

Date of Decision: July 25, 2024

Manoj Malhotra ...Petitioner

State of Haryana ...Respondent

Nirmal Malhotra and another ...Petitioners

State of Haryana ...Respondent

Present: None for the petitioner(s).

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. This common order shall dispose of both the abovementioned petitions as they arise from identical factual matrix. For the sake of brevity, facts are borrowed from ***CRR-103-2015*** titled as '***Manoj Malhotra vs. State of Haryana***'.

2. This revision petition has been preferred against the judgment dated 22.12.2014 passed by learned Additional Sessions Judge, Ambala vide which judgment of conviction dated 03.01.2012 and order of quantum of sentence dated 04.01.2024 passed by the learned Sub Divisional Judicial Magistrate, Naraingarh in FIR, bearing no.148 dated 23.12.2001 under Sections 406, 498A, 323 and 506 of the IPC registered at Police Station Shahzadpur, Ambala, were partly allowed. The learned Additional Sessions Judge, while upholding the conviction under Section 498A of the IPC,

acquitted the petitioners under Section 406, IPC. The petitioners were sentenced as under: -

Offence	Sentence
Section 498A read with Section 34 of IPC	Rigorous imprisonment for 1 year and a fine of Rs. 1,00,000/- each to be payable to the complainant.

FACTUAL BACKGROUND

3. The facts, in brief, are that the marriage of the victim-complainant was solemnized with the petitioner on 11.11.1999. Ample dowry articles were given to the petitioners. Soon after the wedding, however, it is alleged that the complainant was subjected to physical and mental harassment at the hands of the petitioners for the purpose of bringing more dowry. The complainant was taunted on account of bringing insufficient dowry as they also expected a car and a flat. Subsequently, she was turned out of the matrimonial home, while she was pregnant. A *panchayat* was convened, where the father of the complainant paid Rs.1,00,000/- to the petitioner-Manoj Malhotra in order to pacify him and his family. As a result, she was taken aback by the petitioners. However, they started maltreating the complainant again. Another *panchayat* was convened. This time, the petitioners demanded Rs.1,00,000/- and a flat. Hence, the complainant gave her statement before the police and the FIR was registered against the petitioner and his family members.
4. On being charged under Sections 406, 498-A, 323 and 506 of the IPC by the learned Sub Divisional Judicial Magistrate, Naraingarh, the accused pleaded not guilty and claimed trial.



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5. The prosecution examined as many as 11 witnesses to prove its case. Subsequently, the statements of the accused under Section 313 of the Code of Criminal Procedure were recorded, wherein the petitioners pleaded false implication and 01 defence witness was examined in order to prove their innocence.

6. After taking into account all the material on record, the petitioners were convicted by the learned trial Court vide judgment dated 03.01.2012. Aggrieved by the same, the petitioners preferred an appeal before the Lower Appellate Court, which was partly allowed in the aforementioned terms vide judgment dated 22.12.2014.

7. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. Moreover, learned counsel for the petitioners has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua quantum of sentence.

CONTENTIONS

8. Learned State counsel opposes the prayer of the petitioners as the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, which has been partly upheld by the learned Lower Appellate Court, and as such, they do not deserve any leniency.

OBSERVATIONS AND ANALYSIS

9. I have heard the learned State counsel and perused the paper-book with his able assistance.



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10. In *Deo Narain Mandal v. State of UP (2004) 7 SCC 257*, a three Judge bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient. Further, a two Judge Bench in *Ravada Sasikala v. State of AP AIR 2017 SC 1166*, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused. In order to determine the quantum of sentence, Courts should bear in mind the principle of proportionality as awarding punishment is not merely retributive but also reformative.

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11. As per the custody certificate produced by the learned State counsel, details of custody period of the petitioners are tabulated as under: -

Petitioner –Manoj Malhotra

Sr No.	Particulars	Period	Duration
1.	Custody under trial	-	-
2.	Custody after conviction	22/12/2014 to 07/02/2015	01 month and 16 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	22/12/2014 to 07/02/2015	01 month and 16 days
5.	Actual undergone period		01 month and 16 days
6.	Earned remission		15 days
7.	Total sentence including remission		2 months and 01 day

Petitioner- Nirmal Malhotra

Sr No.	Particulars	Period	Duration
1.	Custody under trial	-	-
2.	Custody after conviction	22/12/2014 to 07/01/2015	17 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	22/12/2014 to 07/01/2015	17 days
5.	Actual undergone period		17 days
6.	Earned remission	-	-
7.	Total sentence including remission		17 days

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Petitioner- Kailash Chander

Sr No.	Particulars	Period	Duration
1.	Custody under trial	-	-
2.	Custody after conviction	22/12/2014 to 07/01/2015	17 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	22/12/2014 to 07/01/2015	17 days
5.	Actual undergone period		17 days
6.	Earned remission	-	-
7.	Total sentence including remission		17 days

12. A perusal of the judgment of conviction passed by the trial Court and the lower Appellate Court indicates no perversity in their finding and the same are based on correct appreciation of evidence available on record. The FIR in the present case was lodged on 23.12.2001 and the case was instituted in the trial Court on 05.09.2002. The petitioners have faced the agony of a protracted trial, which has lasted for approximately 23 years. As per the custody certificates of the petitioners, there are no other criminal cases pending against them. Out of the total sentence of 1 year, petitioner- Manoj Malhotra has undergone actual sentence of 1 month and 17 days, while petitioners- Nirmal Malhotra and Kailash Chander have undergone actual sentence of 17 days. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence of rigorous imprisonment of 01 year awarded to the petitioners is reduced to the period already undergone by them.

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CONCLUSION

13. Consequently, the present revision are disposed of in the following terms: -

- (i) The judgment dated 22.12.2014 passed by learned Additional Sessions Judge, Ambala confirming the conviction of the petitioner is upheld, however, the order of sentence dated 22.12.2014 is modified to the extent that the sentence of rigorous imprisonment for 1 year under Section 498A IPC awarded to the petitioners is reduced to the period of sentence already undergone by them.
- (ii) The sentence of fine of an amount of Rs. 1,00,000/- each imposed upon the petitioners by the Lower Appellate Court is upheld. The petitioners are directed to deposit the amount of fine, if not paid, in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the petitioners shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

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

25.07.2024
manisha

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No