

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

1. **Criminal Revision No.2946 of 2014(O&M)**
Date of Decision: August 2 , 2017.

Surinder Singh and others PETITIONERS

Versus

State of Punjab RESPONDENT

2. **Criminal Revision No. 3305 of 2014(O&M).**

Sarabjit Kaur PETITIONER

Versus

State of Punjab and others RESPONDENTS

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. K.S.Sidhu, Senior Advocate with
Mr. A.S.Sandhu, Advocate
for the petitioners in CRR No.2946 of 2014

Mr. Navkiran Singh, Advocate
for the petitioner in CRR No.3305 of 2014

Mr. P.S.Paul, DAG, Punjab.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This order shall dispose of Criminal Revision No.2946 of 2014

(Surinder Singh and others v. State of Punjab) and Criminal Revision No.3305

of 2014 (Sarabjit Kaur v. State of Punjab and others) as both of them arise out of the same impugned judgment and order.

Criminal Revision No.2946 of 2014 has been preferred by the petitioners – Surinder Singh, Surjit Kaur and Gurvinder Singh. The said petitioners have been convicted for the offence punishable under Section 498A IPC and sentenced to undergo rigorous imprisonment for two years, besides, pay a fine of ₹3,000/- each and in default thereof, undergo further rigorous imprisonment for one month by the learned Additional Chief Judicial Magistrate, SBS Nagar vide judgment and order dated 23.10.2013. Their conviction and sentence has been upheld by the learned Additional Sessions Judge, SBS Nagar vide judgment dated 06.09.2014. Aggrieved therefrom, the petitioners have filed this revision petition.

Criminal Revision No.3305 of 2014 has been preferred by the complainant (since divorced) through her General Power of Attorney holder challenging the acquittal of the accused (respondents No.2 to 4 in CRR No.3305 of 2014 and the petitioners in CRR No.2946 of 2014) under Section 406 IPC. There is a further prayer for enhancement of the sentence imposed upon them under Section 498 A IPC.

The facts of the case, for the sake of convenience, are extracted from CRR No.2946 of 2014.

Brief facts of the case are that, FIR No.9 dated 27.07.2008 under Sections 406/498A/506 IPC was registered on an application moved by the complainant. She was married with petitioner No.3 – Gurvinder Singh on 26.01.2006. It was admittedly the second marriage of both the complainant and

petitioner No.3 – Gurvinder Singh. Gurvinder Singh has two children from his first marriage and the complainant had one son from her earlier marriage. Sufficient dowry, it is averred, was given by the parents of the complainant at the time of marriage, but the accused immediately started harassing and maltreating her on account of insufficient dowry. Petitioner No.3 left for Germany after fifteen days of marriage. The complainant joined her husband in Germany on 28.05.2006. The behaviour of petitioner No.3 towards the complainant, it is alleged, was cruel and insulting. Ultimately, the complainant was sent back to India on 18.01.2007 alongwith her daughter with whom the couple was blessed. She was told to leave the two months old child with her own parents. However as the child was breast-fed and kept on crying without the complainant, she again returned to Germany on 08.08.2007 with the child, which infuriated the accused. Petitioner No.3 started ill-treating the complainant. She was made to work while having to look after the child as well. The accused continued harassing and torturing her besides, forcing her to leave the minor child at her parental house. The complainant was again sent back to India on 14.10.2007 to drop the child at her parental home.

However, the complainant went back to Germany with her daughter on 25.10.2007 which infuriated all the accused. It is alleged that the complainant was brought back to India from Germany on 28.06.2008 by her father-in-law, mother-in-law and sister-in-law. They reached Chandigarh in one taxi from where a separate taxi was hired for the complainant and they forcibly sent her to her parental home while retaining her Indian Passport, marriage registration certificate, birth certificate and German Passport of her daughter

alongwith the child's immunization card. It is stated in the application that the complainant's daughter was scheduled to be given her second dose of Polio drops in Germany, which was not possible in the absence of the immunization card. The complainant expressed an apprehension that the accused have destroyed her passport alongwith that of her daughter so as to deprive them from returning to Germany. FIR No.9 dated 27.07.2008 under Sections 406/498A/506 IPC was registered against the accused on the basis of the abovesaid complaint.

After investigation, final report under Section 173 Cr.P.C. was presented against the accused. Charge for the offences punishable under Sections 498A/406 IPC was framed against the accused persons to which they pleaded not guilty and claimed trial. Prosecution examined as many as nine witnesses to prove its case. In their statements under Section 313 Cr.P.C., the petitioners denied the incriminating evidence put to them. They pleaded innocence and false implication. Certain documents were tendered in defence.

