

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Rev. No.644 of 2006
Date of Decision: 20.11.2015

Avtar Singh & others

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

Criminal Rev. No.1955 of 2006

Virsa Singh

...Petitioner(s)

Versus

State of Punjab & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

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

Present:- Mr. Dinesh Trehan, Advocate in CRR-644-2006.
Mr. Amandeep Saini, Advocate in CRR1955-2006.
for the petitioner(s).

Mr. Gurinderjit Singh, DAG, Punjab.

HARI PAL VERMA J.(Oral)

This order shall dispose of CRR Nos.644 and 1955 of 2006 as the same have arisen out of common judgments passed by the Courts below. However, for the sake of brevity, facts have been noticed from CRR No.644 of 2006.

CRR No.644 of 2006 has been filed by the petitioners-accused challenging the judgment dated 7.3.2006 passed by learned Additional Sessions Judge, Fatehgarh Sahib, whereby their appeal against the judgment dated 29.11.2002 passed by learned Judicial Magistrate Ist Class, Fatehgarh Sahib, convicting them under Section 498-A IPC and sentencing them to undergo rigorous imprisonment for two years and to pay fine of Rs.300/-, was dismissed, whereas CRR No.1955 of 2006 has been filed by the complainant against the same judgment dated 7.3.2006 questioning the inadequacy of sentence and therefore, has prayed for enhancement of the sentence.

Briefly stated, the case of the prosecution is that marriage of petitioner No.3 – Baljinder Singh was solemnized with Baljinder Kaur on 23.10.1997. After the marriage, the petitioners started maltreating her with an intention to coerce her for bringing more dowry and after some time, they also demanded a Maruti car. The parents of the Baljinder Kaur had given sufficient articles at the time of marriage as '*Istri Dhan*' including a Hero Honda motorcycle which was sold by accused Kamaljit Singh and all the accused misappropriated the jewellery of Baljinder Kaur. On 15.3.1997, when Baljinder Kaur had gone to her parental house, a complaint was lodged by father of Baljinder Kaur with SSP, Fatehgarh Sahib and on the basis of this complaint, the present FIR No.179 dated 7.9.1999 under Sections 406/498-A IPC, Police Station Sirhind was registered against the petitioners. On investigation, chargesheet was presented against the petitioners-accused. The accused were

supplied with copies of documents of challan free of cost as provided under Section 207 CrPC.

The prosecution examined Baljinder Kaur as PW-1, ASI Narinder Singh, Incharge, Chowki Nabipur as PW-2, Hamir Singh, Granthi as PW-3, Virsa Singh, father of the complainant as PW-4, Sukhdev Singh, uncle of the complainant, as PW-5, Surinder Kumar C/o Monika Jewellery, Sirhind Mandi, as PW-6, Ashok Kumar, as PW-7, SI Kashmira, as PW-8, Subash Goel, Managing Partner of M/s Goel and Goel, The Mall, Patiala, as PW-9, Davinder Singh, Proprietor of Hari Chand Lal, Sirhind Mandi, as PW-10, HC Jagdish Singh, as PW-11. However, PW Bhajan Singh, Panch, Nahar Singh and Parsin Singh were given up having won over by the accused, whereas Karnail Singh, witness, had died and Angrej Singh was given up, as unnecessary.

The trial Court after considering the evidence and hearing learned counsel for the parties, convicted the petitioners-accused under Section 498-A/406 IPC vide judgment dated 29.11.2002 and sentenced each of them to undergo R.I. for two years each and to pay fine of Rs.300/- each under Section 498-A IPC and in default of payment of fine, to further undergo R.I. for one month each. They were further sentenced to undergo R.I. for two years each under Section 406 IPC. All the sentences were ordered to run concurrently.

Aggrieved from the aforesaid judgment dated 29.11.2002, the petitioner no.3-Baljinder Singh (husband) as well as other accused/petitioners (relatives of husband) preferred separate appeals before learned Additional Sessions Judge, Fatehgarh Sahib

and learned Additional Sessions Judge, by common judgment partly accepted the appeals and acquitted the petitioners for offence under Section 406 IPC, but upheld their conviction and sentence for offence under Section 498-A IPC, as recorded by the trial Court.

