

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-27859-2013

Date of Decision:- 19.05.2017

Jaswinder Singh

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

**Present: Mr. R.M. Sharma, Advocate
for the petitioner.**

Mr. J.S. Sekhon, AAG, Punjab.

**Mr. A.S. Syan, Advocate
for the complainant.**

RITU BAHRI, J. (Oral)

This petition is under Section 482 Cr.P.C. for quashing of order dated 13.05.2013 (Annexure P-3) whereby the revision against the order framing charge under Sections 406 and 498-A IPC has been dismissed and for quashing of charge-sheet dated 17.01.2010 (Annexure P-1).

The marriage of the petitioner and complainant was solemnized as per Sikh Customs on 09.12.2001 at Gurudwara Khel Sahib, Patiala. At the time of marriage, the petitioner was practicing lawyer at Civil Courts whereas the complainant was working as a Teacher in a private school. Petitioner joined in service as Inspector, Municipal Council, Lehra Ghagga before the marriage and thereafter the marriage was solemnized. Both of them cohabited up to 01.04.2003 and after that they started living

separately. On 17.04.2008, the petitioner filed a petition under Section 9 of the Hindu Marriage Act for the restitution of conjugal rights, in which, after notice the complainant has refused to accept the summons. Thereafter, on a complaint dated 01.08.2008 of complainant, the police registered the present FIR No.243 dated 01.10.2008 under Sections 406 and 498-A IPC against the accused. After investigation, the challan was presented and thereafter the charge was framed under Sections 406, 498-A and 494 IPC by the trial Court. In revision before the learned ASJ, Patiala, the charge framed under Section 494 IPC has been set aside and the order framing charge under Sections 406 and 498-A IPC has been held to be valid.

Learned counsel for the petitioner has argued that after 01.04.2003 till 01.11.2008 i.e. about 5 years, no complaint was made by the complainant with regard to allegations of cruelty and misappropriation against the petitioner and his family members. As per Section 468 Cr.P.C. the Court could not take the cognizance of the offence as the limitation to initiate the complaint was three years.

As per allegations in the FIR, the petitioner (husband of the complainant) was having illicit relationship with Narinder Kaur (*bhabhi*), who is wife of elder brother, namely, Narinder Pal Singh. It is further alleged by complainant that brother of the petitioner wanted to take the land which they were cultivating without giving any rent. In February, 2003, the father of the complainant was offered a job in SGPC at Amritsar and at that point of time petitioner-Jaswinder Singh started residing with the complainant in her paternal house. On 01.04.2003, he left the house of her parents and never returned back. Thereafter, several attempts have been

failed. The dowry articles have also not been returned so far. The trial Court framed the charge under Sections 494, 406 and 498-A IPC, however, the revisional Court set aside the charge under Section 494 IPC as there was no allegation that the petitioner had solemnized marriage with Narinder Kaur.

Now only question remains with regard to offence under Sections 406 and 498-A IPC.

It is not the case of the petitioner that after he left the house of his in-laws on 01.04.2003, he made many attempts to get his wife back in the matrimonial house. The minor child is staying with the complainant since 01.04.2003. Even if the petitioner had shifted to the house of his in-laws in the year 2003 and before that the complainant had been staying in her matrimonial house. Moreover, it is a question of evidence whether the misappropriation of dowry articles was done by the petitioner or not.

The allegation of Section 406 IPC is a continuing offence as held by this Court in case **Mastan Singh Vs. Jaswinder Singh Zora Singh Sandhu**, 2001(4) R.C.R. (Criminal) 2 that unless and until the misappropriated dowry articles are returned, it would amount to continuing of the offence and bar to take cognizance under 468 IPC would not be applicable. In paragraph 5 of the said judgment, the Court has observed as under: -

“The respondents have been summoned to face their trial under Section 406, IPC. The complaint had to be filed within 3 years as laid down in Section 468 Cr.P.C. In the present case though the transition took place between the parties after 4.5.1991 yet the cause of action to file the complaint arose only when the respondents refused to make payments of the amounts due from them to the petitioner on 8.9.1996 as the offence of criminal mis- appropriation is a continuing offence, which continues until the property is restored to its true owner. For this view of mine, I seek support from the observations contained in **Balram Singh v. Sukhwant**

Kaur and another, 1991(2) CLR 107. The complaint was, therefore, within time as observed by their Lordships of the Hon'ble Supreme Court in *Smt. Rashmi Kumar v. Mahesh Kumar Bhada, 1997(1) Apex Court Journal 386 : 1999(2) RCR(Crl) 43 (SC)* and Balram Singh's (supra)."

