

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

CRR No.1289 of 2005

Date of Decision : 16.12.2016

Shri Bhagwan @ Bhagwan

...Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Sumit Sangwan, Advocate,
for the petitioner.

Mr. Vijesh Sharma, DAG, Haryana.

SUDIP AHLUWALIA J.

The petitioner in this case was tried for the offences under Sections 498-A/406 of the Indian Penal Code, 1860 (for short, 'IPC') along with his other family members by the Ld. Judicial Magistrate Ist Class, Siwani Camp Court at Charkhi Dadri (for short, 'Trial Court') for the allegation that his wife (complainant-Smt. Saroj Bala), after her marriage with the petitioner was subjected to physical and mental cruelty by all of them in her matrimonial house. Such cruelty was inflicted in pursuance of the demand of dowry made by the petitioner, his parents, elder brother and sister-in-law, who all allegedly also taunted the complainant for bringing insufficient dowry. Such maltreatment is stated to have continued over a long period of time stretching over a span of seven years during which even one son and daughter were born to the complainant out of her wedlock. Consequently, the complainant ultimately lodged the FIR No.106 dated 12.05.1999 under Sections 498-A, 406,

506/34 IPC at Police Station Sadar Dadri, after having been forced to seek shelter in her parental house for the last 1½ years.

2) It may be mentioned that all the other family members of the petitioner were acquitted of all offences by the Ld. Trial Court. Even in respect of the petitioner, the offences under Sections 406/506 IPC as per Ld. Trial Court were not satisfactorily established on account of which he was, however, found guilty for the offences under Section 498-A IPC only and was treated differently from his other family members since the Ld. Trial Court was of the opinion that the alleged dowry demand in the form of Motor Cycle, as imputed to all the accused persons, could be appropriately established only against the petitioner/husband, in view of the case law in “**Ashok Kumar Versus State of Haryana**” 1996(3) PCR 835. The decision was upheld by the Ld. Lower Appellate Court which in its judgment in appeal dated 06.07.2005 found that the statements of various prosecution witnesses against the appellant could not be shattered in any way in spite of their lengthy cross-examination, and therefore the Appellate Court found no illegality or infirmity in the impugned judgment of conviction and sentence passed by the Ld. Trial Court. The relevant observations contained in paras 12 and 13 in the Lower Appellate Court's judgment are set out below:-

“12. After giving my thoughtful consideration to the submissions so made by the learned counsel for both the sides I find no merit in this appeal, because PW-1 Saroj Bala complainant has specifically stated that after the marriage she was maltreated badly at the hands of her husband who also demanded motor cycle. When the said demand was not fulfilled, she was kept without food. She

also stated that she was threatened to be killed in case the demand of dowry was not met. PW-2 Randhir Singh, father of the complainant, PW-3 Ram Singh her brother and PW4 Smt. Ompati her mother also corroborated the version of PW 1 Saroj Bala. They were cross examined at length by the learned counsel, but their evidence could not be shattered in any way. The authorities referred by the learned counsel for the appellant titled as Madhu Sharma and Anr. vs. Dr. M.L. Sharma & Ors. and Nanak Chand and others vs. State of Haryana & Anr. (supra) are not applicable to the facts and circumstances of the present case. Hence, the ingredients of the offence under Section 498-A of the Indian Penal Code against the appellant are fully proved.”

13. In view of the discussion above, I find no illegality or infirmity in the impugned judgment of conviction and order of sentence passed by the learned trial court against the appellant. Hence, I affirm the same.”

3) It is, however, noteworthy that the Ld. Appellate Court has not even referred to any part of the evidence led from the defence side, largely being documentary in nature, including at least two letters written by the complainant to the petitioner/husband herself, which had been taken note of by the Ld. Trial Court. Also, the Ld. Appellate Court while upholding the sentence imposed by the Trial Court did not consider whether it was in consonance with the legal requirement under Section 361(A) of the Code of Criminal Procedure.