The learned trial court on considering the facts and circumstances of the case, convicted the petitioners for the offence punishable under Section 498A IPC and sentenced them as detailed above. The petitioners were however acquitted of the offence punishable under Section 406 IPC as it was held that the prosecution failed to prove its case against the accused for the said offence.

Appeals were preferred by both the petitioners as well as the complainant. The Additional Sessions Judge, SBS Nagar while taking into consideration the entire facts and circumstances of the case, dismissed both the appeals. An application moved by the complainant at the appellate stage with a

prayer for additional charge under Section 506 IPC was also dismissed. Aggrieved therefrom, the abovesaid criminal revisions have been preferred by the accused as well as the complainant.

Learned senior counsel for the accused-petitioners vehemently argues that the petitioners have been wrongly convicted by both the learned courts below for the offence punishable under Section 498 A IPC. It is submitted that all allegations raised in the FIR pertained to incidents which allegedly took place at Germany. No occurrence took place in India, therefore as per Section 188 Cr.P.C., the cause of action does not arise in India. Moreover, the falsity of the allegations is apparent from the fact that a complaint was moved in Germany at the behest of the complainant. However, the proceedings were closed in March 2009 by the authorities in Germany as no truth was found therein. Reference is made to Ex.Dx-6. General and omnibus allegations have been raised against all the petitioners. In respect to petitioners No.1 and 2, the allegations that they subjected the complainant to cruelty and forcibly brought her to India on 28.06.2008 thereafter, forcibly sent her to Nawanshahr in a separate taxi by retaining her passport etc., are not substantiated by any evidence. It is denied that minor daughter of the complainant and petitioner No.3 was not treated well or was looked upon with distaste. Reference is made to photographs Ex.D1 to D26 to urge that the child was treated very well. In fact, the petitioners, it is urged, showered all love and affection on the complainant. They facilitated her visit to India as and when she wanted. It is apparent from her own statement that her visit to India was facilitated a number of times after the birth of her daughter in Germany. There

is admittedly nothing on record to even suggest that the expense of her travel to India all this while were ever incurred by her parents. Numerous visits to India at her request have been twisted and distorted in the complaint. Furthermore, acquittal of the petitioners for the offence punishable under Section 406 IPC clearly impinges on the credibility of the prosecution witnesses. Credibility of the complainant is sought to be impeached on an another ground i.e. she wrongly stated herself to be married for the second time while applying for her marriage certificate after her third marriage. Reference is made to Ex.DA, her affidavit dated 06.04.2011. It is vehemently argued that the complainant has remarried for the third time after obtaining divorce from petitioner No.3 at Germany. The third marriage by the complainant is admitted. Thus, it is prayed that keeping in view the facts and circumstances as a whole, the petitioners be acquitted of the charges against them. The impugned judgment and order accordingly be set aside.

In the alternate, learned senior counsel for the petitioner submits that the benefit of probation be afforded to the petitioners or the sentence imposed upon the petitioners be reduced to one already undergone. The petitioners, it is submitted, have suffered the agony of a protracted trial, appeal etc. for nearly ten years now. The complainant has admittedly remarried after obtaining divorce from petitioner No.3. Petitioner No.3 has been separated from his children from first marriage as he was unable to go back to Germany to look after his children due to the pendency of the present proceedings. Learned counsel relies upon judgments of Hon'ble Supreme Court in Eliamma and another v. State of Karnataka, 2009(2) RCR(Criminal) 47 and of this

Court in Gurinder Singh v. State of Haryana, 2013(1) RCR(Criminal) 314.

Learned counsel for the State and the complainant refute the abovesaid arguments and submit that the prosecution has proved the commission of the offence under Section 498A IPC against the petitioners beyond reasonable doubt. There is no question of acquittal of the petitioners and there are no mitigating circumstances to afford the benefit of probation to the petitioners.

Learned counsel for the complainant argues that the petitioners have been wrongly acquitted of the offence punishable under Section 406 IPC. There is specific evidence on record to show entrustment of dowry articles to the petitioners. Furthermore, the complainant's passport was recovered from petitioner No.3. Reference is made to recovery memo Ex.PW1/B. The passport of the minor child was never recovered. It is contended that the accused sister-in-law of the complainant is still a proclaimed offender. She never came to India to face trial. The conduct of petitioner No.3, it is submitted, is reprehensible too. He was admittedly declared a proclaimed offender on 21.10.2008 and was subsequently arrested in the abovesaid case on 18.11.2011 when he landed in India at Indira Gandhi International Airport, Delhi. It is not denied that the complainant has remarried, but it is urged that petitioner No.3 has also remarried, though admittedly there is nothing on record to indicate his remarriage. Learned counsel for the complainant submits that the petitioners have been dealt with leniently by the learned courts below and have wrongly been acquitted of the offence under Section 406 IPC. It is thus prayed that the revision petition filed by the accused petitioners be dismissed. They be

convicted for the offence punishable under Section 406 IPC and punished accordingly. The sentence imposed upon them under Section 498A be enhanced.

