

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A 650 - MA of 2012 (O&M)

Date of decision : 8.12.2017

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Kulwinder Kaur

.....Appellant

vs.

Gurcharan Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Nafiz, Advocate for

Mr. Suvir Singh, Advocate for the applicant-appellant

Mr. Ankush Singla, Advocate for respondents No. 2 and 3.

Mr. Kirat Singh Sidhu, Deputy Advocate General,
Punjab.

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H. S. Madaan, J.

Gurcharan Singh and his wife Jagtar Kaur, both of them being accused in FIR No. 39 dated 8.3.2006, for offences under Sections 420, 406, 498-A IPC, registered at Police Station Sadar Moga, faced trial by Judicial Magistrate Ist Class, Moga, who vide his judgment dated 20.12.2010 convicted and sentenced both the accused as follows :-

<i>Sr. No.</i>	<i>Name of convict</i>	<i>U/Section</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default</i>
1	Gurcharan Singh	406 IPC	RI for one year	Rs.1,000/-	RI for two months
		498 A IPC	RI for one year	Rs.1,000/-	RI for two months
2	Jagtar Kaur	406 IPC	RI for one year	Rs.1,000/-	RI for two months
		498 A IPC	RI for one year	Rs.1,000/-	RI for two months

Both the sentences were ordered to run concurrently.

Briefly stated, that facts of the case, as per prosecution story are that a complaint Exhibit PW 4/A, sent by Mrs. Kulwinder Kaur w/o Baljit Singh r/o Canada, was received in the office of Senior Superintendent of Police, Moga on 13.1.2006, through fax, craving for registration of FIR for offences under Sections 406, 498-A, 420 read with Section 34 IPC, against her husband Baljit Singh, father-in-law Gurcharan Singh, mother-in-law Jagtar Kaur, brothers-in-law Ranjit Singh and Sukhdev Singh and sister-in-law Harpreet Kaur, all residents of village Melak, Tehsil Dharamkot, District Moga. Inter alia in the said application, the complainant had contended that she was married with Baljit Singh as per Sikh rites and rituals on 9.2.2001 and from that wedlock, she had given birth to a female child namely, Pushpinder Kaur on 8.11.2001 in Canada; that at the time of her marriage, her parents had spent around Rs.10,00,000/- giving dowry articles on demand, as such dowry articles had been entrusted to the accused, but were meant for the use of complainant; that such accused had given an assurance that articles would be handed over to the complainant on demand but they failed to do so, rather the accused were not satisfied with the dowry articles and after a few

days of marriage, they started taunting her and demanded a car from her parents. Baljit Singh treated her with cruelty stating that she was not attractive and he had married her just to settle down in Canada; that after a few months of the marriage accused Baljit Singh reached Canada; that accused Gurcharan Singh and Jagtar Kaur kept raising demand of car from parents of the complainant and threatened that in case of their failure to do so, Baljit Singh would give divorce to the complainant. Furthermore, maltreatment of complainant at the hands of her husband Baljit Singh continued. According to the complainant, during her stay in the matrimonial home, she had asked the accused to hand over her dowry articles to them, but they did not do so, rather misappropriated the same. On receipt of the said complaint, in the office of Superintendent of Police, Moga, it was marked to DSP (SD) Moga, who carried out an enquiry in the matter and submitted report Exhibit PW 3/A, finding merit in the allegations and recommending taking of legal action against Baljit Singh, his father Gurcharan Singh, mother Jagtar Kaur for offences under Sections 420, 406, 498-A IPC. Formal FIR was accordingly registered. The matter was investigated. Gurcharan Singh and Jagtar Kaur were arrested in this case, whereas Baljit Singh was not challaned and his name was kept in column No. II of the final report under Section 173 Cr.P.C.

After completion of the investigation and other formalities, challan against the accused was prepared and filed in the Court of Illaqa Magistrate.

On presentation of challan in the Court, copies of

documents relied upon therein, were supplied to the accused, free of cost, as provided under Section 207 Cr.P.C. Then finding a prima facie case, charge for offences under Sections 420, 406, 498-A IPC was framed against both the accused, to which they pleaded not guilty and claimed trial.

During the course of prosecution evidence, it examined Balvir Singh, brother of the complainant as PW-1, Harjinder Singh, Goldsmith as PW-2, Tara Chand ASI, Investigating Officer as PW-3, Kulwinder Kaur – complainant as PW-4 and thereafter evidence of the prosecution stood closed.

