

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

**Criminal Revision No.3252 of 2015(O&M)
Date of Decision: January 27, 2016**

Mohd. Yaseen

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Gurbachan Singh Bhatia, Advocate,
for the petitioner.

Mr.K.S.Pannu, DAG, Punjab.

Naresh Kumar Sanghi, J.(Oral)

Challenge in this criminal revision petition is to the judgment dated 20.08.2015 passed by learned Additional Sessions Judge, Sangrur, whereby the appeal filed by the petitioner challenging his conviction and sentence for the offence punishable under Section 498-A, IPC, was dismissed.

The present criminal revision petition came up for preliminary hearing before this Court on 02.09.2015. At that time learned counsel for the petitioner suffered the statement not to challenge the conviction of the petitioner for the offence punishable under Section 498-A, IPC, in view of the concurrent findings of both the Courts below and as such, notice of motion was issued with regard to quantum of sentence only.

In pursuance to the notice issued, learned counsel for the State has appeared.

Mr.Bhatia, learned counsel for the petitioner submits that the marriage of the petitioner with Zahida was solemnized in the year 2001 as per Mohammedan customs and rites. Due to incompatible behaviour, they could not pull on well and their dispute resulted into registration of the FIR at Police Station, Malerkotla, bearing No.178 dated 14.07.2004, for the offences punishable under Sections 406 and 498-A, IPC. He further contends that there was no issue out of the said wedlock. After separation, Smt. Zahida had solemnized her second marriage with Mohd. Ashraf on 05.05.2011 and now she is happily residing with her second husband. He further contends that the petitioner has also solemnized his second marriage and settled with his second wife. He also points out that for last approximately 12 years, the petitioner is facing the agony of trial, appeal and the present revision petition. During pendency of his case before learned trial Court as well as pendency of appeal, he was granted bail but he did not misuse the said concession. He also submits that the petitioner who is the first offender has already suffered incarceration for more than five months. He further points out that except the petitioner, there is no other adult earning member in his family to maintain his

family members. He also submits that in view of the circumstances explained hereinabove, the substantive sentence awarded by the Courts below be reduced to the period already undergone.

Learned counsel for the State has not controverted the fact that the petitioner has suffered incarceration for five months and approximately nine days as on date. He has not disputed the fact that the petitioner is a first offender and during pendency of the trial and appeal he was released on bail but he did not misuse the concession granted to him. He also fairly admits that for the last approximately five months, the petitioner is continuously behind the bars and during his incarceration, he has not committed jail offence which shows that he is in the process of improving himself.

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

Though learned counsel for the petitioner has opted not to challenge the conviction of the petitioner yet to satisfy the conscience of this Court the material available on record has been re-scanned and it is found that during trial, Zahida and other prosecution witnesses have fully supported the prosecution case which led learned trial Court to form an

opinion that the petitioner did commit the offence punishable under Section 498-A, IPC. Even learned Appellate Court has also re-apprised the material and affirmed the conviction of the petitioner for the offence punishable under Section 498-A, IPC, learned trial Court had acquitted the petitioner for the offence punishable under Section 406, IPC, and the appeal filed by Zahida before the Court of Session against acquittal for the offence punishable under Section 406, IPC, was dismissed. On re-appraisal of the material, this Court also finds that conviction of the petitioner for the offence punishable under Section 498-A, IPC, is well-based and as such, learned counsel for the petitioner has rightly opted not to challenge the concurrent findings recorded by both the courts below.

There appears to be substance in the submissions of learned counsel for the petitioner when he submitted that the marriage of petitioner with Zahida was performed approximately 15 years back; the FIR was registered in the year 2004 and since then, the petitioner was facing the agony of trial, appeal and pendency of the present revision petition; the petitioner is first offender; he has already suffered the incarceration for approximately five months and during his confinement in jail in the present case he did not commit any jail offence which would show that he is in the process of improving

himself and that the petitioner as well as Zahida after their separation have solemnized the second marriage with some other persons.

In view of the totality of the facts discussed hereinabove, this Court finds that some concession in the substantive sentence can be extended to the petitioner and as such, the same is reduced to rigorous imprisonment for six months. The fine imposed by learned trial Court is hereby maintained.

With the above modification in the order of sentence, the present criminal revision petition is partly allowed.

January 27, 2016
seema

(Naresh Kumar Sanghi)
Judge