

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

CRR No.314 of 2015 (O&M)

Date of decision: 02.02.2017

Daljit Kaur

....Petitioner

Versus

Davinder Singh and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Amit Jhanji, Advocate
for the petitioner.

REKHA MITTAL J.

The present petition directs challenge against order dated 22.09.2014 passed by the trial Court whereby the respondents/accused have been ordered to be discharged in complaint under Sections 406, 498-A and 506 of the Indian Penal Code (in short 'IPC') read with Section 12 of the Protection of Women from Domestic Violence Act, 2005.

The petitioner filed a private complaint against her husband, parents-in-law, sister-in-law (Nanad) and brother-in-law (devar) on the allegations that she was married with Mandeep Singh on 31.08.2005 at Purewal Palace, VPO Shanker Tehsil Nakodar. Out of wedlock, one son namely Cusionpreet Singh was born on 30.07.2006 and is residing with the complainant. At the time of marriage, parents of the complainant had given handsome dowry to the accused including gold ornaments weighing 15 tolas, 25 suits, sewing machine, furniture, 21 beddings and other valuable articles by spending more than Rs.8/9 lacs. From the very beginning of the marriage, accused maltreated the

complainant and gave beatings for bringing less dowry. She was turned out of the matrimonial house 2/3 times. The complainant convened Panchayats on each occasion consisting of Kulbir Singh son of Joginder Singh, Jagtar Singh Aulakh son of Atma Singh and Harjit Singh son of Chainchal Singh and the accused assured not to do any illegal act in future. About 3½ months back, she was beaten mercilessly by all the accused and they demanded Rs.15 lacs for sending Mandeep Singh to England. On refusal, she was turned out of the matrimonial home along with the minor son.

After recording preliminary evidence consisting of statement of Daljit Kaur – complainant CW1, Jagtar Singh CW2, Palwinder Singh CW3 and Kulbir Singh CW4, Mandeep Singh (husband), Davinder Singh (father-in-law) and Surinder Kaur (mother-in-law) were ordered to be summoned to face trial for commission of offence punishable under Sections 406, 498-A and 506 IPC. However, complaint against Kulwinder Kaur and Soni was ordered to be dismissed.

On appearance of accused before the Court, pre-charge evidence was recorded. Daljit Kaur – complainant stepped into the witness-box and examined Jagtar Singh CW2 and Kulbir Singh CW3.

After having heard counsel for the parties and bestowing its thoughtful consideration to the materials on record particularly evidence adduced by the complainant, the learned trial Court came to record a finding that no case against the accused is made out which if remains unrebutted would warrant their conviction, therefore, the accused are liable to be discharged and ordered accordingly.

Feeling aggrieved against the order of discharge, the present petition has been filed by the complainant.

Counsel for the petitioner has submitted that in pre-charge evidence, the petitioner has adduced sufficient rather overwhelming evidence to frame charge for offence punishable under Sections 406 and 498-A IPC. It is argued that testimony of Daljit Kaur is duly corroborated by her father, Kulbir Singh CW3 and Jagtar Singh CW2, a member of the Panchayats convened by the complainant. Further argued that the impugned order is liable to be set-aside and the matter be remitted to the trial Court for bringing the criminal proceedings to its logical end after framing of charge and thereafter proceeding with the case in accordance with law.

I have heard counsel for the petitioner and perused the paperbook particularly the order impugned but find myself unable to accept the petition.

To negate plea of the petitioner that the accused have committed offence punishable under Section 406 IPC with regard to misappropriation of articles of Istridhan, the trial Court has adopted manifold reasoning namely:-

1. *The complainant or any other witness has not specified the nature of gold articles handed-over or entrusted by the complainant party to the accused.*
2. *There is no allegation that she made any demand of such Istridhan from her in-laws at any stage but they refused to return the same and as such they misappropriated her Istridhan.*
3. *So far as the articles including gold articles given by girl side to the bridegroom side, they are usual*

*and customary gifts which cannot be construed to be Istridhan and as such no question arises with regard to entrustment or criminal misappropriation or breach of trust qua such articles. For this purpose, the Court has relied upon judgment of Hon'ble the Supreme Court of India “**Bhaskar Lal Sharma and another vs Monica**”, 2009(3) RCR (Criminal) 866.*

4. *The bills of concerned dowry articles/istridhan allegedly belonging to the complainant were never produced or brought on record to prove purchase and ownership of said articles.*
5. *To add doubt and confusion in the case, complainant – Daljit Kaur in her cross-examination stated the she purchased 15 tolas of gold ornaments of her choice at Nurmehal but she did not know the name of shop. Her father Kulbir Singh in his cross-examination stated that he did not take any bills of articles purchased from Amritsar and they had not purchased gold ornaments from any shop rather it had come from foreign country and some ornaments were already in the house. He further stated that he cannot produce the bills of articles purchased at the time of marriage of Daljit Kaur.*

With regard to offence punishable under Section 498-A IPC, the Court after noticing the essential ingredients of the offence by quoting the relevant provisions of Section 498-A IPC has held that Kulbir Singh CW3 had admitted in his cross-examination that he brought back Daljit Kaur and her son after giving a writing in Panchayat. The accused persons convened Panchayats at their house. The accused never demanded any dowry at the time of marriage or after marriage. The present complaint has been filed only to teach a lesson to

the accused persons.

Jagtar Singh CW2 had admitted the defence plea that there was interference of mother of Daljit Kaur in matrimonial life of Mandeep Singh and Daljit Kaur and she even used to stay at the matrimonial house of Daljit Kaur. It has further been held that allegations are vague, general in nature and no particular time or particulars of cruelty have been specified as to how and when the complainant was harassed by the accused for bringing less dowry. The Court has relied upon judgment of Hon'ble the Supreme Court of India **“Neelu Chopra vs Bharti”**, 2010(1) RCR (Criminal) 115 holding that *mere mention of Sections and their language is not sufficient and what is required to be brought to the notice of the Court is particulars of offences committed by each and every accused and role played by each and every accused in committing the offence.*

The revisional jurisdiction is exercised by the Court in order to examine correctness or legality of an order passed by a subordinate Court. Counsel for the petitioner has failed to point out any materials on record that proves any contradiction in the findings of trial Court viz-a-viz evidence adduced. He has fairly conceded that there is no allegation in the complaint as to which accused was entrusted with which article of dowry belonging to the complainant. It is also an admitted position of the case that no documentary evidence has been produced to prove purchase of articles of istridhan. There is a serious contradiction in stand of the complainant and her father with regard to purchase of gold ornaments.

The complainant has not specified date, month and year

when she was subject to any harassment or cruelty at the hands of the accused. No particular act constituting harassment or cruelty has been attributed categorically to any of the persons arrayed as accused.

Taking into consideration the materials on record, adversely commented upon by the trial Court, when examined in the light of provisions of Section 245 Cr.P.C., I do not find any error much less illegality in the impugned order warranting intervention.

For the foregoing reasons, the petition fails and is accordingly dismissed *in limine*.

(REKHA MITTAL)
JUDGE

02.02.2017

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No