4) Therefore, the questions that have arisen for consideration before this Court are, firstly, whether the Ld. Courts below were correct in considering

the petitioner on a different footing from his other (acquitted) family members, although the nature of allegations and evidence forthcoming against all of them was similar, and, secondly, whether in the given facts and circumstances even otherwise the quantum of punishment awarded to him was just and proper?

5) In considering the first question mentioned in the last paragraph, the reasoning of the Ld. Trial Court is set down as below:-

“Regarding the offence under Section 498A IPC all the witnesses corroborating with each other and they have proved that demand of dowry was made by the husband of the complainant and not family members of her husband. As the mother of the complainant, who has come into the witness box she has stated that direct demand was never made by any of the accused, only her daughter told to her regarding the demand of dowry. In the letters written to her husband, she has never complained about the demand of dowry made by her in-laws and the demand of dowry as alleged by the complainant for the motor cycle and the said motor cycle cannot be used by her in-laws except her husband as per the case law Ashok Kumar Vs. State of Haryana (supra), it is the demand made by the son to her wife to put pressure on her father for the motor cycle and even if the said pressure was put by in-laws to the husband of the complainant, provision under Section 498A IPC was not attracted. Therefore, though it is proved that demand was made by the husband of the complainant only for motor cycle as well as 1/4th share in the share of her father and also a plot, all these demands seems to be made by the husband of the complainant only and all these demands were made directly to the wife/complainant, by the one of the accused Shri Bhagwan only and when the husband was

raising demand, other relatives had no reason to press the demand and they were not likely to use the motor cycle as well as the house and even if the complainant has received 1/4th share from her father that has to be used by the husband only and not by the other in-laws of the complainant. Therefore, beneficiary of the articles would fall primarily on husband and not her other in-laws. Hence, I hold guilty under Section 498A IPC to accused Shri Bhagwan for demanding dowry and treated her wife with cruelty to fulfill the demand of dowry and the remaining accused are acquitted from the charges framed against them.”

6) It is, therefore, clear that the Ld. Trial Court while being cognizant of the fact that in her letters written to the petitioner, the complainant had never mentioned about the alleged “demand of dowry made by her in-laws”, somehow over-looked the aspect that she similarly did not mention anything about any such demand for dowry in the form of motorcycle or otherwise, even attributable to the petitioner/convict. This Court has gone through the two original letters dated 26.10.1996 and 26.10.1998 which are Exhibits D-1 and D-2 in the Trial Court's record. It may be mentioned that the contents thereof indicate a prolonged estrangement between the husband and wife principally attributable to misunderstandings arising between them on account of their respective family members since in one letter, it is clear that the petitioner allegedly nursed a feeling of disliking for his father-in-law, while in the other, similar sentiments for his own brother can be read in the expressions of the wife/complainant. Also it is undeniable that in both the aforesaid letters written by the complainant ostensibly when she was obliged to put up in her

parental house after having been allegedly driven away from her matrimonial house, it was she, who requested/implored her husband to come, meet and talk to her apparently with a view to patch up their estrangement. Since the two letters were written on the identical date of 26th October with an exact gap of two years intervening, her statement as PW-1 to the extent that she was approached by the petitioner and her family members after an intervening gap of one and a half years with the request to return to her matrimonial house becomes a little less credible. But this discrepancy of time gap may be understandable in view of the fact that the complainant's deposition was recorded in Court a long time later. Besides, this need not be taken to mean that her statements alleging harassment in her in-law's house for her inability to fulfill the demands for dowry whether in the form of motorcycle, cash or partition of her 1/4th share in her parental property to enable her in-laws to construct their house can be simply brushed aside, since these allegations stretch over a prolonged period of time, and certain instances of physical or mental torture as alleged, such as by way of not providing fooding to the complainant or keeping her confined/locked in a room inside her matrimonial house are otherwise incapable of being proven by any other independent evidence, as obviously no outsider could have access inside her matrimonial household to corroborate her statements in this regard.

