

CRM-M-26887-2014

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

**CRM-M-26887-2014
Date of Decision:19.03.2015**

Krishna and others

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the 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 ?

Present: Mr.Surinder Sharma, Advocate,
for the petitioners.

Mr. B.S.Cheema, DAG, Punjab.

Mr. P.S.Brar, Advocate,
for respondent no.2.

Paramjeet Singh, J.

Instant petition has been filed under Section 482 of the Code of Criminal Procedure (for brevity, 'Cr.P.C.') for setting aside the order dated 30.07.2013 (Annexure P-7) passed by Chief Judicial Magistrate, Faridkot whereby application under Section 319 Cr.P.C. moved by respondent no.2-complainant has been allowed and petitioners have been summoned to face trial for the offences under Sections 498-A/406/323/34 of the Indian Penal Code (for brevity, 'IPC') in F.I.R. No.271 dated 14.09.2011, registered at Police Station Faridkot (Annexure P-1) and for setting aside the order dated 17.04.2014

CRM-M-26887-2014

(Annexure P-9) passed by Additional Sessions Judge, Faridkot whereby revision filed by the petitioners has been dismissed.

In brief, the facts relevant for disposal of the present petition are to the effect that petitioner no.1 is mother-in-law, petitioner no.2 is brother-in-law (Devar), petitioners no.3 and 4 are sisters-in-law (Devrani) and petitioner no.5 is nephew (son of brother of husband) of the complainant. Respondent No.2 was married to Jugal Kishore on 12.02.1993 as per Hindu rites and customs. Since no child was born to respondent no.2 from the loins of Jugal Kishore, therefore, the couple adopted Manav as son on 23.01.2000 from their relatives namely Savita and Amardeep. From the very beginning of marriage, respondent no.2 insisted upon her husband to live separately from the family members and respondent no.2 and her husband started living separately from the petitioners in House No.216, Patti Gilan, Jamsher, Tehsil and District Jalandhar. Due to temperamental differences between respondent no.2 and her husband-Jugal Kishore, she along with adopted son left the company of her husband and started living with her parents at Faridkot. It is alleged in the petition that there are no specific allegations against the petitioners and even petitioner no.5 was minor at the time of registration of FIR. Petitioner no.5 was born on 23.11.1994 i.e. after marriage of respondent no.2 and Jugal Kishore. Petitioner no.3 was married to Deepak Kumar on 11.10.2000 i.e. after seven years of marriage of respondent no.2 and Jugal Kishore. The petitioners filed CRM-M-9574-2012 for quashing of F.I.R. No.271 dated 14.09.2011,

CRM-M-26887-2014

registered at Police Station Kotwali, Faridkot, under Sections 406/498-A/323/34 of IPC. In pursuance of the same, State-respondent no.1 filed reply to the effect that petitioners no.1 to 4 herein have been found to be innocent during the course of investigation and petitioner no.5 herein has not been named in the list of accused attached with the FIR and is unnecessary party. In that petition, on 19.02.2013, learned State counsel and learned counsel for respondent no.2 stated that after investigation, nothing has been established against the petitioners except petitioner-Deepak Kumar and his brother who is husband of the complainant, who have been attributed a specific role in causing injuries to the complainant, therefore, it was observed that the petition qua petitioner nos.1 to 3, 5 and 6 (petitioners herein) did not survive. That petition was disposed of being infructuous qua petitioners because challan was not presented against them. Thereafter, respondent no.2-complainant filed application under Section 319 Cr.P.C. for summoning of the petitioners to face trial along with co-accused for the offences under Sections 498-A/406/323/34 of IPC which has been allowed vide impugned order dated 30.07.2013 (Annexure P-7). Feeling aggrieved, the petitioners preferred revision before the Additional Sessions Judge, Faridkot which has been dismissed vide impugned order dated 17.04.2014. Hence, this petition.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioners vehemently contended that the present FIR has been registered after 18 years of the marriage.

CRM-M-26887-2014

Petitioner no.5 was minor at the time of registration of FIR. Petitioner no.1, who is mother-in-law of respondent no.2, is more than 80 years of age. Learned counsel further contended that there are no specific allegations against the petitioners with regard to entrustment of dowry articles and the demand of dowry. Learned counsel further contended that petitioner no.3-Seema was married to Deepak Kumar on 11.10.2000 i.e. after seven years from the marriage of respondent no.2 and Jugal Kishore. Learned counsel further contended that in CRM-M-9574-2012, learned State counsel and learned counsel for respondent no.2 stated that nothing has been established against the present petitioners, therefore, petition qua present petitioners did not survive. That petition was disposed of qua present petitioners with the observations that since challan has not been presented against them, therefore, it has become infructuous. Thereafter, respondent no.2 moved application under Section 319 Cr.P.C. in order to harass the petitioners.

Per contra, learned State counsel and learned counsel for respondent no.2 vehemently opposed the contentions of learned counsel for the petitioners and contended that specific allegations have been levelled against the petitioners. Learned counsel further contended that respondent no.2 was harassed by the in-laws family and the dowry articles were entrusted to them which have not been returned. Learned counsel supported the impugned orders.

I have considered the rival contentions of learned counsel for the parties.

