

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

CRM-A-5-MA-2017 (O&M)

Date of Decision: December 04, 2017

Sukhwinder Kaur

... Applicant

Versus

Jarnail Singh

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R.K. Trikha, Advocate
for the applicant.

JAISHREE THAKUR, J. (Oral)

This is an application that has been filed under Section 378(4) Cr.P.C. for grant of special leave to file appeal against the judgment dated 03.11.2016 passed by Ms. Gurpreet Kaur, Chief Judicial Magistrate, Shaheed Bhagat Singh Nagar at Nawanshahr..

In brief, the facts of the case are that the applicant has filed a complaint under Sections 498-A, 406, 506 of Indian Penal Code against the present respondent and other persons as accused, with the averments that she was married to the respondent about five and half years back and a male child Gurkamal Singh was born from this wedlock. It was submitted that at the time of marriage, the parents of the applicant spent more than Rs.10 lacs and gave sufficient dowry including gold and silver ornaments, clothes, furniture, utensils and electrical gadgets and the same were entrusted to the

accused persons. It was further averred that after some time of the marriage, the accused showed their dissatisfaction over the dowry articles and came up with more demand. It was alleged that accused persons started harassing and torturing the applicant and ultimately, she was thrown out of her matrimonial home

On the basis of preliminary evidence led, respondent was summoned to face trial under Section 498-A of Indian Penal Code and on appearance of accused, he was released on bail. In pre-charge evidence, applicant Sukhwinder Kaur examined herself as CW1 and also examined her father Jasbir Singh as CW2. After considering the pre-charge evidence led, the respondent was charge-sheeted under Section 498-A of Indian Penal Code, to which he pleaded not guilty and claimed trial. Since after framing of charges, learned counsel for the respondent suffered a statement to read the cross-examination done in pre-charge evidence, as cross-examination in after charge evidence as well, statement of the respondent under Section 313 Cr.P.C., was recorded and respondent was given opportunity to lead evidence in his defence. Thereafter, after hearing the arguments of both the sides, learned trial court acquitted the accused of the charges framed against him and dismissed the complaint. It is against the acquittal of the respondent-accused and dismissal of the complaint, the application in hand has been filed.

Learned counsel for the applicant contends that the trial court has completely failed to appreciate the applicant's evidence on record for the offence under Section 498-A of Indian Penal Code that she was subjected to cruelty on account of demand of dowry. It is argued that statement of

complainant, while appearing as CW1 was duly supported by her father Jasbir Singh, CW2, however, the trial court did not consider this fact. It is also contended that the judgment of acquittal passed by the Ld. Trial court has resulted in miscarriage of justice.

I have heard learned counsel for the petitioner, apart from perusing the record.

The trial court by its judgment dated 03.11.2016, acquitted the accused i.e. the respondent herein while observing as under;-

“After hearing learned counsel for the parties and perusal of file, this Court is of the considered view that Sukhwinder Kaur has filed this complaint with the allegations that though her marriage with accused no.1 was performed by her parents with great pomp and show and huge money was spent on the same and sufficient dowry was given but accused were not satisfied with the same and they started maltreated, beating and torturing her on the pretext of bringing less dowry that too of inferior quality and they raised demand of Rs.7 lacs and when the demand of dowry was not fulfilled, they shunted her out of her matrimonial home. Though, the complainant has filed this complaint against as many as 14 accused but after considering her preliminary evidence, the Court had summoned accused no.1 i.e. husband of complainant only to face trial under Section 498-A of the Indian Penal Code and on the basis of pre-charge evidence having been led by the Sukhwinder Kaur Versus Jarnail Singh and others 9 complainant, charge under Section 498-A of the Indian Penal Code was framed against accused no.1. It is pertinent to mention here that though during her examination in chief, the

