefore, urges the Court to allow the criminal revision petition.

[14] Counsel appearing for the respondent wife on the other hand submits that the trial Court called for a domestic violence report from the Protection Officer and such report along with the evidence adduced by the wife clearly proved that the wife was subjected to domestic violence and her *stridhan* was retained by her husband while she was ousted from her
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matrimonial home. According to Mr. Acharjee, there is no reason to interfere with the concurrent findings of the courts below which are based on sound evidence.

[15] With regard to return of *stridhan* to the respondent wife it is submitted by learned counsel that legally the husband has no right over the *stridhan* of his wife. He can at best be regarded as the custodian of the *stridhan* of his wife and in no point of time he can claim any interest in such property of his wife. It is further argued by Mr. Acharjee, learned counsel that if the husband invest the *stridhan* of his wife for any purpose of his own, he would be liable to prosecution for criminal breach of trust. In support of his contention Mr. Acharjee has relied on the decision of the Apex Court in ***Krishna Bhattacharjee Vrs. Sarathi Choudhury and another;*** reported in **(2016) 2 SCC 705** wherein the Apex Court has held as under:

"25. The said passage, be it noted, has been quoted Pratibha Rani v. Suraj Kumar and Another¹⁰. In the said case, the majority referred to the stridhan as described in "Hindu Law" by N.R. Raghavachariar and Maine's "Treatise on Hindu Law". The Court after analyzing the classical texts opined that:-

"7. It is, therefore, manifest that the position of stridhan of a Hindu married woman's property during coverture is absolutely clear and unambiguous; she is the absolute owner of such property and can deal with it in any manner she likes — she may spend the whole of it or give it away at her own pleasure by gift or will without any reference to her husband. Ordinarily, the husband has no right or interest in it with the sole exception that in times of extreme distress, as in famine, illness or the like, the husband can utilise it but he is morally bound to restore it or its value when he is able to do so. It may be further noted that this right is purely personal to the husband and the property so received by him

in marriage cannot be proceeded against even in execution of a decree for debt."

26. In the said case, the Court ruled:-

"... a pure and simple entrustment of stridhan without creating any rights in the husband excepting putting the articles in his possession does not entitle him to use the same to the detriment of his wife without her consent. The husband has no justification for not returning the said articles as and when demanded by the wife nor can he burden her with losses of business by using the said property which was never intended by her while entrusting possession of stridhan. On the allegations in the complaint, the husband is no more and no less than a pure and simple custodian acting on behalf of his wife and if he diverts the entrusted property elsewhere or for different purposes he takes a clear risk of prosecution under Section 406 of the IPC. On a parity of reasoning, it is manifest that the husband, being only a custodian of the stridhan of his wife, cannot be said to be in joint possession thereof and thus acquire a joint interest in the property."

27. The decision rendered in the said case was referred for a fresh look by a three-Judge Bench. The three-Judge Bench *Rashmi Kumar(Smt) v. Mahesh Kumar Bhada*¹¹ while considering the issue in the said case, ruled that :-

"9. A woman's power of disposal, independent of her husband's control, is not confined to *saudayika* but extends to other properties as well. *Devala* says: "A woman's maintenance (*vritti*), ornaments, perquisites (*sulka*), gains (*labha*), are her *stridhana*. She herself has the exclusive right to enjoy it. Her husband has no right to use it except in distress...." In *N.R. Raghavachariar's Hindu Law — Principles and Precedents*, (8th Edn.) edited by Prof. S. Venkataraman, one of the renowned Professors of Hindu Law para 468 deals with "Definition of *Stridhana*". In para 469 dealing with "Sources of acquisition" it is stated that the sources of acquisition of property in a woman's possession are: gifts before marriage, wedding gifts, gifts subsequent to marriage etc. Para 470 deals with "Gifts to a maiden". Para 471 deals with "Wedding gifts" and it is stated therein that properties gifted at the time of marriage to the bride, whether by relations or strangers, either

Adhiyagni or Adhyavahanika, are the bride's stridhana. In para 481 at page 426, it is stated that ornaments presented to the bride by her husband or father constitute her Stridhana property. In para 487 dealing with "powers during coverture" it is stated that saudayika meaning the gift of affectionate kindred, includes both Yautaka or gifts received at the time of marriage as well as its negative Ayautaka. In respect of such property, whether given by gift or will she is the absolute owner and can deal with it in any way she likes. She may spend, sell or give it away at her own pleasure.

