

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

CRA-S-769-SB-2014(O&M)
Date of decision:-21.8.2018

Kanwaljit Kaur @ Kavaljeet Kaur

....Appellant

Versus

State of Punjab and others

....Respondents

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mrs.G.K. Mann, Advocate
for the appellant.

H.S. MADAAN, J.

Complainant Kanwaljit Kaur @ Kavaljeet Kaur had approached this Court and a direction was accordingly issued to Senior Superintendent of Police, Amritsar to decide the representation submitted by her within two months, as such a probe was conducted into the matter and formal FIR for an offence under Sections 3(i)(x) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities Act), 1989 (hereinafter referred to as *the Act*”) read with Section 498-A IPC was registered.

As per the version of the complainant Kanwaljit Kaur @ Kavaljeet Kaur, she was married with Jagjit Singh son of Narinder Singh, resident of village Manwala Khurd, however, Jagjit Singh had played a fraud with her; that the marriage was consummated and the

complainant had conceived; that the marriage was not accepted by the mother and sister of Jagjit Singh, who abused and passed casteist remarks against the complainant and refused to allow her to remain in the house.

After the registration of the FIR, the matter was investigated and it transpired that Jagjit Singh accused had got married with the complainant on 2.6.2009; thereafter, they resided in a rented accommodation as husband and wife, which was for a month. On 16.7.2009, accused Jagjit Singh took the complainant to C.M. Palace Hotel, Chandigarh and left her there on 20.7.2009 without informing her; he failed to return to that place; the complainant could not contact him despite her best efforts. Jagjit Singh belongs to Jat Sikh family, whereas the complainant belongs to Bazigar community. The complainant had contacted mother of the accused Jagjit Singh to seek her rehabilitation but she refused to accept the complainant stating that she had disinherited Jagjit Singh.

After completion of investigation, challan against accused Jagjit Singh, his father Narinder Singh and mother Amarjit Kaur was filed in the Court of Judicial Magistrate, Amritsar

On presentation of challan in the Court, copies of documents relied upon therein were supplied to the accused free of costs as provided under Section 207 Cr.P.C. Then finding that the offence under the Act is exclusively triable by the Court of Sessions, the Magistrate committed the case to the Court of Sessions Judge, Amritsar from where it was entrusted to the Court of Additional Sessions Judge, Amritsar.

On receipt of case in the Court, Additional Sessions Judge, Amritsar, observing that prima facie charge for offences under Sections 3(i)(x) of the Act read with Section 498-A IPC was disclosed against accused, they were charge-sheeted accordingly. The accused pleaded not guilty and claimed trial.

During the course of its evidence, the prosecution examined as many as three witnesses.

PW1 happened to be complainant Kanwaljit Kaur @ Kavaljeet Kaur, who repeated on oath her case as per the prosecution story. Her father Sh.Gian Chand appearing as PW2 toed the line of the prosecution. PW3 Manwinder Singh, DSP, who had carried out the investigation in this case deposed in that regard proving various documents. The prosecution had proved on record original birth certificate of son of complainant Ex.PA, statement made by the complainant before the police Ex.PB, FIR Ex.PW3/3, arrest memo of accused Narinder Singh Ex.PW3/5, arrest memo of accused Jagjit Singh Ex.PW3/7, arrest memo of accused Amarjit Kaur Ex.PW3/6, entrustment of enquiry Ex.PW3/1, enquiry report Ex.PW3/2, representation of complainant Ex.PW3/8 and orders of Hon'ble High Court Ex.PW3/9.

With that the prosecution evidence got concluded.

Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they are innocent and have been falsely involved in this case. Accused Jagjit Singh stated that he has no relation with the

complainant and the complainant never visited his house and he never used any derogatory words against her. Similar plea was adopted by the other two co-accused.

In defence evidence, the accused examined Ramesh Singh son of Mohinder Singh as DW1 and Palwinder Kaur as DW2

After hearing arguments, learned trial Court acquitted the accused, which left the complainant aggrieved and she has filed the present appeal. The reasons for acquittal of the accused are as follows:

- (i) There being no evidence on record to show that complainant Kanwaljit Kaur @ Kavaljeet Kaur was member of Scheduled Caste or Scheduled Tribes.
- (ii) There being only oral assertion of the complainant that she belongs to Bazigar community with no documentary evidence being produced to establish that fact; that though learned counsel for the complainant at the time of arguments produced before the trial Court a notified scheduled caste list of the Punjab State down loaded from the website of the Punjab Scheduled Castes Land Development & Finance Corporation, however, no certificate issued by the competent authority showing that the complainant is member of Bazigar community and that Baazigar community is notified as a scheduled caste in the State of Punjab had been proved in evidence.
- (iii) The primary ingredient of offence under Section

3(i)(x) of the Act is missing and evidence is lacking to prove that the complainant is a member of scheduled caste or scheduled tribes.