complainant has supported her allegations as contained in the complaint but during cross-examination, she has duly admitted that actually dispute arose inter se her and accused no.1 for she was having suspicion that accused no.1 Jarnail Singh is having illicit relations with one lady namely Kamaljit Kaur who was from distant relations of accused. She even admitted that the petition filed by accused no.1 for dissolution of marriage against her on the ground of cruelty has already been decided in favour of accused no.1 by the Court of learned District Judge, Family Court, Shaheed Bhagat Singh Nagar. She further admitted that even after taking divorce from her, Jarnail Singh accused no.1 has not married aforesaid Kamaljit Kaur. It has also come during her cross-examination that she was not shunted out of her matrimonial home by the accused, rather, she was arrested by the police in a criminal case for causing injuries on the person of accused party by her brother and father and in the said criminal case, her father and brother had been convicted for having caused injuries on the persons of accused party. It is also pertinent to mention here that though the complainant has stated during her evidence that she was shunted out of her matrimonial home by the accused with the demand of Rs.7 lacs but during her cross-examination, she admitted that she is not available with any document or oral evidence to prove the factum of dowry articles being given to the accused for she being harassed for more money, rather admitted that she was provided with all the amenities while she was Sukhwinder Kaur Versus Jarnail Singh and others 10 living in her matrimonial home and she was living there being a family member of the accused. It is further pertinent to mention here that out of wedlock of complainant and accused

no.1, one son was born, who is presently residing with his father i.e. accused no.1 and thus, he is being maintained by his father. Though, the complainant has examined her father in addition to her own testimony for proving the factum of cruelty being meted out by her at the hands of the accused but the statement of her father has no where proved the factum of demand of more dowry being raised by the accused or the complainant being harassed or treated with cruelty by the accused. It is settled proposition of law that the evidence of a person has to be read as a whole for the examination in chief and cross-examination of a person has to be read together to reach at a conclusion and on that periphery the totality of the evidence of the complainant and her father point out towards the cruelty being meted by accused at the hands of the complainant. For the sake of brevity, only complainant and her father have been examined to prove the case of complainant but their cross-examination reflect the contrast. Furthermore, there are findings of two higher Courts against the complainant for the father and brother of the complainant have been convicted by the Court of Sessions for having caused injuries on the persons of accused party and the Court of learned District Judge, Family Court, Shaheed Bhagat Singh Nagar has granted the decree of divorce in favour of accused no.1 by holding that accused no.1 was treated with cruelty by the complainant. It is settled proposition of law that the prosecution has to prove its case beyond the shadow of reasonable doubt Sukhwinder Kaur Versus Jarnail Singh and others 11 and the burden of proof in criminal cases is high to that of civil matters. Thus, the complaint being of criminal nature requires high degree of evidence but the evidence brought on record by the

complainant side no where prove the contents of the complaint. In other words, the complainant has failed miserably to prove the case against the accused and on the other hand, the cross-examination of complainant as well as her father coupled with the copies of the judgments passed by the Courts available on the file vide Ex.DA and Ex.Da rather point out towards the acquittal of the accused. For the sake of brevity, in criminal cases, the complainant has to prove its case beyond the shadow of reasonable doubt but here in this case the complainant has failed in proving its case against the accused beyond the shadow of reasonable doubt, rather, a doubt has got created in the story of the prosecution in view of the admissions which have come during her cross-examination and the cross-examination of her witness and it is settled law that when a doubt is created in the prosecution case, its benefit must go to the accused.”

From the observations given by the learned trial court, it is made out that during her cross-examination, the applicant has duly admitted that actual dispute arose between her and respondent because she was having suspicion that respondent is having illicit relations with one lady namely Kamaljit Kaur, who was a distant relation of the accused. It is also come out during the cross-examination of the applicant that she was not shunted out of her matrimonial home by the accused, rather, she was arrested by the police in a criminal case for causing injuries on the person of respondent party and her brother and father had been convicted for having caused injuries on the person of respondent party. She further admitted that she was provided with all the amenities while she was living in her

matrimonial home. Further, the trial court has also observed that father and brother of the applicant have been convicted by the Court of Sessions for having caused injuries on the person of respondent party. It has also been observed that a decree of divorce on the ground of cruelty has already been granted in favour of respondent, though the same has been challenged before this court. Considering all the circumstances, the trial court held that the applicant/complainant has failed to prove the guilt of the accused/respondent beyond shadow of reasonable doubt. The trial court rather doubted the story of the prosecution, in view of the admissions, which had come during the cross-examination of complainant and her witness as well.

In the case in hand, there are number of admissions made by the complainant and her father during their cross-examination, which are sufficient to create a reasonable doubt in the mind of the court. Needless to say, it is settled principle of criminal jurisprudence that when the accused succeeds in creating a doubt in the prosecution case, its benefit must go to the accused. Learned counsel for the applicant has failed to point out any illegality in the findings recorded by the trial court.

In view of the above discussion, the application in hand is hereby dismissed, being devoid of any merits.

December 04, 2017

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No