7) Regarding the punishment awarded, the observations of the Ld. Trial Court were as under:-

“ORDER OF QUANTUM OF SENTENCE:

I have heard learned APP for the State, accused and learned defence counsel on the point of quantum of

sentence. It has been stated by learned APP for the State that accused Shri Bhagwan be awarded maximum sentence as accused has committed the offence under Section 498A IPC by demanding the dowry and treated her wife with cruelty to fulfill the demand of dowry. On the other hand, learned counsel for the accused has argued that accused is first offender and he is sole bread earner of his family and prayed for taking lenient view.

After hearing the submissions made by learned APP for the State and learned defence counsel, as accused has committed the offence under Section 498A IPC by demanding the dowry and treated her wife with cruelty to fulfill the demand of dowry, therefore, I sentenced the accused for rigorous imprisonment for a period of two years and an amount of Rs.2000/- is imposed as penalty/fine under Section 498-A IPC. In default of payment of fine he shall further undergo rigorous imprisonment for a period of three months. Fine paid.”

8) As already noted in para No. 2 above, the aforesaid finding as well as sentence were upheld by the Ld. Lower Appellate Court whose observations in this regard have already been reproduced earlier. It is, however, to be noted that the Ld. Trial Court was cognizant of the fact “that accused is first offender” considering the nature of the offence involved, which is essentially in the back drop of close familial (matrimonial) relationship between him and the complainant, and the maximum sentence awardable for the same, it was clearly a fit case following for consideration under Section 360(1) of the Criminal Procedure Code. But the Ld. Trial Court did not consider applicability of the same nor recorded any reasons for not dealing with the convict under Section

360 or under provisions of the Probation of Offenders Act 1958, as required under Section 361(a) of the Code of Criminal Procedure. It is also disappointing to note that this aspect was not considered even by the Ld. Lower Appellate Court.

9) In conclusion, therefore, this Court is of the opinion that while the Ld. Courts below were not altogether wrong in finding the petitioner guilty of the offence under Section 498-A IPC, but such conviction on the basis of the available evidence need not have attracted such a stringent sentence of rigorous imprisonment for two years apart from a fine of ₹2,000/- since even otherwise he had been acquitted of the other connected offences under Sections 406/500 of the IPC, after the complainant in her statement had admitted that she had received back all her dowry/gift items from her in-laws.

10) It was, thus, an appropriate case to be dealt with under the provision of Offenders Act as indisputably there is no instance of any previous implication of the petitioner in any criminal case. Nevertheless, after convicting him, the Ld. Trial Court awarded a strict sentence as mentioned earlier which, as transpires now, led to his summary dismissal from service as a constable in the Delhi Police. After having thus lost his job/principal source of income, it has transpires that he ended up paying an even heavier price for his inability to provide maintenance to the complainant in the proceedings under Section 125 Cr.P.C. started by her in the concerned local Courts. In fact, the custody certificate placed on record on today, goes to show that while the petitioner underwent a total actual imprisonment of 2 months and 10 days besides earning remission of an additional 4 days in the present case, he has, on

various other seven occasions, separately been obliged to undergo to imprisonment for non payment of the maintenance dues to the complainant, and such cumulative period of imprisonment comes to 4 years 6 months and 7 days, over and above the imprisonment suffered by him for the offence under Section 498-A IPC.

11) In the given circumstances, this Court is of the opinion that the petitioner at this stage certainly deserves a remission to the extent that he need not undergo the balance part of the sentence awarded to him by the Ld. Court below. The revision is, therefore, disposed of with the observation that while upholding conviction of the petitioner for the offence under Section 498-A IPC, the sentence awarded is reduced to the term already undergone by him.

(SUDIP AHLUWALIA)
JUDGE

16.12.2016

Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No