

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

**Criminal Revision No.217 of 2015 (O&M)
Date of decision: 05.02.2015.**

Gurtejpal Singh

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 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. J.S. Bedi, Sr. Advocate with
Mr. Simar P.S. Barnala, Advocate
for the petitioner.

Mr. Parupkar Singh Ghuman, Addl. AG, Punjab
for the respondent – State.

Daya Chaudhary, J.

The present revision petition has been filed to challenge the judgment of conviction and order of sentence dated 06.02.2012 passed by Chief Judicial Magistrate, Patiala, whereby the petitioner was convicted under Section 406 of the Indian Penal Code and also judgment dated 13.01.2015 passed by learned Additional Sessions Judge, Patiala affirming the judgment of conviction and order of sentence of the trial Court.

Briefly, the facts of the case are that the petitioner was

married to complainant on 11.12.1997. Certain dispute arose between the parties and the complainant filed a complaint on the basis of which, FIR No.125 dated 04.03.2000 was registered under Sections 406, 498-A IPC at Police Station Civil Lines, Patiala. A petition under Section 13 of the Hindu Marriage Act was also filed by the petitioner on the ground of cruelty, which was allowed in his favour. Petitioner-Gurtejpal Singh and co-accused faced trial for offences punishable under Sections 406, 498-A IPC. Co-accused of the petitioner were acquitted of the charges framed against them but the petitioner was convicted for offence punishable under Section 406 IPC only and sentenced to undergo RI for a period of one year and to pay fine of ₹1000/- with default clause but was acquitted of the charge framed under Section 498-A IPC vide judgment dated 06.02.2012.

Aggrieved against the said judgment of conviction and order of sentence dated 06.02.2012, the petitioner filed appeal before learned Additional Sessions Judge, Patiala, which was dismissed on 13.01.2015 and judgment of conviction as well as order of sentence passed by the trial Court was upheld.

After losing the case before two Courts below, the present revision petition has been filed by raising various grounds.

Learned counsel for the petitioner submits that the petition filed under Section 13 of the Hindu Marriage Act for grant of divorce on the ground of cruelty was passed on 17.03.2009 by holding that the petitioner was treated with cruelty by respondent-wife. Learned

counsel further submits that the petitioner was acquitted of the charge framed against him under Section 498-A IPC but was convicted only under Section 406 IPC by recording wrong finding that 83 articles have been recovered from him whereas as per list of dowry articles, those articles were returned to the complainant. Learned counsel for the petitioner also submits that the allegations regarding harassment were disbelieved by both the Courts below as the petitioner has been acquitted for offence punishable under Section 498-A IPC by holding that the allegations of beatings, demand of dowry were not made out. Learned counsel for the petitioner also submits that the trial Court while convicting the petitioner has not considered the decree of divorce granted in favour of petitioner on the ground of cruelty and also factum of returning the dowry articles prior to registration of FIR and as such, judgments passed by trial Court as well as lower appellate Court are liable to be set aside.

Learned State counsel has not disputed the submissions made by learned counsel for the petitioner.

Heard arguments of learned counsel for the parties and have also perused the judgments passed by the trial Court as well as lower Appellate Court and other documents available on the file.

Admittedly, the petitioner faced trial for offence punishable under Sections 406 and 498-A IPC. He was acquitted of the charge framed against him under Section 498-A IPC but was convicted for offence punishable under Section 406 IPC. While passing judgment of

conviction, the trial Court has held that there is no evidence on the file to show that the accused petitioner has subjected the complainant to cruelty as alleged by the prosecution and as such, he was acquitted of the charge framed against him under Section 498-A IPC. The trial Court has also held that it has duly been proved beyond the shadow of reasonable doubt that accused petitioner has misappropriated the dowry articles/Istri Dhan of the complainant wife and convicted him for offence under Section 406 IPC. A finding has also been recorded by the trial Court in the judgment that gold ornaments, which are Istri Dhan of the complainant were taken out from the locker by the complainant herself but the entire Istri Dhan of the complainant has not been returned to her. The petitioner has been convicted under Section 406 IPC on the ground that 83 articles have been recovered from him, which does not mean that dowry articles were not returned whereas the petitioner made a request by stating that he was willing to return all dowry articles on 30.01.2000 i.e., date of filing of divorce petition. The trial Court has not considered para Nos.36 and 37 of the divorce petition wherein it has been mentioned that the petitioner was ready to return the dowry articles even during meetings with Mediator on 20.12.1998 and 06.01.1999. An application was also moved under Section 391 Cr.P.C. for placing on record divorce petition wherein in para Nos.36 and 37, it was specifically mentioned that the petitioner was ready to return the dowry articles to the respondent-wife before her leaving the matrimonial home. Said application was also allowed

on 13.01.2015 and following order was passed: -

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XXX

XXX

I have heard the learned counsel for the appellant-applicant, learned Addl. P.P. for the State and carefully gone through the records on file. The appellant-applicant wants to place on file certified copy of petition under Section 13 of the Hindu Marriage Act dated 30.1.2000 filed by him against his wife Amarpreet Kaur. He also wants to place on file copy of list of dowry articles of Amarpreet Kaur lying in his custody. The production of these documents will not in any way prejudice the prosecution. Rather, their production on record will help the court in just and proper decision of the case. As such, the appellant is allowed to place on record the copies of both these documents by way of additional evidence. The application stands disposed of accordingly.”

In the judgment of divorce, it is mentioned in Para No.36 that a list of dowry articles taken away by the complainant was also attached only on the ground that 12 items, which were lying with the petitioner were not returned whereas 12 articles, which are mentioned in the petition, have been returned as is clear from Ex.PW/D/2 dated

20.04.2000.

In view of the facts as mentioned above, the conviction of the petitioner under Section 406 IPC is not based on correct facts and judgment of conviction and order of sentence has been passed by recording wrong finding and without considering the finding recorded in the judgment of divorce, which was allowed in favour of the petitioner.

In judgment of divorce passed in favour of the petitioner, it has been categorically held that all dowry articles were returned to complainant and as such, no offence is made out for offence punishable under Section 406 IPC and as such, judgment of trial Court as well as lower Appellate Court are set-aside and the petitioner is acquitted of the charge framed against him for offence under Section 406 IPC.

He should immediately be released, if not required in any other case.

05.02.2015
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(DAYA CHAUDHARY)
JUDGE