

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

Criminal Misc. M- No. 37126 of 2016 (O&M)

Date of decision : March 03, 2017

Baldev Singh

.....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. G.B.S. Dhillon, Advocate for the petitioner.

LISA GILL, J.

Prayer in this petition is for quashing of order dated 08.12.2012 (Annexure P-3) passed by the Sub Divisional Judicial Magistrate, Phagwara discharging respondents No. 2 to 4 in FIR No. 44 dated 10.04.2011 under Section 406 IPC as well as order dated 26.07.2015 (Annexure P-4) passed by the learned Additional Sessions Judge, Kapurthala dismissing the revision petitions preferred by the petitioner as well as the State. The present petition is filed by the complainant. The State of Punjab has not challenged the said orders now.

The brief facts of the case are that the petitioner unfortunately lost his daughter, who was married to respondent No. 2. FIR No. 271 dated 26.08.2007 under Section 304-B IPC was registered at Police Station City Phagwara against respondents No. 2 to 4. All the accused respondents were convicted and sentenced for the offence punishable under Section 304-B

IPC by the learned Sessions Judge, Kapurthala on 15.11.2008.

Subsequent to their conviction, an application dated 08.11.2010 was moved by the petitioner against respondents No. 2 to 4 for registration of a case under Sections 406 and 120B IPC and for return of *Istridhan* of his daughter after her death. The contents of this complaint are reproduced in para 2 of order dated 08.12.2012 passed by the learned Sub Divisional Judicial Magistrate, Phagwara. The said application was marked for inquiry to Incharge Women Cell Phagwara. She submitted her report dated 14.12.2010 and the application was marked for further inquiry to SHO, Police Station City Phagwara. It was recommended by the said SHO that as the accused have been convicted for the offence punishable under Section 304-B IPC, they are bound to return the articles of dowry. The matter was referred to the District Attorney (Legal). It was opined that an offence punishable under Section 406 IPC is made out and a case be registered against the respondents in this regard. Resultantly, FIR No. 44 dated 10.04.2011 registered under Section 406 IPC at Police Station City Phagwara was registered. Respondents No. 2 to 4 were afforded the benefit of anticipatory bail by this Court in CRM-M No. 12436 of 2011 (Annexure P5).

The final report/challan under Section 173 Cr.P.C. was presented against the abovesaid respondents on completion of investigation. Arguments were addressed at the time of framing of charge. Respondents No. 2 to 4 raised an argument that once they have already been convicted for the offence punishable under Section 304B IPC, they cannot be tried now for the offence punishable under Section 406 IPC. It was, thus, prayed that they should be discharged.

The learned trial Court while relying upon the judgment of this

Court in Kuljit Singh versus Jasbir Singh 2002 (4) R.C.R.(Criminal) 707

discharged the said respondents vide impugned order dated 08.12.2012. The revision petitions filed by the petitioner as well as the State were dismissed by the learned Additional Sessions Judge, Kapurthala vide order dated 26.07.2016. Aggrieved therefrom, the instant petition under Section 482 Cr.P.C. has been filed by the petitioner challenging both the abovesaid orders.

Learned counsel for the petitioner argues that there is sufficient evidence on record for framing of the charge under Section 406 IPC against respondents No. 2 to 4. The fact that they have been convicted under Section 304-B IPC cannot be an impediment to their being proceeded against under Section 406 IPC. To the contrary their conviction clearly proves that they are liable under Section 406 IPC. Reference is made to order dated 30.05.2011 passed by this Court in CRM-M No. 12436 of 2011 dealing with the grant of anticipatory bail to respondents No. 2 to 4 in FIR No. 44 dated 10.04.2011. It is submitted that in the earlier FIR No. 271 dated 26.08.2007 under Section 304-B IPC, it was specifically mentioned that costly items had been given at the time of the marriage of the complainant's daughter. She was harassed and tortured for more dowry. Thus, the charge under Section 406 IPC should be framed against the respondent – accused and they be proceeded against in accordance with law. It is prayed that this petition be, thus, allowed.

I have heard learned counsel for the petitioner and have perused the file with his assistance but do not find any ground to interfere in the impugned orders. It is not in dispute that respondents No. 2 to 4 have been convicted for the offence punishable under Section 304-B IPC. As per the

allegations therein, the petitioner's daughter was harassed and tortured on account of not bringing adequate dowry. It is not disputed by learned counsel for the petitioner that as per the averments in the said case under Section 304-B IPC, it is mentioned that valuable articles including *Istridhan* were entrusted to the accused respondents. However, the said accused were not proceeded against for the offence punishable under Section 406 IPC at that time even though the allegations as above were available.

At this stage, it is useful to refer to the provisions of Section 300 Cr.P.C. which read as under:-

300. Person once convicted or acquitted not to be tried for same offence:

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub- section (1) of section 221, or for which he might have been convicted under sub- section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub- section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last- mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first- mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 , (10 of 1897) or of section 188 of this Code. Explanation.- The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.

This Court in Kuljit Singh's case (supra) was dealing with a case where the accused was proceeded against for the offence punishable under Sections 302, 304B, 34 IPC. The accused was convicted for the offence punishable under Section 304B IPC and accordingly sentenced. In the said case, a complaint was thereafter filed against accused persons for the offences punishable under Sections 406, 498A, 34 IPC. It was held by this Court that once the accused were proceeded against for the offences punishable under Sections 302, 304B, 34 IPC and not charged for the offences punishable under Sections 406, 498A IPC, they could not be tried subsequently for the offences punishable under Sections 406, 498A IPC. It was specifically observed that though the allegations constituting the offences punishable under Sections 406, 498A IPC were very much available but neither the complainant/prosecution nor the Court called upon the accused to face trial under the said sections. The matter was held to be

covered under Section 300 Cr.P.C.

The facts in the present case are similar inasmuch as the allegations raised subsequently seeking their conviction under Section 406 IPC were very much available at the time when the accused respondents were proceeded against for the offence punishable under Section 304B IPC. Learned counsel for the petitioner is unable to point out any distinguishing feature in the petitioner's favour.

Keeping in view the facts and circumstances of the case, I do not find any illegality or infirmity in impugned order dated 08.12.2012 (Annexure P-3) passed by the Sub Divisional Judicial Magistrate, Phagwara as well order dated 26.07.2015 (Annexure P-4) passed by the learned Additional Sessions Judge, Kapurthala, which call for any interference by this Court.

Petition is, accordingly, dismissed.

March 03, 2017

rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes

Whether reportable : Yes/No