

CRR No. 2968 of 2015

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision:1.5.2017

CRR No. 2968 of 2015

Harbans Singh

---Petitioner

vs.

State of Punjab and another

---Respondents

CRM-A-136-MA of 2015

Kamaljeet Kaur

---Applicant

vs.

Chanchal Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.Sarju Puri, Advocate
for the petitioner in CRR-2968 of 2015
for the non-applicants-respondents in CRM-A-136-MA of 2015

Ms. Promila Nain, Advocates
for the applicant in CRM-A-136-MA of 2015
for respondent No. 2 in CRR-2968 of 2015

Mr. Mikhail Kad, AAG, Punjab

Rekha Mittal, J.

This order will dispose of CRR No. 2968 of 2015 and application for leave to appeal CRM-A-136-MA of 2015 as these have emerged out of the judgment dated 2.8.2014 passed by the Chief Judicial Magistrate, SBS Nagar vide which Harbans Singh petitioner was convicted and sentenced for committing offence under Sections 406 and 498-A of the

Indian Penal Code (in short “IPC”) whereas the co accused namely Chanchal Singh and others were acquitted of the offence charged against them. However, judgment of conviction and order of sentence passed against Harbans Singh were affirmed in appeal by the Additional Sessions Judge, SBS Nagar on 2.7.2015. For the sake of convenience, facts are taken from CRR-2968 of 2015.

To appreciate the controversy, a brief reference to the facts is pertinent. Marriage of Kamaljeet Kaur complainant was performed on 17.3.2003 with Harbans Singh at village Naura Tehsil and District Nawanshahr. She filed a private complaint against her husband, Chanchal Singh father-in-law, Tarsem Singh jeth, Smt. Jasvir Kaur Jethani, Smt. Tarsem Kaur nanad and Dalbir Singh, nanadoi (husband of Tarsem Kaur) on the allegations raised in paras 3 and 4 of the complaint instituted in September 2005. It has been alleged that parents of the complainant had given sufficient dowry worth more than Rs. 2 lakhs as mentioned in the list Annexure 'B' and the articles of dowry were entrusted to the accused as described in detail in the list Annexure 'A' with specific direction that the same was stridhan of the complainant meant for her exclusive use and the accused had taken away the articles with a clear undertaking that they will restore the same to the complainant immediately on her reaching in-laws house.

The accused started taunting and scolding the complainant that she had brought insufficient dowry and the articles given in dowry were of inferior quality and not up to their expectations, status and standard. The complainant tried to make the accused understand but they turned violent

and raised demand of more dowry in the shape of a scooter and an amount of Rs. 2 lakhs to enable Harbans Singh accused No. 1 to establish his own venture. The complainant pleaded with the accused that her parents had already spent lavishly on her marriage and are not in a position to pay anything more. Accused No. 1 was addicted to excessive drinking. He, at the instigation of accused Nos. 2 to 6 started harassing and physically torturing the complainant. Physical beatings by accused No. 1 to the complainant became a routine matter. She tolerated all this maltreatment with a hope that the accused would start behaving well. The complainant used to be kept in solitary confinement and was not even given two times meals on number of occasions. Ultimately, when her parents did not fulfill demands of the accused, she was thrown out of the matrimonial home on 5.10.2003 when she was carrying pregnancy. She delivered a male child at her parental house but none of the accused came to see the newly born child. Panchayats were convened by parents of the complainant for her rehabilitation but the accused flatly refused to rehabilitate her and the minor child and further refused to hand over dowry articles despite demands.

After recording preliminary evidence, all the accused were summoned to face trial under Sections 406 and 498-A IPC. The pre charge evidence was adduced by the complainant and all the accused were charged for committing offence punishable under Sections 406, 498-A IPC.

After having heard counsel for the parties and bestowing its thoughtful consideration to the rival submissions made by counsel for the parties in the light of materials on record, the trial court convicted and sentenced Harbans Singh, husband of the complainant for the aforesaid

offences. However, Chanchal Singh and others were acquitted of the offence charged against them. Harbans Singh was sentenced to rigorous imprisonment for a period of two years with fine for each of the offence.

As has been noticed hereinbefore, conviction and sentence of Harbans Singh came to be challenged before the first appellate court but the appeal preferred by him did not find favour with the Additional Sessions Judge, SBS Nagar and as a result, his conviction and sentence were affirmed.