This Court in *Mohinder Singh Vs. The State of Punjab and another, 2012(3) R.C.R. (Criminal) 632* has examined the case where the misappropriation of rice and paddy, it was held that unless the misappropriated rice is returned, the offence would be a continuing offence and the trial Court has vast power to take cognizance of an offence after the expiry of period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or it is necessary so to do in the interest of justice.

"As depicted hereinabove, according to the prosecution that PUNSUP has entrusted the A-class quality paddy to the firms of petitioners-accused for milling, which was acknowledged by them. Instead of returning the same quality rice of the required quantity, the indicated firms returned a very less quantity (weight) of rice, that too, of very inferior quality. Meaning thereby, they have not returned the entire A-class quality rice till today, cheated and misappropriated the PUNSUP. That means, since the petitioners-accused did not return the complete stock of A-class quality rice till today, so, the commencement of the crime is still continuing. In that eventuality, a fresh period of limitation shall begin to start at every moment of the time, during which, the offence continues, as envisaged under section 472 Criminal Procedure Code and question of bar of limitation would not apply to the present case. Moreover, the trial Court has vast power to take cognizance of an offence after the expiry of period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or it is necessary so to do in the interest of justice. Therefore, question of limitation under section 468 Criminal Procedure Code does not arise at all at this stage in this case, as (contrary) urged on behalf of the petitioner (in 2nd case)."

This Court in *Hussan Lal Vs. State of Punjab, 2002(1)*

with a limitation to file a complaint of three years that the Court is competent to take cognizance even after a period of limitation under Section 473 Cr.P.C. In paragraph Nos.9 and 10, the Court has observed as under: -

“9. In Arun Vyas v. Anita Vyas, 1999(20 RCR (Criminal) 828 SC, it was held by their Lordships of the Supreme Court that the essence of the offence in Section 498-A is cruelty as defined in the explanation appended to that section. It is a continuing offence and on each occasion on which the respondent was subjected to cruelty, she would have a new starting point of limitation. It was further held in the said authority that section 473 Criminal Procedure Code extends the period of limitation in two parts. The second part has two limbs. The first limb confers power on every competent court to take cognizance of an offence after the period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained and the second limb empowers such a court to take cognizance of an offence if it is satisfied, on the facts and in the circumstances of the case, that it is necessary so to do in the interests of justice. It was further held in the said authority that "interest of justice" demands that the court should protect the oppressed and punish the oppressor/offender. In complaints under Section 498-A the wife will invariably be oppressed, having been subjected to cruelty by the husband and in-laws. It is, therefore, appropriate for the Court, in case of delayed complaints, to construe liberally Section 473 Criminal Procedure Code, in favour of wife who is subjected to cruelty if on the facts and in the circumstances of the case, it is necessary so to do in the interests of justice. It was further held in the said authority that when the conduct of the accused is such that applying rule of limitation will give an unfair advantage to him or will result in miscarriage of justice, the Court may take cognizance of an offence after the expiry of period of limitation in the interests of justice. Reliance was placed on the law laid down by the Hon'ble Supreme Court, in the case reported as (1993)3 SCC 4 (supra).

10. In view of the law laid down by the Hon'ble Supreme Court in the above mentioned authorities, it would be clear that the complaint in question, the summoning order passed by the learned Magistrate and all subsequent proceedings taken thereon, cannot be quashed on the ground of limitation, especially when the Court is competent to take cognizance even after the period of limitation by virtue of the provisions of Section 473

Criminal Procedure Code Furthermore, the offence under Section 498A Indian Penal Code being a continuous offence, it could not be said that the present complaint under Sections 406/498-A Indian Penal Code had become time barred. In my opinion, on the facts and circumstances of the present case, it cannot be said that the complaint, summoning order and all subsequent proceedings taken thereon against the accused-petitioners were liable to be quashed on the ground that the complaint was barred by time, in view of the provisions of Section 468(3) Criminal Procedure Code read with Section 473 Indian Penal Code.”.

After hearing the learned counsel for the parties, going through the above-said judgments, this Court is of the considered view that in criminal cases, it is usually seen that after the relationship, the husband and wife get separated, an attempt was made to reduce the legal right of the child and wife, by transferring the land in the name of the family members. In the present case as per the allegations in the FIR it was alleged that brother of the present petitioner-Jaswinder Singh was making an attempt to take the land of the petitioner on account of the matrimonial dispute. The complainant has one son from this marriage.

Keeping in view the facts of the present case, the order framing charge, at this stage, cannot be quashed simply on the ground of limitation. Offence under Sections 406 and 498-A IPC are continuing offence and it would be the trial Court, who after going through the evidence, can return the appropriate finding with regard to the above-said offences.

Since there is no merit in the present revision petition, therefore, the same is hereby dismissed.

May 19, 2017
naresh.k

(RITU BAHRI)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No