CRM-M-26887-2014

The present petitioners along with accused-Deepak Kumar earlier filed CRM-M-9574-2012 for quashing of F.I.R. No.271 dated 14.09.2011, registered at Police Station Kotwali, Faridkot, under Sections 406/498-A/323/34 of IPC. On 19.02.2013, following order was passed by a Coordinate Bench in that petition:

“Learned counsel for the respondents state that after investigation, nothing has been established against the petitioners except petitioner No.4 (Deepak Kumar) and his brother who is husband of the complainant, who have been attributed a specific role in causing injuries to the complainant, and therefore, the petition qua petitioner Nos.1 to 3, 5 and 6 does not survive.

Learned counsel for the petitioners contends that petitioner No.4 is innocent and has been staying separately and has no role to play in the matrimonial affairs of the complainant.

A perusal of the FIR shows specific role attributed to petitioner No.4.

At this stage, learned counsel for the petitioners contends that the petitioners are willing to explore the possibility of settlement to which learned counsel for respondent No.2 is not averse.

List the matter on 11.4.2013 for further proceedings.

The complainant, her husband and petitioner No.4 shall remain present in court on the next date of hearing.”

On 25.07.2013, that petition was disposed of and following order was passed:

CRM-M-26887-2014

“Learned State counsel on instructions from ASI Shagun Singh informs that on presentation of challan, the trial Court has framed charges against petitioner No.4 and his brother on 1.5.2013.

Petitioner No.4, if aggrieved, can challenge the order by way of revision as the order is revisable. In case, petitioner No.4 files revision within 15 days from today, the same would be entertained without the objection of limitation, but petitioner No.4 will have to apply for condonation of delay, if required, in accordance with law.

Learned counsel for the petitioners also prays for exemption of petitioner No.4. For that, petitioner No.4 may move an application before the trial Court.

With these observations, the petition is disposed of.

For rest of the petitioners against whom challan was not presented, the petition has become infructuous and is disposed of as such.”

In reply filed by the State in that petition, it is specifically mentioned that Jugal Kishore and Deepak Kumar are the real accused and the petitioners herein were found to be innocent during investigation conducted by S.P.(HQ), Faridkot and S.S.P, Faridkot and it was recommended that challan would only be filed against Jugal Kishore and Deepak Kumar.

Perusal of FIR (Annexure P-1) reveals that there are no specific averments as to when dowry demand was raised by the petitioners. The marriage of respondent no.2 and Jugal Kishore was

CRM-M-26887-2014

solemnized on 12.02.1993. Petitioner no.5 was born on 23.11.1994 i.e. after the marriage of respondent no.2 and Jugal Kishore. Petitioner no.3- Seema was married to Deepak Kumar on 11.10.2000 i.e. after seven years of the marriage. It apparently appears that petitioner nos.3 and 5 have no concern with the *istridhan* articles given in the marriage. Only general allegations have been levelled that the petitioners used to hurl abusive language upon respondent no.2 and they used to beat her. There is no medical evidence with regard to beating etc. At the cost of repetition, it is pertinent to mention that on the basis of statement of learned State counsel and learned counsel for respondent no.2, earlier the petition filed for quashing of the FIR was disposed of being infructuous qua present petitioners.

From the above, since there is no specific entrustment of any article to the petitioners, offence under Section 406 of IPC is not made out. There is not an iota of evidence on record with regard to offence under Section 323 of IPC as there is no medical evidence or any other evidence which may show that offence under Section 323 of IPC is made out. The offence under Section 498-A of IPC is also not made out as neither of the petitioners was to be benefited by raising the demand of dowry. It seems that respondent no.2 moved application under Section 319 Cr.P.C. just to harass her in-laws.

At this stage, it would be relevant to reproduce the observations of the Hon'ble Supreme Court made in **Preeti Gupta & another v. State of Jharkhand & another**, AIR 2010 SC 3363 : (2010)

CRM-M-26887-2014

7 SCC 667, which read as under:-

“28. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

29. The courts are receiving a large number of cases emanating from section 498-A of the Indian Penal Code which reads as under:-

“498-A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.--For the purposes of this section, 'cruelty' means:-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

CRM-M-26887-2014

30. *It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.*

31. *The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.*

32. *Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.*

33. *The ultimate object of justice is to find out the*

CRM-M-26887-2014

truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

34. *Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases.*

35. *The criminal trials lead to immense sufferings for*

CRM-M-26887-2014

all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law & Justice to take appropriate steps in the larger interest of the society.

36. When the facts and circumstances of the case are considered in the background of legal principles set out in preceding paragraphs, then it would be unfair to compel the appellants to undergo the rigmarole of a criminal trial. In the interest of justice, we deem it appropriate to quash the complaint against the appellants. As a result, the impugned judgment of the High Court is set aside. Consequently, this appeal is allowed.”

For the foregoing discussion and the observations made by the Hon'ble Supreme Court extracted above, the present petition is allowed and the impugned orders dated 30.07.2013 (Annexure P-7) and dated 17.04.2014 (Annexure P-9) are set aside along with the subsequent

CRM-M-26887-2014

proceedings arising therefrom qua the petitioners.

19.03.2015

parveen kumar

(Paramjeet Singh)
Judge