10. It is thus clear that the properties gifted to her 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. He has no control over her stridhana property. Husband may use it during the time of his distress but nonetheless he has a moral obligation to restore the same or its value to his wife. Therefore, stridhana property does not become a joint property of the wife and the husband and the husband has no title or independent dominion over the property as owner thereof."

[16] In the given context, the respondent wife had categorically stated in her examination-in-chief that apart from the cash sum of Rs.5,00,000/- her parents gave several jewellery items to her at the time of her marriage which included necklace, bala, bracelet, ear rings etc. Along with her application under Section 12 of the DV Act she also attached a list of such articles. In her list, the jewellery items are described in Sl. No.4 to 8 which are as under:

Sl. No.	Articles	Quantity
04.	Golden finger ring	01 No.
05.	Golden chain	01 No.
06.	Golden Bala	02 Nos.
07.	Golden ear ring	02 Nos.
08.	Golden Necklace	01 No.

[17] During trial of the case, respondent wife also adduced the evidence of the goldsmith named, Arun Kumar Bhowmik as PW-3 who owned a jewellery shop named Maa Sandhya Jewellers at Bangla Bazar Road, Udaipur. In his testimony, PW-3 had categorically stated that father of the respondent came to his shop and placed order for some jewellery items for the purpose of the marriage of the respondent and items were selected by the respondent herself. The father of the respondent then gave the list of the items in an order slip, the receipt of which acknowledged by the PW by putting his signature thereon. The wife produced the receipt at the trial which was marked as Exbt.5. Five jewellery items have been mentioned in the said order slip (Exbt.5) along with the weight of each of the items which are as under:

Sl. No.	Articles	Quantity
01.	Golden finger ring weighing 5.830 gm.	01 No.
02.	Golden chain weighing 29.160 gm.	01 No.
03.	A pair of golden Bala weighing 60.500 gm.	02 Nos.
04.	Golden ear ring weighing 7.2900 gm.	02 Nos.
05.	Golden Necklace weighing 42.992 gm.	01 No.

Jewellery items mentioned in the said order slip (Exbt.5) are same which have been mentioned in the list furnished by the respondent wife along with her petition under Section 12 of the DV Act.

[18] In the course of hearing of this petition an advocate Commissioner was appointed by this Court vide order dated 15.06.2020

on the basis of the submission of the counsel of the petitioner husband who submitted before the Court that the said jewellery items might have been lying in the personal almirah of the respondent wife. The advocate Commissioner appointed by this Court was requested to open the almirah in presence of the parties and return the articles to the respondent wife if she agrees to accept those articles and thereafter submit the report before the Court. The Commissioner reported that he could not open the almirah since the key was missing. After hearing the parties the said advocate Commissioner was asked to break open the almirah in presence of the parties and submit his report in sealed cover. Pursuant to the said order of this Court, the Commissioner broke open the almirah at the house of the petitioner in presence of the father of the respondent wife and found 25 Sarees and several items of wearing apparels of the respondent wife, her imitation jewellery and several items of cosmetics in the said almirah and no gold ornaments were found by the Commissioner. List of the articles recovered by the Commissioner has been prepared and submitted before this Court.

[19] The situation in which respondent wife left her matrimonial home is very significant. In her evidence the respondent wife stated that on 29.01.2016 she was beaten up by her husband. 2/3 days thereafter she informed her parents. Her father came and rescued her with police assistance. PW-2, who is the father of the respondent also supported the evidence of his daughter by saying that he rescued his daughter from her matrimonial home with police assistance and thereafter she was

admitted in the district hospital at Udaipur where she was confined for two days. It is quite improbable that in such a situation it would have been possible for the respondent wife to carry all her jewellery items with her. It is no case of the petitioner that no jewellery or bridal gift was given to the respondent wife at the time of her marriage. Rather it has been abundantly proved by the list submitted by the advocate Commissioner that the respondent wife left everything of her daily use including her saree and all her wearing apparels, her cosmetics, imitation jewellery and even her purse in her almirah at her matrimonial home which indicates that she brought nothing with her. The Courts below have rightly held that tested on the preponderance of probability, case of the wife appears to be more probable than that of her husband. Moreover, the almirah in which she used to keep her own articles at her matrimonial home was lying in the custody of the husband. Interestingly, when the Commissioner appointed by this Court went to the house of the petitioner husband to open the almirah, it was told to him that the key was missing. It is no case of the husband that his wife had taken away the key with her. As a result, the Commissioner was asked to break open the almirah. Everything other than the jewellery items was found intact inside the almirah.

