

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

CRR No.643 of 2005

Date of decision: 26th August, 2015

Salwinder Singh and others

... Petitioners

Versus

Amarjit Kaur

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. D.S. Pheruman, Advocate
for the petitioners.

Mr. Aman Pal, Advocate
for the respondent.

FATEH DEEP SINGH, J.

The present revisionists were initially tried in criminal complaint under Sections 406/498A IPC and through judgment of conviction and order of sentence dated 12.01.2004 passed by the trial Court of learned Sub Divisional Judicial Magistrate, Baba Bakala were found guilty of commission of offences under Sections 406/498A IPC and were sentenced under Section 406 IPC to undergo rigorous imprisonment for one year and to pay a fine of ₹1,000 and in default of payment of fine to further undergo RI for two months, whereas under

Section 498A IPC they were sentenced to undergo RI for one-and-a-half years along with fine of ₹1,000 and in default whereof to further undergo RI for two months and which findings of the trial Court were challenged by the convicts in their appeal before the appellate Court of learned Additional Sessions Judge, Amritsar which through impugned findings dated 19.03.2005 maintained the conviction of all the four convicts and dismissed their appeal. The same is subject matter of challenge before this Court in the instant revision.

Heard Mr. D.S. Pheruman, Advocate for the petitioners; Mr.Aman Pal, Advocate representing the respondent and perused the records.

The allegations by the complainant Amarjit Kaur are that she was married with accused Salwinder Singh on 10.12.1995 out of which wedlock a son was born, claiming that her parents had given sufficient dowry at the time of marriage which was handed over to each of the accused and that on account of more demand of dowry, a matrimonial dispute arose forcing her to leave her matrimonial home leading to filing of the present complaint on 08.10.1997.

Appreciating the contentions of the two sides, it is duly acceded to by learned counsel for the contesting parties that the scope in a revision is very limited and it is only the very legality and propriety of an order or a finding that can be gone into. As has been pointed out on behalf of the complainant, there is specific allegation that the articles of Istri Dhan were handed over to each of the accused

and it was specifically made clear to them that the same were for the use of the complainant bride and has, in the complaint, detailed each and every article of Istri Dhan that has been handed over to Salwinder Singh husband, Charan Kaur mother-in-law, Piara Singh father-in-law and Mangal Singh brother-in-law and that the accused had denied her, her legitimate right to use these articles of Istri Dhan and when she demanded them back they have flatly refused to do so. Though, learned counsel representing the revisionists has sought to assail that it is rarely done at the marriages that a typed list of articles is prepared, does not impresses the Court much as Ex.PA is only the tabular form as to the articles which were handed over to each of the accused and thus, not much benefit could be drawn out of this argument by the revisionists. However, learned counsel has brought to the notice of this Court the agreement of compromise entered between the parties before the Gram Panchayat Attari, District Gurdaspur by way of Ex.DW1/1 and which is the stand of the accused that the gold articles belonging to the complainant side as well as accused side have been taken back by each of them.

Much force has been laid by learned counsel for the revisionists on the fact that in the proceedings under Section 125 Cr.P.C. the complainant wife in her statement Ex.R1 and her father Kashmir Singh Ex.R2 have nowhere levelled allegations of criminal breach of trust qua the Istri Dhan, which fact has not been controverted on behalf of the respondent side and even in the initial

stand taken by the accused by way of Ex.R5 which is a petition written to the Superintendent of Police, Police Head Quarter, Gurdaspur, there is mention of the fact that the parties have compromised and returned the respective articles and which is an admission made by the complainant in the judicial proceedings in the maintenance application wherein the applicant in her cross-examination had admitted about the compromise and application dated 21.07.1996 Ex.R2 and her signatures thereon, and therefore, in terms of Section 20 of the Indian Evidence Act, 1872 such an admission is a relevant piece of evidence and certainly undermines the case of the complainant which has escaped judicial scrutiny in the impugned findings and impels this Court to re-appreciate the evidence. Factum of this compromise is duly proved even by Gurnam Singh DW1, one of the signatories to this agreement of compromise. Furthermore, it has come in the cross-examination of Kashmir Singh father of the complainant as CW2 as well as that of complainant herself that they had not given any furniture at the time of marriage and failed to even give the particulars of the fridge, the source of its purchase or any documentary proof in respect of it, are matters which cannot be lightly inferred and which is the mainstay of the allegations of the complainant. It cannot be lost sight of the fact that in cases of matrimonial disputes, there is always a tendency to rope in the near relatives for a motivated purpose especially when the police refuses to challan leading to filing of a complaint and therefore, courts have to be

slow in accepting the allegations unless and until they are materially corroborated. It has been rightly pointed out on behalf of the revisionists that not even a single document or substantial proof of purchase of Istri Dhan has been brought on the record which can instill confidence that the television, fridge etc. were given at the wedding. Critically evaluating, even the list of articles Ex.PA shows that they are mostly covered within the domain of gifts and when by the own admission and stand of the complainant the gold articles have already been taken back by each of the sides, rather creates a suspicious circumstance qua the truthfulness of Ex.PA.

Since the prosecution is under bounden duty to prove its allegations beyond the shadow of reasonable doubt and that there is neither any substantial evidence to prove handing over each and every of the dowry articles, much less their breach of trust.

The only semblance of evidence qua cruelty is demand of dowry. To the very query of the Court, learned counsel for the respondent could not answer if any specific instance, with time, place and the person before whom it was committed is forthcoming either in the complaint or the evidence of the complainant. Learned trial Court has lost sight of this fact that it is the evidence that has to be gone into constituting any particular offence and has failed to appreciate the same to reach at a judicious conclusion. Similarly, the learned appellate Court in its conclusion drawn in the impugned judgment has miserably failed to enliven its reasons by evidence and how it was in

concurrence with the findings of the trial Court. Merely accepting the allegations to be gospel truth, the learned lower Courts have come to these unjustified conclusions against the accused and did not even notice that the allegations of alleged cruelty are only vague and ambiguous, not supported in material particulars.

Thus, in the totality of what has been observed and seen, the conclusions drawn are certainly bereft of merits and the findings are wholly perverse in their approach and illegal in their reasoning, needs to be set aside by way of acceptance of this revision petition whereby judgment of conviction and order of sentence are set aside. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

August 26, 2015
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