Statements of accused were recorded under Section 313 Cr.P.C. in which all the incriminating circumstances appearing against the accused were put to them, but they denied the allegations and raised the plea that they never demanded any dowry from the complainant nor ever instigated their son for such demand; their son had gone to Canada in the year 2001; that thereafter complainant never came to their house and there was no occasion for them to maltreat her or to demand any dowry; that complainant had lodged the FIR against them to extract money from their son in Canada by harassing and blackmailing them in India; that neither any dowry articles were given to them at the time of marriage of the complainant nor they misappropriated any dowry article of the complainant. Though the accused opted to adduce defence evidence but did not examine any witness and closed their defence evidence on 20.12.2010.

After hearing arguments, the trial Magistrate, convicted

and sentenced accused as mentioned above.

Feeling aggrieved by the said judgment, both the accused convicts had filed an appeal in the Court of Sessions, which was accepted by the Additional Sessions Judge, Moga, vide judgment dated 14.2.2012. Resultantly, both the accused-convicts were acquitted of the charge framed against them.

Feeling dissatisfied with the said judgment, the complainant has filed the present application for grant of leave to appeal, notice of which was given to the State, as well as the respondent accused, who put in appearance.

I have heard learned counsel for the parties, besides going through the record.

Learned Additional Sessions Judge, while acquitting the accused has given reasoning as contained in paragraph No. 12 of the judgment and for ready reference, is reproduced as under:-

"12. However, from the appreciation of the facts and circumstances of the case it becomes quite evident that the learned trial Court has committed a grave error of law and fact in recording the conviction of appellants/convicts. It is the case of the complainant that dispute arose between her and Baljeet Singh 1 ½ years after the solemnization of marriage, when he reached Canada. Prior his reaching Canada, there was no demand of dowry nor there was any dispute inter se parties. She has further stated

that Baljeet Singh remained joint with her in Canada for a period of 2 years 2 months. After a period of 15/20 days of reaching Canada, Baljeet Singh started the dispute. Baljeet Singh beaten up on 4/5 occasions. She received internal injuries. She continued living with Baljeet Singh upto July 2004. During this period question of participation allegedly on demand of dowry or maltreatment by appellants/accused persons does not arise at all. In such a situation, the dispute, if any, regarding maltreatment or demand of dowry was between complainant and Baljeet Singh. Because appellants/accused persons resided in India. It appears that parents of Baljeet Singh have been dragged into the controversy simply on account of their intimate relationship with Baljeet Singh. Baljeet Singh has not been charged by the police. When Baljeet Singh has not been charged, present appellants/convict cannot be held to be guilty under Sections 406, 498-A of the Indian Penal Code by any stretch of imagination. There are major discrepancies in the statements of PW-1 Balvir Singh and PW-4 Kulwinder Kaur. According to PW-4 Kulwinder Kaur, some of the gold items given at the time of marriage were brought by her from Canada, which were

given to the accused persons. However, PW-1 Balvir Singh has a different story to tell when he stated that all the gold items were got prepared from PW-2 Harjinder Singh, Goldsmith. To the similar effect is the statement of PW-2. No bills regarding purchase of alleged dowry articles have been adduced on record for the reasons best known to the prosecution. Moreover the dispute, if any, took place in Canada. Complainant Kulwinder Kaur, has admitted that the matter was never reported to Canada police during their joint stay in Canada. Appellants/convicts had absolutely no role to play in the matter. The simple fact that some gifts were given to appellants/convicts at the time of solemnization the marriage of complainant with Baljeet Singh, such gift items do not fall under the definition of dowry articles. Since Kulwinder Kaur and her husband Baljeet Singh did not reside together alongwith appellants/convicts at any point of time question of involvement of appellants/convicts in the alleged offences under Sections 406, 498-A of the Indian Penal Code, does not arise at all. Reasoning given by the learned trial Court for recording conviction of appellants/convicts, does not appeal to reason

and it appears that conviction has been recorded against appellants/convicts simply on account of their being parents of Baljeet Singh, who himself has been let off by the police. In my considered opinion, conviction of both the appellants/convicts recorded by the learned trial Court, vide impugned judgment, is bad in law and the same is not sustainable by any stretch of imagination. Consequently, I accept the appeal and set aside the judgment of conviction recorded by the learned trial Court and acquitting the appellants/accused persons of the charges framed against them. Fine amount, if deposited, be refunded to appellant/convict after the expiry of the period prescribed for appeal, review or revision, if any. Trial Court file alongwith copy of this judgment be remitted to the learned trial Court for the purpose of consignment while appeal file be consigned to the record room."

