

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-68-2012 (O&M)

Date of Decision:- 24.08.2016

Deepak Kumar

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Gurcharan Dass, Advocate, for the petitioner.

Mr. Anmol Malik, AAG, Haryana.

RITU BAHRI, J. (Oral)

Present petition has been filed against the judgment of conviction and order of sentence dated 12.12.2011 passed by the Additional Sessions Judge, Ambala, vide which the appeal against the judgment of conviction and order of sentence dated 07.04.2010 passed by the learned Chief Judicial Magistrate, Ambala (hereinafter referred to as "the trial Court") was dismissed.

The trial Court, vide judgment of conviction dated 07.04.2010, convicted the accused-petitioner under Sections 498-A IPC and sentenced him as under:--

Under Section 406 IPC

One year rigorous imprisonment and to pay a fine of ₹1000/- and in default of payment of fine he shall undergo rigorous imprisonment for three months.

Under Sec 498-A IPC

One year rigorous imprisonment and to pay fine of ₹1000/- and in default of payment of fine, to further undergo rigorous imprisonment for 03 months

Briefly, the facts of the case are that complainant-Neelam Verma had moved an application before the SHO of Police Station Ambala City that she was married to the petitioner Deepak Kumar on 30.09.1998, according to Hindu Rites and Ceremonies. Her parents have given sufficient dowry articles in the marriage. Thereafter, the accused used to make taunts for not bringing sufficient dowry articles. On 31.12.1998, she was turned out of the matrimonial home and she came to her parents at Ambala City. On 20.05.1999, on the assurance of accused that they will keep the complainant nicely in future, she came to her matrimonial home and ready to rehabilitate therein. After some months, the accused again started harassing the complainant for bringing less dowry. On 03.10.2000, she was again turned out of the matrimonial home and had come to her parental home. Thereafter, F.I.R was registered against the accused.

After registration of the FIR, the challan was presented and learned Magistrate vide order dated 14.08.2001, charge-sheeted all the accused under Sections 406 and 498-A IPC. The prosecution has examined seven witnesses in their respective statements under Section 313 Cr.P.C. all the accused except Nazar Singh, against whom the FIR was stood quashed by the High Court. After completion of the trial, the learned Magistrate acquitted all the accused and appellant Deepak Kumar was convicted under Sections 406 and 498-A IPC.

The State of Haryana has filed the appeal against the judgment of acquittal and the accused Deepak Kumar was filed the appeal against his conviction. The appellate Court vide judgment dated 12.12.2011, dismissed both the appeals. Both the Courts have returned the finding that appellant

Deepak Kumar had made a demand of motorcycle from the complainant and

assaulted her. She was turned her out of the matrimonial home on 03.10.2000 in three clothes for bringing more dowry. Her deposition has been corroborated by PW4 Om Parkash on all material counts and essential ingredients of “cruelty” as defined in Section 498-A IPC stood proved.

Learned counsel for the petitioner, during the course of arguments, does not challenge the conviction on merits and restricts his prayer to reduce the sentence of the petitioner to the period already undergone by him. He has referred to a judgment dated 09.12.2003 (Annexure P-2) whereby the petitioner has been granted divorce in a petition under Section 13-B of the Hindu Marriage Act on the ground of cruelty and desertion. It has been argued that once the petitioner has granted divorce on the ground of cruelty and desertion, then on the same he cannot be convicted. This argument of learned counsel for the petitioner is liable to be rejected, as under the Hindu Marriage Act, if a wife deserts his husband it amounts to cruelty.

This finding cannot be read in the criminal law to describe the definition of “cruelty”. The explanation (b) to Section 498(a) IPC shows that the harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

In the facts of the present case, the concurrent finding has been recorded by both the Courts below to show that there was a consistent demand of motorcycle from the complainant and her family members after the marriage. When the demand was not fulfilled, the complainant was harassed and thereafter was left her matrimonial house.

Learned State counsel has filed the custody certificate of the petitioner, today in the Court, which is taken on record.

As per the custody certificate, the petitioner has undergone 3 months and 22 days including remission, out of total one year of conviction. He has not misused the concession of bail during the trial. He was released on bail on 22.03.2012 and during the period of trial he has not misused this concession. FIR No.139 was registered way back in the year 2001 and he faced the criminal trial almost for 16 years.

Having examined the impugned judgments, no illegality, much less irregularity has been found therein warranting interference by this Court. Accordingly, they are upheld. However, a lenient view can be taken on the quantum of sentence of the petitioner.

Accordingly, keeping in view the submissions made by the learned counsel for the petitioner, it is a fit case where the sentence qua imprisonment is liable to be reduced to already undergone by the petitioner. Hence, the conviction of the petitioner under Sections 406 and 498-A IPC is maintained and the sentence qua the imprisonment of the petitioner is reduced to the period already undergone by him, subject to the condition that he will deposit ₹35,000/- within the next two months before the trial Court, which shall be disbursed thereafter to the complainant.

With the above modification, the present petition stand disposed of.

August 24, 2016
naresh.k

(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No