[20] As discussed, it is submitted by learned counsel of the petitioner that without proof of the commission of domestic violence, no order under Section 19 of the DV Act including the order for returning the *stridhan* to the possession of the aggrieved person can be made. Law is

very clear on this point. Section 19 of the DV Act clearly provides that the Magistrate while disposing an application under Section 12(1) of the DV Act can pass an order under Sub Section (1) of Section 19 or any other order under Sub Section (2) to Sub Section (8) of Section 19 of the Act:

"19. Residence orders.— (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing of the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without

sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer-in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer-in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to."

[21] The respondent wife gave consistent evidence at the trial Court in support of her allegation that she was persistently abused by her husband which included physical abuse as well as emotional abuse. Her father, PW-2 who was an Assistant Headmaster in a Government School also supported the statement of his daughter. PW-4, a woman Sub Inspector of Police, who accompanied the father of the respondent wife to her matrimonial home categorically stated that when she reached the matrimonial home of the respondent wife along with her father to rescue the respondent wife from there, she found her consistently crying. There

was no inmate of her matrimonial home besides her. Her husband or anybody else was not found there to console the lady. She wanted to return to her parents. Accordingly, she was brought back from her matrimonial home. The police officer unambiguously stated that the respondent wife did not bring anything with her from her matrimonial home while returning to her parents.

[22] Relying on the decision of the Apex Court in the case of **Reshmi Kumar(Smt) Vrs. Mahesh Kumar Bhada;** reported in **(1997) 2 SCC 397** the trial Court arrived at the conclusion that the properties claimed by the respondent wife being her wedding gifts were *stridhan* and she was the absolute owner of the said property and the husband had a moral and legal obligation to restore the same or its value to his wife. The Apex Court in the said judgment has held as follows:

"9. A woman's power of disposal, independent of her husband's control, is not confined to *saudavika* but extends to other properties as well. Devala says: "A women's maintenance (*vritti*), ornaments, perquisites (*sulka*), gains (*labha*), are her *stridhana*. She herself has the exclusive right to enjoy it. Her husband has no right to use it except in distress...". In "N.R. Raghavachariar's "Hindu law - Principles and Precedents" [8th Edn.] edited by Prof. S. Venkataraman, one of the renowned Professors of Hindu law para 468 deals with "Definition of *Stridhana*". In para 469 dealing with "Sources of acquisition" it is stated that the sources of acquisition of property in a women's possession are: gifts before marriage, wedding gifts, gifts subsequent to marriage etc. Para 470 deals with "Gifts to a maiden". Para 471 deals with "Wedding gifts" and it is stated therein that properties gifted at the time of marriage to the bride, whether by relations or strangers, either *Adhiyagni* or *Adhyavahanika*, are the bride's *stridhana*. In para 481 at page 426, it is stated

that ornaments presented to the bride by her husband or father constitute her Stridhana property. In para 487 dealing with "powers during coverture" it is stated that *saudayika* meaning the gift of affectionate kindred, includes both *Yautaka* or gifts received at the time of marriage as well as its negative *Ayautaka*. In respect of such property, whether given by gift or will she is the absolute owner and can deal with it in any way she likes. She may spend, sell or give it away at her own pleasure.

10. It is thus clear that the properties gifted to her 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. He has no control over her *stridhana* property. Husband may use it during the time of his distress but nonetheless he has a moral obligation to restore the same or its value to his wife. Therefore, *stridhana* property does not become a joint property of the wife and the husband and the husband has no title or independent dominion over the property as owner thereof."

[23] In view of what has been discussed above, the allegation against the petitioner that he committed domestic violence within the meaning of Section 3 of the DV Act on his respondent wife has been proved and the Courts below correctly arrived at the finding that the petitioner committed domestic violence on his respondent wife.

[24] With regard to the correctness of the direction of the Courts below to return *stridhan* to the possession of the respondent wife, it can be safely held that the Courts below rightly directed the petitioner to return the *stridhan* including the jewellery items to his respondent wife. I find no reason to interfere with the said direction of the Courts below.

[25] In the result, the petition is dismissed. The petitioner is directed to restore the said *stridhan* in terms of the impugned order or pay its value to the respondent wife within a period of two months from today.

Pending application(s), if any, shall also stand disposed of.

Send down the LCR immediately.

JUDGE

Dipankar



सत्यमेव जयते