In the aforesaid circumstances, the petitioners-accused as well as the petitioner-complainant have filed their respective revision petitions challenging the judgment dated 7.3.2006 passed by learned Additional Sessions Judge, Fategarh Sahib for the relief indicated in the paras above.

At the outset, it may be noticed that learned counsel for the petitioners/accused has confined his arguments with regard to quantum of sentence only. He submits that the whole family of the petitioner-husband including the close relatives have been roped in the present case, despite the fact that there is no allegation of entrustment of any property to them or demand of dowry. He further submitted that Baljinder Kaur, wife, had even remarried, which gives sufficient support to the fact that the petitioners have been falsely involved in the present case. He further submitted that apart from facing the agony of trial since the 7.9.1999, the petitioners have remained in custody for about five months, as against the total awarded sentence of two years and therefore, the sentence awarded to them be reduced to the period already undergone by them. He further submitted that the petitioner have already deposited the fine.

To substantiate his arguments, learned counsel has relied upon judgment of Hon'ble the Apex Court in the case of

Santoshi & others v. State of Madhya Pradesh 2011 (6) RCR (Criminal) 2133, wherein the accused were convicted for offence under Section 498-A IPC and as against the awarded sentence of one year, they remained in custody for about five months and therefore, their sentence was reduced to the period already undergone.

On the other hand, learned counsel for the complainant submitted that since there are serious allegations against the petitioners for demand of dowry, they have rightly been convicted. Therefore, the petitioners-accused are not entitled even for the relief of reduction of sentence. He further submitted that the scope of interference by this Court in revisional jurisdiction is very limited unless patent illegality in the impugned judgments is established.

Similarly, learned State counsel has argued that the judgments passed by the Courts are fully justified in view of allegations of demand of dowry against the petitioners and no interference is warranted by this Court in revisionary jurisdiction.

I have heard learned counsel for the parties and gone through the impugned judgments.

Hon'ble the Supreme Court in the case of **Arnesh Kumar v. State of Bihar 2014(3) RCR (Criminal) 527** in more or less in similar controversy has come to a conclusion that it has been noticed that in number of cases, the provisions of Section 498-A IPC and Dowry Prohibition Act are being misutilized by disgruntled wives to harass the husband and his relatives and get them arrested.

Since the provisions of Section 498-A IPC are being misutilized, the Hon'ble Apex Court came to the rescue of the relatives of the husband by directing the police not to make their arrest without reasonable satisfaction as to the genuineness of allegations. The observations made by Hon'ble the Apex Court in **Arnesh Kumar v. State of Bihar** (*supra*) read as under:-

"12. We are of the opinion that if the provisions of Section 41, Cr.PC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Cr.PC for effecting arrest be discouraged and discontinued.

13. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

(a) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;

(2) All police officers be provided with a check list containing specified sub- clauses under Section 41(1)(b)(ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

(4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

(6) Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

14. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.”

In **Santoshi & others v. State of Madhya Pradesh**

(*supra*), the Hon'ble Apex Court has held as under:-

“3. So far as the other appellants, namely, Brahma s/o Maniram Rathore, Maniram s/o Gopal Rathore, Kalawati w/o Maniram Rathore and Dakshri w/o Bramha Rathore, are concerned, they have also undergone imprisonment for a term of about 5 to 6 months. We are also informed that they have also paid the fine. Considering the facts and circumstances of the case and also considering the fact that at least two of them are ladies, we alter the sentence of imprisonment awarded to them to the period already undergone by them.”

Therefore, in view of judgments in the cases of **Arnesh Kumar v. State of Bihar** (*supra*) and **Santoshi & others v. State of Madhya Pradesh** (*supra*), this Court feels that ends of justice will be met if the substantive sentence of the petitioners is reduced to the period already undergone by them.

Accordingly, while upholding the conviction of the petitioners, the sentence awarded to them is reduced to the period already undergone by them. No case for enhancement of sentence is made out, as even the Baljinder Kaur has re-married.

With above modification in the sentence, both the petitions stands dismissed.

November 20, 2015
AK

(HARI PAL VERMA)
JUDGE