Harbans Singh has filed the revision to assail the consistent findings recorded by the Courts below holding him guilty for committing offence under Sections 406, 498-A IPC. On the other hand, the complainant has preferred an appeal under Section 378(4) of the Code of Criminal Procedure (in short "Cr.P.C") with an application for leave to appeal against acquittal of Chanchal Singh and others.

Counsel for the petitioner has assailed conviction of Harbans Singh on two counts. The first submission made by counsel is that as per allegations raised in the complaint, the complainant was turned out of the matrimonial home on 5.10.2003 but she filed the complaint in September 2005 after about two years without any explanation for delay. It has further been argued that the complaint as well as testimony of the complainant is conspicuously silent as to the date and month when any such demand was made by the accused or she was physically tortured or harassed. In addition, it is submitted that prior to filing of the complaint in September 2005, the complainant, admittedly, did not submit any application before any authority including panchayat of the village for redressal of her alleged

grievance sufficient to prove that allegations raised in the complaint are the result of due deliberations and have been drafted with the help of a fertile legal mind.

Another submission made by counsel is that the complainant examined Gurmej Singh PW2, her relative, resident of village Ladhana Ucha, Tehsil Banga, District SBS Nagar. In his cross examination, he has stated that father of the complainant used to perform path once and twice in a month from which he used to get Rs. 200/- for performing one path. He has further admitted that father of the complainant does not have any source of income other than performance of path. Kuldeep Singh father of the complainant has a house of four marlas approximately and he has no other property except the house. It is argued that admittedly the complainant has four more sisters and all the daughters of Kuldeep Singh are married. According to counsel, in view of financial status of family of Kuldeep Singh, it is difficult to believe that Kuldeep Singh spent money lavishly on performance of marriage of the complainant or the accused raised demand of scooter and Rs. 2 lakhs in cash. In addition, it is submitted that Harbans Singh always expressed his willingness to rehabilitate the complainant in the matrimonial home but the complainant for the reasons best known to her, never agreed for the same and eventually lodged the criminal proceedings roping in the entire family with an intent to cause harassment to the husband and his family members.

Counsel for the petitioner, in the alternative, has urged that in case conviction of the petitioner for the aforesaid offences is affirmed, he may either be released on probation or substantive sentence awarded may be

reduced to the period already undergone. For this purpose, he has referred to judgments of this Court **Sushil Kumar vs. State of Punjab 2010(1) RCR (Criminal) 48** and **Gurwinder Singh and others vs. State of Punjab and another 2010(1) RCR (Criminal) 508**.

Counsel for the respondent/complainant has supported the judgments passed by the courts below so far as holding the petitioner guilty of charged offences with the submission that consistent findings recorded by the courts below are not amenable to intervention in exercise of limited revisional jurisdiction unless the court has committed a patent illegality or jurisdictional error. It is further argued that as the complainant was interested that her matrimony may be saved despite what had happened during her short stay in the matrimonial home particularly in the circumstances that a child was born out of the wedlock, she was not expected to lodge criminal proceedings immediately after she was turned out of the matrimonial home. It is further submitted that several panchayats were convened for reconciliation of differences between the parties but nothing materialized. Counsel would urge that as the complainant was subject to physical torture in routine by the husband during her short stay in the matrimonial home, the petitioner does not deserve any leniency who has also failed to pay maintenance regularly and is in arrears of maintenance of approximately Rs. 27,000/-.

To assail judgment of acquittal qua Chanchal Singh and others, counsel for the applicant/complainant would urge that the complainant levelled specific allegations against the other accused and she narrated her tale of woe when examined on oath. It is argued that application for leave

to appeal and the appeal preferred by the complainant may be allowed.

Counsel for the non-applicants-accused, on the contrary, has submitted that story propounded by the complainant that any particular articles were entrusted to each of the accused, reflected in the list Ex, C-1 is imaginary and impracticable. Further argued that Tarsem Singh elder brother of Harbans Singh was married to Jasvir Kaur before marriage of Harbans Singh was performed. Tarsem Singh and his wife had nothing to do with the marital affairs of Harbans Singh and Kamaljeet Kaur and they have been indicted in the crime with an intent to rope in maximum number of family members of the husband. Similarly, Tarsem Kaur sister of Harbans Singh was married to Dalbir Singh many years prior to marriage of Harbans Singh. Tarsem Kaur and Dalbir Singh are leading a happy married life with their child born out of the wedlock at Garhshankar District Hoshiarpur.

