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

CRA-S No.1984-SBA of 2004

Date of Decision: 05.06.2015

STATE OF HARYANA

.....Appellant

Vs

HARI CHAND AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rajesh K. Sheoran, Addl. A.G., Haryana.

Mr. Sandeep Kotla, Advocate
for the respondents.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. This is an appeal filed by State of Haryana against the judgment of acquittal dated 28.03.2003 recorded by Additional Sessions Judge, Panipat in appeal against judgment/order dated 05.11.2001 passed by Chief Judicial Magistrate, Panipat.

[2]. Vide order dated 05.10.2004, Division Bench of this Court granted leave to file appeal in respect of Subhash Chand (husband of the complainant) only. For other accused/respondents leave to file appeal was declined.

[3]. Accused were tried in FIR No.98 dated 15.03.1999 under Section 498-A/406 IPC, Police Station City Panipat. Complainant-Anita wife of Subhash Chand set the official machinery in motion on

the allegations that she was married to Subhash Chand on 20.06.1993 at Panipat. Her father spent about Rs.1,50,000/- on her marriage towards ornaments and other *Ishtnidhan*. A scooter was also given. However, complainant was harassed for bringing inadequate dowry.

[4]. On 09.08.1994, a son took birth from this wedlock. Her mother was insulted when she visited the matrimonial house on the pretext of giving under-valued gift items. Complainant was turned out of the matrimonial house in February 1997 and she remained in parental house upto February 1998. On assurance of the accused, complainant went back to matrimonial house in February 1998. However she was again turned out of matrimonial house on 06.12.1998. The entire dowry/*Ishtnidhan* was allegedly misappropriated by accused. With this background the prosecution against the accused persons proceeded.

[5]. During course of investigation dowry articles were recovered and report under Section 173 Cr.P.C., was submitted. Complainant got examined herself as PW-1, Narayan Dass as PW-2, Jawahar Lal as PW-3, Partap Singh, DSP as PW-4 and Inspector Karan Singh as PW-5. Rakesh and Suraj Parkash were given up as unnecessary. Statements of accused were recorded under Section 313 Cr.P.C., and they denied all the incriminating allegations against them and pleaded false implication. In defence, accused got examined Ramesh Lal as DW-1 and Sher Mohammad as DW-2.

[6]. Trial Court convicted all the accused i.e. Hari Chand

(father-in-law), Bhago Bai (mother-in-law), Kailasho Bai (sister-in-law), Subhash Chand (husband) and Rohtash (brother of husband) under Section 406/498-A and sentenced them rigorous imprisonment for 3 years each under Section 406 IPC and rigorous imprisonment for 3 years and fine of Rs.2,000/- each under Section 498-A IPC. The aforesaid sentences were ordered to run concurrently.

[7]. The accused filed appeal before the Additional Sessions Judge, Panipat against the conviction and sentence passed by Chief Judicial Magistrate, Panipat. Lower Appellate Court acquitted all the accused by setting aside their conviction.

[8]. Appeal was filed before this Court by State of Haryana and the Court took cognizance only qua husband i.e. Subhash Chand. In respect of remaining accused persons, leave was not granted.

[9]. Learned State counsel states that ingredients of offence under Section 406/498-A IPC are fully attracted.

[10]. The statement of PW-1 Anita was duly corroborated by Narain Dass in respect of continued cruelty meted to her on account of bringing inadequate dowry. Dowry articles were recovered from the possession of accused vide recovery memo Ex.PW2/C. Trial Court observed that since accused were unable to explain as to why dowry articles were retained by them, therefore, factum of dowry articles having been recovered from them coupled with shunting out the complainant from matrimonial house gave rise to the conclusion that complainant was harassed and dowry articles were misappropriated.

[11]. Trial Court ignored the testimonies of Ramesh Lal DW-1 and Sher Mohammad DW-2 in the context of their version having not seen the cruelty meted to Anita on account of bringing less dowry. The reason for aforesaid non-consideration of defence version was that the cruelty on account of not bringing sufficient dowry was committed within four walls of house and in such a situation outsiders were not supposed to be having any clue of the same. Special means of acquiring knowledge by aforesaid defence witnesses was missing, therefore, testimonies of defence witnesses were rejected. Appellate Court reversed the findings.

[12]. After hearing both the parties, this Court noticed that the Complainant-Anita PW-1 was turned out from matrimonial house on 06.12.1998 whereas FIR came to registered on 15.03.1999. No explanation was given by complainant for moving Ex.PW1/A so late.

[13]. Out of 10 prosecution witnesses initially cited by prosecution, only 5 were examined. Out of those 5 PWs so examined by prosecution PW1 to PW-3 are interested witnesses. PW-1 is the complainant herself, whereas PW-2 and PW-3 are her maternal uncle and father respectively.

[14]. In order to prove cruelty at the locality where complainant allegedly resided with her husband Subhash Chand, no witness has come forward to prove the alleged factum of cruelty. Despite citing that complainant resided at Gurgaon in a house of one Santokh Singh and prior to that in the house of one Arjun Singh, none of the aforesaid owners have been examined.

