

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No.152 of 2017 (O&M)
Date of decision: 05.04.2017

Manoj Kumar
.....Petitioner
Versus
Meenakshi and another
.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. K.D.S. Hooda, Advocate
for the petitioner.

Mr. S.S. Dinarpur, Advocate
for respondent No.1.

Mr. Pawan Garg, AAG, Haryana.

REKHA MITTAL J.

The present petition directs challenge against consistent findings recorded by the Courts below whereby the petitioner (husband of the complainant) has been convicted and sentenced for commission of offence punishable under Sections 498-A and 323 of the Indian Penal Code, 1860 (in short 'IPC') and a relevant extract from the order of sentence reads as follows:-

Sr. No.	Under Sections	Imprisonment	Fine
1.	498-A IPC	Simple imprisonment for six months	Rs.500/-
2.	323 IPC	Simple imprisonment for three months	-----

Briefly stated, marriage of complainant was solemnized with the petitioner on 23.01.2003. As per the allegations, Manoj – husband, Vinay Kumar, Tej Singh, Beermati and Rajbir arrayed as

accused harassed and tortured the complainant in connection with demand of a car but father of the complainant gave Rs.50,000/- when Manoj and Vinay Kumar came to Hisar. The petitioner filed a divorce petition wherein he refused to accept the male child born on 07.02.2004 as his own son due to which she suffered mental torture.

On appreciation of evidence adduced by the complainant both in pre-charge and after charge, the learned trial Court recorded a finding that allegations of demand of dowry have not been proved but the petitioner is guilty of offence under Section 498-A IPC as conduct of the petitioner casting aspersions on character of the complainant amounts to cruelty. In this regard, the trial Court has recorded its observations in para 30 of the judgment. Eventually, the petitioner was convicted and sentenced for offence under Sections 498-A and 323 IPC vide judgment dated 16.05.2013 by the trial Court.

The appeal preferred by the petitioner did not find favour with the Additional Sessions Judge, Hisar and the judgment of conviction and order of sentence were affirmed.

Still feeling dis-satisfied, the matter has been carried in revision before this Court.

Counsel for the petitioner has put a half-hearted effort to contend that as the allegations qua demand of dowry raised by the complainant were not accepted to be correct, the petitioner can not be held guilty of committing offence punishable under Section 498-A IPC more particularly in the circumstances that the petitioner has already filed a petition seeking custody of the child and the same is pending adjudication. In the alternative, counsel would urge that in case the

findings recorded by the Courts below with regard to conviction are affirmed, the petitioner may be released on probation. In addition, it is argued that the substantive sentence awarded to the petitioner may be reduced to the period already undergone in case his plea for probation is not accepted.

Counsel for the respondent, on the contrary, has supported the judgments passed by the Courts below with the submission that the Courts below have already taken a very lenient view while awarding sentence for offence punishable under Section 498-A IPC, therefore, no intervention, in the given circumstances, is warranted. It is argued that the petitioner committed grave mental cruelty by assassinating character of the complainant as he refused to accept male child born out of the wedlock to be his own and such an allegation was raised by the petitioner in divorce petition filed by him. According to counsel, the complainant in the divorce proceedings filed an application for conducting DNA test for ascertaining paternity of the child on the basis whereof necessary test was conducted and DNA profile of the child proved that the child is son of the parties to the divorce petition (divorce proceedings).

Section 498-A IPC deals with ***husband or relative of husband of a woman subjecting her to cruelty***. A relevant extract therefrom is reproduced hereunder for ready reference:-

“498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be

liable to fine.

Explanation.—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

Clause (a) of explanation appended to Section 498-A IPC would evident that any wilful conduct of the husband or a relative of husband which is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman amounts to cruelty for the purpose of Section 498-A.

In the case at hand, the petitioner refused to own the child born to the complainant/respondent by raising specific allegations in the petition for divorce that amounts to cruelty as defined in Clause (a) of explanation to Section 498-A IPC. In this view of the matter, I do not find any patent error much less illegality to differ with the consistent findings in exercise of limited revisional jurisdiction.

This brings the Court to plea of the petitioner on the question of sentence. The petitioner raised allegations assassinating character of his wife. By denying the child to be his own, he not only caused cruelty to his wife but also to the child who would know about his father only through his mother. This apart, the petitioner is a teacher

and his pupils would be looking forward to learn many good things including values and ethics from him. In the given scenario, he is not entitled to benefit of probation.

The appeal was decided by the First Appellate Court on 12.01.2017 and since then petitioner is in custody for the past about 03 months. The marriage of the parties was performed in the year 2003 and the criminal proceedings were initiated in the year 2004. The petitioner along with co-accused appeared before the trial Court and were released on bail on 16.12.2005. Besides the petitioner, his adopted parents namely Tej Singh and Beermati and his real brother – Vinay Kumar faced the agony of trial for about 08 years. The allegations raised by the complainant with regard to demand of dowry and harassment in connection thereof at the behest of the petitioner and his family members were found to be false and consequently other accused were acquitted of the offence charged against them whereas the petitioner is the only one convicted and sentenced for offence under Section 498-A IPC. The appeal preferred by the petitioner in the year 2013 culminated in the judgment passed in January, 2017. The petitioner has faced pangs of criminal trial for the past more than 11 years.

Examined from another angle, even if the petitioner remains in custody for completing the remaining sentence of 03 months, it would be of no use for the complainant. On the other hand, the petitioner can be directed to pay some amount towards compensation to the complainant.

Taking a cumulative view of the facts and circumstances

discussed hereinbefore, in my considered opinion, interest of justice would be served if the substantive sentence awarded to the petitioner is reduced to the period already undergone subject, however, to the condition that he deposits an amount of Rs.50,000/- with the Chief Judicial Magistrate, Hisar within a period of one month. In case the petitioner deposits the amount within the stipulated period, the same shall be released to the complainant. Failure of the petitioner to deposit the amount within the stipulated period would entail dismissal of the petition.

Disposed of accordingly.

(REKHA MITTAL)
JUDGE

05.04.2017
yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No