Another submission made by counsel is that even if the alleged demand of dowry of giving a scooter and an amount of Rs 2 lakhs for business of Harbans Singh been satisfied by parents of the complainant, the other accused could not be beneficiary of the same, sufficient to falsify and belie story of the complainant that they were privy to any such demand of dowry. Another submission made by counsel is that it is none of the plea of the complainant that any of the articles of stridhan was taken away by Tarsem Kaur and Dalbir Singh to their house at Garhshankar District Hoshiarpur. In the end, counsel would urge that scope of intervention in a judgment of acquittal is quite limited and even if two views are possible from the evidence on record, the appellate court would accept the view

taken by the trial court as every accused is presumed to be innocent and acquittal by the trial court strengthens that presumption. In support of his contention, he has referred to judgments of Hon'ble the Supreme Court of India **Preeti Gupta and another vs. State of Jharkhand and another 2010 (4) RCR (Criminal) 45, Arnesh Kumar vs. State of Bihar and another 2014(3) RCR (Criminal) 527, Manju Ram Kalita vs. State of Assam 2011(6) RCR (Criminal) 806**. Further reference has been made to judgments of this Court **Birbal and others vs. State of Haryana 2014 (1) RCR(Criminal) 84 and Kishan Sharma vs. State of Haryana 1989(2) RCR (Criminal) 13**.

I have heard counsel for the parties, perused the paper books and the original records of the courts below.

So far as conviction of Harbans Singh under Sections 406 and 498-A IPC is concerned, contentions raised by counsel for the petitioner do not appear to be meritorious and deserve to be rejected.

The complainant stayed in the matrimonial home barely for a period of seven months as she was married in the month of March 2003 and came back to her parental home in October 2003. It is difficult to expect that within such a short span of matrimony, a girl would like to convey to outsiders what is happening with her matrimony or for that matter in her matrimonial house. In these circumstances, no adverse view can be taken for failure of the complainant to lodge any complaint against unwarranted conduct of the husband during her short stay in the matrimonial home. It has also been proved on record that when the complainant left her matrimonial home in October 2003, she was carrying a baby in her womb and delivered

a male child in the year 2004 when she was residing with her parents. She has expressed her grievance that none from her in-laws family came to see the newly born child meaning thereby that she was still nurturing a hope that time may change and she may resume matrimony. It has further been proved on record that the matter was settled in Lok Adalat during pendency of proceedings under Section 125 Cr.P.C. and the girl alongwith the child went back to her matrimonial home but again she was not given congenial atmosphere to settle there. It has also been proved by the complainant and her witnesses that various panchayats were convened for settlement of the dispute but nothing reached fruition. In view of the aforesaid, the petitioner cannot derive any advantage to his contention from omission to file complaint(s) to any authority or the panchayat prior to filing of the complaint in the Court of Magistrate. These observations further negate arguments with regard to delay in lodging the proceedings.

Counsel for the petitioner has argued that no date or month of harassment/beatings has been given. As per plea of the complainant, beatings at the instance of husband was a routine matter when she stayed in the matrimonial home for seven months. If it was so, how can she be expected to give any date or month of a particular act. I would hasten to add that the complainant stayed in the matrimonial home for seven months. During her stay, she became pregnant. There is no such material available on record that the complainant had any valid reason to leave her matrimonial home had she been comfortable during her stay with her husband more particularly in the circumstances that she was carrying a baby in her womb and eventually gave birth to a son in the year 2004.

Taking a cumulative view of the given facts and circumstances, it is difficult to accept plea of the petitioner that judgments passed by the courts below suffer from any error much less patent illegality warranting intervention in exercise of revisional jurisdiction.

To be fair, counsel for the petitioner has pointed out certain facts elicited in cross examination of Gurmej Singh with regard to financial status of Kuldeep Singh, father of the complainant. It appears that there is some misrecording with regard to income of Kuldeep Singh by performance of path. If Kuldeep Singh was earning only Rs. 400/- per month, it was not possible for him to feed his family consisting of five daughters and a wife what to talk of performing marriage of the daughters and giving them dowry as per custom prevalent in the society. It appears that Kuldeep Singh was performing path once or twice in a day and earning Rs. 400/- per day. It is clear that Kuldeep Singh had five daughters but in the testimony of Jaswant Kaur mother of the complainant, there is reference to brother of the complainant may be the family had adopted a male child or getting support of a male child of a relative being addressed as a son. Even otherwise, demand of dowry is not always commensurate to financial status of parental family of the girl. The difficulty arises when the husband or in-laws family members become unreasonable in raising demand which the parental family of the girl is not in a position to satisfy. In the circumstances, poor financial status of family of the girl ipso facto is not sufficient to negate plea of the complainant that her husband raised demand of scooter and Rs. 2 lakhs.