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

It is not in dispute that marriage between the parties took place on 26.01.2006. It was the second marriage of both the parties. The birth of the child is admitted. Similarly, numerous visits of the complainant to India alongwith the child is admitted, though a different colour is sought to be given by both the parties. The complainant wished to meet her parents and it is due to this reason, her visits to India were facilitated by the accused-petitioners, whereas the complainant alleges that she was forced to come to India in order to leave her minor daughter with her own parents.

However recovery of the passport of the complainant from the accused has been proved on record. There is no explanation as to how the same came in possession of the accused persons. The learned courts below after a proper and thorough consideration of the evidence on record, have arrived at findings which are correct and substantiated on record. It has been rightly held that the offence punishable under Section 498A IPC is duly proved against all the petitioners. The delay of 48 hours in lodging of the FIR in the present facts and circumstances does not prove to be fatal to the prosecution version neither can any benefit be derived by the accused of drafting of the complaint by the accused from a typist at court complex, Nawanshahr. Merely because the complaint was drafted in this manner, does not per se makes it incorrect or

false.

Similarly, the learned courts below have rightly held that the offence punishable under Section 406 IPC has not been proved by the prosecution beyond reasonable doubt. There is indeed nothing on record to show entrustment of dowry articles by the complainant-side to the accused. Income Tax returns of the complainant or of her father were not produced, neither was any bill pertaining to the dowry articles produced. A perusal of the statements of the complainant and her father do not indicate the commission of the offence punishable under Section 406 IPC.

Therefore, there is no merit in the submissions of learned senior counsel for the accused-petitioners for setting aside their conviction under Section 498A IPC. Similarly, there is no merit in the submissions addressed on behalf of the complainant for convicting the accused for the offence punishable under Section 406 IPC are devoid of any merit. In any case, Section 401 Cr.P.C. clearly provides that a finding of acquittal cannot be turned into one of conviction while exercising revisional jurisdiction. Nothing has been pointed out by learned counsel for the complainant which may call for a re-look at the findings arrived at by the learned courts below.

There is however merit in the submission of learned senior counsel for the accused petitioners regarding the quantum of sentence/affording benefit of probation to the petitioners. Petitioners No.1 and 2 are the aged parents-in-law of the complainant. Petitioner No.3 is the husband of the complainant. It is not in dispute that the complainant has since solemnized marriage again (third marriage) after obtaining divorce from petitioner No.3. She is obviously

resettled in her matrimonial home in Germany. It is not disputed that petitioner No.3 has two children from his first marriage who are residing in Germany. The abovesaid matter has arisen out of a matrimonial dispute between the complainant and her husband petitioner No.3. The accused petitioners have admittedly faced the agony of trial, appeal etc. for nearly ten years. It is affirmed and verified by learned counsel for the State that the petitioners are not involved in any other criminal proceedings. They are first offenders. The sister-in-law of the complainant not being available for trial cannot be taken to be a circumstance for denying the benefit of probation to the present accused petitioners.

Keeping in view the factual matrix of the present case as discussed above, it is considered just and appropriate to extend the benefit of probation to all the petitioners while maintaining their conviction and sentence. This is so, keeping in view the fact that no useful purpose would be served by sending them to jail to serve the remaining period of the sentence. No legal impediment to afford the benefit of probation to the petitioners has been pointed out.

While maintaining their conviction and sentence, the petitioners are extended the benefit of probation for the remaining period of the sentence subject to the condition that they would keep peace and be of good behaviour for the said period. In case it transpires that any of the petitioners have left the country in violation of the terms and conditions of the probation, the present order is liable to be revoked. It is further ordered that a sum of ₹75,000/- be paid to the complainant which shall be in addition to the fine imposed upon the petitioners.

Petitioners shall be released on probation subject to their furnishing requisite probation bonds and sureties to the satisfaction of the Probation Officer. In addition, it is directed that the petitioners shall furnish requisite local sureties having a fixed place of abode or regular occupation within the jurisdiction of the courts at SBS Nagar. The petitioners shall also be bound by all the conditions as may be laid down by the Probation Officer. In case the petitioners are found involved in any other case subsequently or they violate any of the conditions of the probation bond, the sentence imposed upon them by the learned trial court shall be revived. Accordingly, the revision petition No.2946 of 2017 preferred by the accused petitioners is disposed of in the abovesaid terms.

Revision petition No.3305 of 2014 preferred by the complainant is dismissed.

August 2 , 2017.
'om'

(LISA GILL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No