Thus the main factors which weighed on the mind of Additional Sessions Judge were that :-

- 1) even as per own case of the complainant, the matrimonial dispute had arisen between her and Baljit Singh after 1 ½ years of solemnization of marriage when Baljit Singh had arrived in Canada and earlier to that neither there was any demand of dowry nor any

dispute inter se the parties.

- 2) Regarding the alleged maltreatment of complainant by Baljit Singh in Canada, his parents residing in India, could not have possibly joined him in doing that or raise demand of dowry.
- 3) Essentially it was a matrimonial dispute between the complainant and her husband Baljit Singh and parents of Baljit Singh, namely, Gurcharan Singh and Jagtar Kaur, had been dragged in, simply due to they being parents of Baljit Singh.
- 4) The police had not challaned Baljit Singh and it being so, his parents cannot be held to be guilty under Section 406, 498-A IPC.
- 5) Discrepancies in statements of PW-1 Balvir Singh and PW-4 Kulwinder Kaur on material aspects regarding giving of dowry articles and origin thereof.
- 6) Non-reporting of matter by Kulwinder Kaur to the police of Canada regarding alleged maltreatment by her husband Baljit Singh.
- 7) The simple fact that some gifts had been given to the accused at the time of solemnization of marriage of the complainant with Baljit Singh, such gifts do not fall with the definition of dowry articles.

Learned counsel for the respondents-accused has referred to the judgment by a co-ordinate Bench of this Court **Jasmin vs. State of Haryana 2008 (4) RCR (Criminal) 228**, wherein the FIR

under Section 498-A, 406, 506/34 IPC, lodged by wife against her husband, his unmarried brother and sister, the said FIR against brother and sister was quashed holding that no specific allegations had been levelled against brother and sister and the only assertion was that Istridhan/dowry articles were entrusted to all the accused in the presence of relations, respectables and neighbours etc. and the same had not been returned. It was observed that petitioners were being victimised of prevalent syndrome of roping in every member of family in such type of matrimonial criminal litigation. He further referred to authority **Ramandeep Kaur vs. State of Punjab 2001 (4) RCR (Criminal) 394** and **Kamaljit Singh vs. State of Punjab 2004 (1) RCR (Criminal) 321**, on that aspect.

In another authority referred to by learned counsel for the respondents **Ms. Anu Gill vs. State 2002 (1) RCR (Criminal) 82**, by Delhi High Court, it had been observed that it has almost become a practice that whenever a police report is lodged consequent upon a matrimonial discord, there is always a tendency on the part of the complainant to involve practically all the relations of her in-laws' family either out of vengeance or to curl out appropriate settlement and such a tendency ought to be deprecated. He had also referred to authority **Bahadur Singh and others vs. State of Punjab and another 2010 (3) RCR (Criminal) 252**, by a coordinate Bench of this Court, which while dealing with the territorial jurisdiction in a case under Section 498-A and 406 IPC, when the husband and wife living in Canada after marriage and wife had alleged that father, brother and brother's wife of husband used to make demand through phone calls

and husband used to beat her at Canada, the said complaint was quashed holding that larger part of offence had taken place in Canada and marriage had already been dissolved in Canada, thus impugned FIR was nothing but an abuse of process of criminal law. Learned counsel for the respondents further placed reliance upon authority **Guljar Singh @ Guljar Mohammad and others vs. Hazran 2006 (2) RCR (Criminal) 625**, by a coordinate Bench of this Court, wherein it was observed that gift articles given to the relatives of husband at the time of marriage did not constitute Istridhan.

As per copy of certificate of divorce, marriage between the complainant and her husband Baljit Singh is shown to have been dissolved on 27.11.2016.

In view of the above discussion, I find that the judgment passed by the Additional Sessions Judge is well reasoned one, based on proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. No ground is made out to upset the said judgment. Thus the same is upheld, whereas application under section 378 (4) Cr.P.C. is found to be without any merit and is dismissed accordingly.

(H.S. Madaan)
Judge

8.12.2017

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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No