



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

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CRM-A-6-2020(O&M)

Date of order: 18.07.2024

Harjit Kaur

.....Applicant(s)

Vs.

Gurpreet Singh Bhullar & Others

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vaibhav Narang, Advocate for the applicant.

Nidhi Gupta, J.

Present application under Section 378(4) Cr.P.C. is filed seeking leave to file appeal against judgment dated 23.07.2019 passed by learned Judicial Magistrate, 1st Class, Amritsar, whereby the accused-respondents herein, have been acquitted in complaint case bearing No.COMI/223945/2013 filed under Sections 406, 498-A and 506 IPC at Police Station B Division, Amritsar. Respondent No.1 is the husband, respondent No.2 is the father-in-law and respondent No.3 is the mother-in-law of the applicant/complainant.

2. Brief facts of the case as set out by the applicant are that the applicant was married to respondent No.1 on 25.02.2004. One child was born out of their wedlock on 07.03.2005. At the time of marriage of the applicant/complainant, her family had spent huge amount and given her various dowry articles including washing machine, TV, etc. and also numerous gold ornaments along with cash, gifts to the respondents. Despite that, respondents were not satisfied and used to taunt the applicant from time to time. Primarily, the allegations made by the applicant against the

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respondents are of beatings inflicted upon her by the respondents; and demands of cash and other gift items as dowry, especially motorcycle. Subsequently, the applicant was thrown out of the matrimonial home on 21.04.2006. The applicant had previously also filed a complaint before the police however, no action was taken thereupon due to the political influence of the present respondents. Ultimately, on 10.2.2019, the applicant filed the present private complaint under Sections 406, 498-A and 506 IPC.

3. Learned counsel for the applicant inter alia submits that the list of dowry articles has been duly placed on record as Ex.CW1/A. However, despite that, the respondents have been acquitted. It is submitted that even photographs Ex.CW1/20 to Ex.CW1/33, were also produced by the applicant which show dowry articles being handed over to the respondents which sufficiently proves the case of the applicant. However, even the said evidence has been wrongly disregarded by the learned trial Court.

4. It is further submitted that the learned trial Court is in error in holding that since there is no MLR on record, therefore, offence under Section 498-A IPC is not made out. Learned counsel submits that in order to prove cruelty, it is not mandatory that the complainant should be physically injured and get herself examined. It is contended that merely because the applicant had not proved on record the MLR regarding the incidents of beating, her allegation of cruelty cannot be disregarded. It is accordingly, prayed that the impugned judgment be set aside.

5. No other argument is made on behalf of the applicant.

6. I have heard learned counsel for the applicant and perused the case file in great detail.

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7. In the present case, it has been alleged by the applicant that she was dragged by respondent No.1 from her hair, and forcibly given intoxicant tablet by him, and that she was habitually beaten by the respondents. In face of such vehement allegations of constant beatings inflicted on her by the respondents, including allegations that the respondents had threatened to kill her, and that she was beaten despite the fact that she was pregnant, it is odd that the applicant has produced no evidence whatsoever in support of the said allegations. Admittedly, no MLR has been placed on record by the applicant in support of her contentions. Even the previous complaint alleged to have been filed by the applicant has not been placed on record by her. As regards the allegation of mental cruelty, it has been alleged by the applicant that she had demanded return of her gold articles from her mother-in-law as she wanted to attend a marriage. However, the applicant did not disclose as to whose marriage she wanted to attend neither the name of the person whose marriage she wanted to attend nor the date of marriage nor her relation with the said person. As regards the incident of 21.04.2006 when she was allegedly thrown out of the matrimonial home when she was pregnant, the applicant has stated in her examination-in-chief that respondent No.1/husband had taken her on the said date to a beauty salon to get her threading done; whereafter she went to her parental home. Needless to say, this would not constitute being thrown out of the matrimonial home, let alone cruelty. It is also relevant that although it has been alleged by the applicant that she was thrown out of the matrimonial home on 21.04.2006, however, present complaint has been filed by her only on 10.02.2009.

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8. The applicant has also admitted in her evidence that her brother/CW2 and maternal uncle are facing criminal cases for causing injuries to her father-in-law in Court. This fact has been admitted by her brother/CW2 also. It has also been admitted by the applicant before the learned trial Court that in view of the above facts, even her petition under the Protection of Women from Domestic Violence Act has been dismissed.

