

In the High Court of Punjab and Haryana at Chandigarh

CRM-A-1310-MA-2015 (O&M)

Date of Decision: 24.10.2016

Amarjit Kahlon

.....Applicant

Versus

Lt. Col. D.S. Kahlon (Retd.)

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Raman Mahajan, Advocate
for the applicant.

ANITA CHAUDHRY, J(ORAL)

CRM-24346-2015

Application is allowed for the reasons stated therein.

Delay of 488 days in filing the application for grant of leave to appeal is condoned.

CRM-A-1310-MA-2015

This is an application under Section 378(4) Cr.P.C praying for leave to appeal against the acquittal filed by Amarjit Kahlon assailing the judgment of the trial Court. It is indeed unfortunate that the parties are litigating after being married for over 30 years.

Amarjit Kahlon a Lecturer was married to the respondent in September 1974. No child was born from the marriage. The husband was in the army. Disputes arose between them sometime in the year 2000. The husband started staying separately in 2004. The applicant filed a petition under Section 13 of the Hindu Marriage Act on the grounds of adultery and cruelty. The respondent upon notice appeared and filed his reply but later chose not to contest the petition and was proceeded *ex parte* and an *ex parte*

decree of divorce was passed in October 2007.

A complaint had been filed by the wife in July 2005 under Section 406, 494, 498-A and 506 IPC. The complainant had mentioned that she was working as an Administrative Officer in NCC and was living in Chandigarh whereas her husband was Captain in the Army and they cohabited together at various places of their posting and she retired as a Lecturer in Physical Education in the rank of Major in NCC on 31.3.1995, the husband also retired the same day. Allegations were levelled that the husband took away her jewellery and substantial part of her salary during service and did not return it and he purchased property in his own name and she had also contributed. She had given a list of about eight properties. Allegations were made that her husband was brought up by his maternal uncle Shiv Singh as his mother had died early when he was only two years old and his uncle had five daughters and a son and the entire responsibility of them fell on her husband and he performed the marriage of all the children of Shiv Singh. The son of the maternal uncle of the accused namely Paramjit Singh died in September 1999 and the accused started proclaiming that he would adopt the son of Paramjit Singh and he started visiting his maternal uncle's house and in that period he developed intimacy with Rajwinder Kaur. The complainant did not see any foul play but in the beginning of the year 2000, the husband started staying in village Mokhe, Gurdaspur for longer period and rarely used to come to Chandigarh. The behaviour of the accused became intolerable and he became aggressive and started throwing taunts at her and she came to know that he was leading an adulterous life. She also came to know that Rajwinder Kaur had given birth to a daughter in 2003. The allegations were thus levelled under Section 406, 498-A, 494 and 506 IPC.

Preliminary evidence was recorded. Thereafter an application for additional evidence was moved and the accused was summoned only under Section 406, 494 and 506 IPC.

Pre-charge evidence was recorded and charge was framed only under Section 494, 506 and 406 IPC.

The trial Court in its detailed judgment held that the complainant had been unable to prove any of the allegations namely under Section 406, 506 and 494 IPC and acquitted the accused.

The applicant filed an appeal before the Sessions Court which was dismissed in view of the judgment rendered by the Full Bench in *M/s Tata Steel Ltd. versus M/s Atma Tube Products Ltd. and others 2013(2) RCR (Criminal) 1005*.

I have heard the counsel for the petitioner at great length. The counsel has argued with great eloquence and had invited my attention to the statement under Section 313 Cr.P.C. and had urged that there was an admission that the respondent was leading a adulterous life and had fathered two children during the subsistence of their marriage and this was sufficient to convict him under Section 498-A IPC. On going through the record, it was found that no charge under Section 498-A IPC had been framed. The counsel had stressed that it was a fit case where charge should have been framed under Section 498-A IPC and it was a case of mental cruelty which would fall under Section 498-A IPC.

The charge in this case had been framed on 30.3.2010. No document has been placed on record to show that the order framing charge was ever challenged. Even before the Sessions Court, the petitioner had not moved any application for framing fresh charges. Therefore, we have to

examine the allegations and see if there is any infirmity in the order passed by the Court below.

An appraisal of the judgment and evidence I find that there is no merit in this appeal. The complainant was unable to lead any evidence to show entrustment or that she had contributed any amount from her account. There were only oral assertions and have been elaborately dealt with by the trial Court. The complainant could not lead any evidence to show that the respondent had got married to Rajwinder Kaur. In order to prove the charge under Section 494 IPC it was necessary to prove the marriage. As the provisions exist today proof of marriage was necessary. The accused no doubt had admitted that two children were born out of this relationship but he denied that he had married Rajwinder Kaur. No presumption could have been drawn that since they were living together, therefore, they had performed marriage. The complainant had failed to lead any evidence to show that necessary ceremonies had taken place and therefore it had recorded acquittal. The applicant failed to lead evidence to show that she had been threatened or had been beaten up. On the other hand, it had noted that Narinder Pal Kaur CW-2 in her cross-examination had admitted that the accused had never beaten the complainant.

I see no infirmity in the findings of the Court below.

No ground to grant leave to file an appeal is made out.

The application is dismissed.

(ANITA CHAUDHRY)
JUDGE

October 24, 2016

Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No