[15]. According to complainant's version she remained in village Gandhika, District Alwar only for 7 days. Distance between Gurgaon and Gandhika is quite long. The alleged cruelty on the part of parents of husband was found to be missing as in the age group of 65-75 years, father-in-law and mother-in-law would not have visited Gurgaon time and again in the context of inflicting cruelty as suggested by prosecution.

[16]. Rohtash along with his family was living separately in Gurgaon and this fact was duly admitted by complainant while appearing as PW-1.

[17]. Admittedly, prosecution has alleged that many Panchayats were convened but no witness from Panchayat was examined for corroborating the prosecution stand.

[18]. Scooter was never demanded, rather the same was given by Narain Dass on his free will. Offence under Section 406 IPC cannot be presumed in the absence of demand for return of dowry articles. Simply retention of *Ishtnidhan* without there being any demand to return the same does not attract culpability in terms of Section 406 IPC.

[19]. The deposition of PW-2 on the point of demand of motorcycle was misdirected itself when despite alleging the demand of motorcycle by Subhash Chand, the witness became wayward in pleading ignorance, whether motorcycle or scooter was given to Subhash Chand in the marriage.

[20]. The marriage of brother of complainant was fixed for

11.12.1998. Complainant being the only sister went to participate in the marriage on 06.12.1998 and the alleged shunting of complaint from matrimonial house has its own relevancy in the aforesaid context. Subhash Chand also attended the marriage where according to defence, he was insulted and custody of son was given to him. He was forced to leave the house. Till then, he has been bringing up his son who is still in his care and custody.

[21]. The alleged story of causing harassment soon after the marriage was never disclosed by complainant in the form of any complaint made to anyone. From the years 1993 to 1998, in respect of alleged torture no complaint was made to any one nor any report was lodged with the Police.

[22]. No specific entrustment vis-a-vis item given to accused, mother-in-law Bhago Bai was not the member of marriage party and allegation in the said context had no legs. Complainant was employed in Sanjeevni Nursing Home, Panipat. She wanted to continue with her job even after marriage. On being objected by Subhash Chand, complainant left the house of her own will. The entire family of husband Subhash Chand was involved.

[23]. In view of above, no specific allegations were forthcoming in respect of time, place and manner of cruelty.

[24]. Besides highlighting aforesaid grounds, learned counsel for the respondents submitted that Investigating Officer of the case has not been examined. Petition for divorce on the ground of cruelty filed by wife was allowed by the trial Court, however appeal is statedly

pending. The matrimonial status of wife at the time of marriage was also stated to be ground in which she always behaved indifferently and left matrimonial house of her own and thereafter left the son also in the company of her husband who is now doing B-Tech and is in care and custody of his father i.e. Subhash Chand.

[25]. The aforesaid attending circumstances of the case give rise to irresistible conclusion that in the absence of refusal to return *Ishtnidhan*, no offence much less offence under Section 406 IPC is made out. The false implication of entire family was rightfully appreciated by the Lower Appellate Court. This Court even granted leave to file appeal qua husband only. Complicity of husband if appreciated in the light of facts recorded, that also stands eclipsed in view of material ingredients of offence under Section 406 IPC having not attracted, factum of cruelty under Section 498-A is also found to be deficient on material particulars vis-a-vis time, place and manner of cruelty. Independent corroboration of instances of cruelty has not been done by any of the person in whose presence the cruelty might have been committed.

[26]. Apparently, the Investigating Officer of the case having not been examined and conduct of the complainant herself while leaving minor son in the company of her husband, therefore, the judgment of acquittal recorded by the Appellate Court, according to this, Court cannot be faulted. This Court is not persuaded to take different view than the one taken by Lower Appellate Court.

[27]. The judgments cited at the Bar i.e. **1992(2) RCR(CrI.) 339,**

Kartar Singh v. Rajdev Kumar and Another, 2012(6) RCR(Crl.) 508, Baljinder Singh v. State of H.P., 2012(5) RCR(Crl.) 601, State of NCT Delhi v. Mohammad Rafiq and 2013(7) RCR(Crl.) 814, State of NCT of Delhi v. Rakesh and others are the precedents to bring out alleged offences from culpability of the accused on the premise that in order to constitute offence in terms of Section 406 IPC, entrustment of *Ishtridhan* and refusal on demand are *sine qua non* for committing such offences. The cruelty in terms of Section 498-A IPC cannot be presumed without reference to time, place and manner of inflicting injury and it cannot be on the basis of trivial issues even though it has not been specifically defined anywhere. The allegations of cruelty cannot be presumed, if no complaint was ever lodged during the intervening period of commission of alleged cruelty till the date of filing of FIR.

[28]. The reasoned order recorded by the Lower Appellate Court based on evidence not be interfered with, without there being any substantial or compelling reasons.

[29]. Looking to the aforesaid attending circumstance, this Court does not find any merit in the appeal, consequently the same is dismissed.

June 05, 2015

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**(RAJ MOHAN SINGH)
JUDGE**