9. It has become a matter of routine to file criminal complaints against the husband and his relatives on the basis of vague, general, and omnibus allegations without any material in support. In a recent judgment titled as **“Achin Gupta Vs. State of Haryana & Another” 2024 Live Law (SC) 343, Law Finder doc ID # 2569458**, the Hon’ble Supreme Court has flag marked the flagrant misuse of Section 498-A IPC in recent times and has recommended that in view of the false implication of the husband and his hapless relatives, the Legislature needs must relook at the corresponding Sections 85 and 86 of the Bharatiya Nyaya Sanhita which are a verbatim reproduction of Section 498-A IPC. The Hon’ble Supreme Court has further observed as follows: -

“In all cases, where wife complains of harassment or ill-treatment, Section 498-A of the IPC cannot be applied mechanically. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty”.

10. In the present case, in view of the facts as noticed above I find no error in the impugned order in holding that the applicant was unable

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to prove commission of offence under section 498-A IPC, by the accused-respondents.

11. As regards allegations of the applicant under section 406 IPC, it is an established precept of law that in order to make out an offence under the said provision, it is essential to establish three ingredients that: firstly there should be entrustment of dowry articles to the accused; secondly there should be a demand by the complainant side seeking return of the said articles; and thirdly, there has to be a misappropriation/ refusal on part of the accused to return the said dowry articles. In the present case, no doubt, the list of articles has been placed on record as Ex.CW1/A. However, the same is a photocopy. The applicant has even led no secondary evidence to prove the same. Moreover, it is not clear as to whom the said articles were allegedly entrusted. Even the person whose signatures are there on the list has not been examined. The bills of the gold articles have been produced as Ex.CW1/2 to Ex.CW1/13. CW4 has been produced as the person from whom the said articles were purchased. However, CW4 has admitted in his cross-examination that the said bills (Ex.CW1/2 to Ex.CW1/13) do not bear the date, bill number or any signatures. He has further admitted that these are *kacha* bills inasmuch as these are orders and estimates thereupon. As regards the bill of washing machine dated 03.03.2014 produced as Ex.CW1/19 and bill of the television produced as Ex.CW1/17, the same are in the name of maternal uncle of the applicant. Bills of clothes (Ex.CW1/14 to Ex.CW1/16) do not bear the name of the customer, etc. As such, on the basis of evidence led by the parties, the learned trial Court has found as follows: -

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“8. I have heard the Learned Counsel for the Complainant and Learned Defence Counsel and have gone through the case file carefully. First of all the section 406 of the IPC, list of the articles has been placed on the file as Ex. Cw1/A, the same is photocopy. It has not been proved on the file that the original of the same is with the accused. If the situation is that, then the complainant has to prove it by leading the secondary evidence in the file, but she has not done so. List does not bear the signatures of any of the accused to whom the articles are stated to be entrusted. Even the person whose signatures are there on the list that has not been examined. Further list does not mention about the occasion for which that was prepared. Further bills of the gold articles are produced as Ex.Cw1/2 to Ex.Cw1/13 and CW4 from whom the articles of the gold are alleged to be purchased in his cross examination admitted that the bills does not bear the date and bill number and signatures on these. He has also admitted that these are not cash memo and he has admitted that these are order and estimate as per the writing on these. Even he has not produced the record qua the bills in the court, since these are the Kacha Bills. Further in her cross-examination complainant herself admitted that the washing machine's bill produced in the court as Ex. CW1/19 is on the name of her maternal uncle and even this was purchased after the marriage as marriage took place on 25.02.2004 and bill is of date 13.03.2014. Further bill of the Television produced as Ex. CW1/17, this is also on the name of the Gurnam

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Singh who is maternal uncle of the complainant. Bills Ex. Cw1/14 to Ex. Cw1/16 are bills of the cloths, but these does not bear the name of the customer and even the record has not beer got produced from the concern shop. Further complainant produced, the photographs 10 show the handing over the articles to the accused parties as Ex. Cw1/20 to Ex. Cw 1/33. these photographs are not part of the this case file these are the part of the other file which is attached with the present file, even in her cross examination she has admitted that these photographs had not clicked by her and even no bill of these photographs has been placed on the file and even negatives have not been produced in the court. So these are also not got established on the file. Since the purchase of the articles alleged to be entrusted to the accused party is doubtful then the entrustment of the same is also become doubtful. Further in the complaint it has not been stated specifically to whom washing machine, T.V., iron almira and house hold articles were entrusted to the accused persons, only bills of the washing machine and T.V. have produced and these are on the name of the some other person and even one bill is of after the marriage and no bills of other articles are not produced or proved....”

12. In the present case even if it is assumed for the sake of argument that an entrustment was made, however, there is nothing on part of the applicant to show that a demand was made by her or her family seeking return of the said articles; and there was a refusal on part of the accused to



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return the said articles. As such, offence under section 406 IPC is not established.

13. Learned counsel for the petitioner is unable to dispute the above said facts and findings and legal position.

14. Present application is accordingly, **dismissed**.

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

18.07.2024

Sunena

(Nidhi Gupta)
Judge

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>