In view of the above, I do not find any merit in contentions of

the petitioner that conviction of the petitioner recorded by the trial court and affirmed in appeal warrants intervention. Accordingly, conviction of the petitioner for the charged offence is order to be affirmed.

This brings the Court to the question of sentence. The petitioner has been sentenced to rigorous imprisonment for a period of two years for each of the offences and the sentences were ordered to run concurrently. The petitioner is in custody for the last about ten months since his appeal was dismissed by the Additional Sessions Judge, SBS Nagar on 2.7.2015. The criminal proceedings were initiated in the year 2005 and the accused caused appearance before the trial court in March 2007. The petitioner has faced pangs of criminal proceedings for more than 10 years. Counsel for the petitioner has prayed for reducing the sentence to the period already undergone. For this purpose, he has referred to judgment of this Court **Gurwinder Singh and another's case (supra)**.

Counsel for the respondent has submitted that the petitioner is in arrears of maintenance to the tune of Rs. 27,000/-. Counsel for the petitioner has not made any counter submission in this regard. There is a child born out of the wedlock and he is now aged about 13 years. The wife and child of the petitioner would not gain any advantage even if the petitioner remains in custody and completes his sentence awarded by the Courts below. Taking a practicable view of the matter, I am of the considered opinion that interests of justice would be better served if substantive sentence of the petitioner is reduced to the period already undergone but subject to the condition that the petitioner shall pay compensation of Rs. 1,00,000/- to the complainant. The petitioner is

directed to deposit the amount of Rs. 1,00,000/- with the Chief Judicial Magistrate, SBS Nagar within a period of one month. On necessary deposit being made, the money shall be released in favour of the complainant. Failure of the petitioner to deposit the amount would entail dismissal of the petition.

Coming to the appeal preferred by the complainant assailing acquittal of Chanchal Singh and others, the complainant has not made any specific allegations against Chanchal Singh and others with regard to harassment or cruelty in connection with demand of dowry. As has been argued by counsel for the respondents, Chanchal Singh and others would not be a beneficiary even if the alleged demand of dowry being satisfied by parents of the complainant. So far as the plea with regard to entrustment of articles of dowry and misappropriation thereof, the complainant has tried to portray that particular items were entrusted to each of the accused as detailed in the list prepared by her. It is difficult to accept to reason that a bride would be knowing as to which article given at the time of marriage was entrusted to which member of the marriage party. It appears to the court that in order to indict all the accused for the alleged offences, an effort was made by the complainant to plead essential ingredients of offence under Section 406 IPC being complete. One thing more to be added here is that sister-in-law (nanad) of the complainant namely Tarsem Kaur and her husband Dalbir Singh were married prior to marriage of the complainant. Tarsem Kaur and Dalbir Singh are residing at Garhshankar District Hoshiarpur in her (Tarsem Kaur's) matrimonial home. No such plea was raised by the complainant that any of the articles given in marriage to the

complainant were taken away by Tarsem Kaur and Dalbir Singh. Tarsem Singh is the elder brother of Harbans Singh and Jasvir Kaur is his wife. Jasvir Kaur has the same status in the family as was that of the complainant. There is no such plea by the complainant that during her stay in the matrimonial home, the alleged articles given to her were not put to use in the house or were not available to her. In this view of the matter, I do not find any error much less illegality in the findings of the trial court holding in favour of Chanchal Singh and others. I would hasten to add that scope of interference in a judgment of acquittal is fettered by substantial and compelling reasons to be recorded by the appellate court. In the case at hand, when the facts and circumstances are examined in the light of judgment of Hon'ble the Supreme Court of India **Ganpat vs. State of Haryana (2010) 12 SCC 450**, I do not find any reason to intervene in the findings of acquittal recorded by the trial court. As a consequence, application filed by the complainant/applicant for leave to appeal is devoid of merit and accordingly dismissed.

For the foregoing reasons, the appeal preferred by complainant Kamaljeet Kaur is dismissed and the revision is disposed of in the manner indicated above.

(Rekha Mittal)
Judge

1.5.2017
paramjit

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