(iv)The other ingredient of the offence that accused not being a member of scheduled caste or scheduled tribes insulted or intimidated the complainant with intent to humiliate her in any place within public view also not established.

(v)Even if the version of the complainant is accepted then the entire occurrence had taken place at the house of accused within bounded area of the house and not in any place within public view. The only grudge of the complainant coming forth from her deposition is that the main accused and his parents were not ready to accept her because, she belongs to a lower caste and she had stated in her cross-examination that at the time of occurrence no person from the neighbourhood had arrived at the scene.

(vi)Her father PW2 Gian Chand, who had allegedly accompanied the complainant to the house of the accused was unable to tell the exact date when they had gone to the house of accused. He has also not stated anywhere that the alleged humiliation was caused in public view or any member of the public had witnessed the occurrence.

(vii)The trial Court has relied upon judgment passed by

this Court in **Gorkhi Ram Vs. State of Haryana 2006(4) RCR(Criminal) 365** to the effect that when alleged occurrence resulting into abusing and insulting had taken place within the bounded area of house of complainant and not in any public place within public view then no offence under Sections 3, 4, 5 of the Act was made out.

Therefore, the trial Court has returned the finding that in this case the prosecution had failed to establish its charge for the offences under Section 3(i)(x) of the Act against the accused.

Coming to Section 498-A IPC, the trial Court referring to judgment of the Apex Court in **Bhaskar Lal Sharma and Anr. Versus Monica (2009) 10 SCC 604**, observed that essential ingredients of Section 498-A IPC are:

1. A woman must be married.
2. She must be subjected to cruelty.
3. Cruelty must be of the nature of:
 - (i) any willful conduct as was likely to drive such woman:
 - a. To commit suicide;
 - b. Cause grave injury or danger to her life, limb, either mental or physical;
 - (ii) harassment of such woman,
 - (1) with a view to coerce her to meet unlawful demand for property or valuable security, (2) or on account of failure of such woman or by any of her relation to meet the unlawful demand,
 - (iii) woman was subjected to such cruelty by:
 - (1) husband of that woman, or
 - (2) any relative of the husband.

These ingredients must be held to be existing to constitute an offence under Section 498-A IPC.

The trial Court has further relied upon law laid down by the Apex Court as reported in judgment **Sushil Kumar Sharma Versus Union of India(2005) 6 SCC 281** and it has also referred to authority **Preeti Gupta and Anr. Versus State of Jharkhand and Anr., 2010 AIR SCW 4975 : (AIR 2010 SC 3363)** wherein Hon'ble Supreme Court had observed as follows:

30. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same, rapid increases in the number of genuine cases of dowry harassment is also matter of serious concern.

The discussion by the trial Court in that regard contained in paras No.25 and 27, which is being reproduced as under:

25.Reverting to the statement of the complainant, she was simply abused and insulted by the accused and his parents at their house by saying that she belong to the Bazigar community. They refused to accept her in the matrimonial house. Considering the testimony of the complainant and her father PW Gian Chand it appears that they have made allegations of harassment against accused but such sweeping

allegations would not amount to cruelty as it is defined under Section 498-A IPC. It is very much clear from the bare provisions of Section 498-A IPC that the cruelty must be of the nature of any willful conduct as was likely to drive that woman to commit suicide or to cause grave injury or danger to her life, limb, either mental or physical with a view to coerce her to meet some unlawful demand of property or valuable security. Therefore to attract the provisions of Section 498-A IPC, the cruelty must have been meted out to a woman either by her husband or the relatives of the husband and the cruelty should be purposely mean to either harass that woman to commit suicide or to coerce her to meet unlawful demand of dowry. The object of the provisions of Section 498-A IPC is to combat the menace of dowry death and cruelty.

27. When viewed from the perspective of Section 498-A IPC, the bare ingredients of the Section have not been established by the complainant.

I have heard learned counsel for the appellant besides going through the record and I find that there is no merit in the appeal.

There is no illegality or infirmity in the judgment passed by the learned trial Court. Rather it is based upon proper appraisal and appreciation of the evidence and correct interpretation of law.

During the appeal proceedings, the appellant/complainant

has moved an application under Section 391 read with Section 482 Cr.P.C. for leading additional evidence submitting that as appellant is not legally well versed and was not having Scheduled Caste Certificate at the time of evidence, after that she had filed an application before concerned authority to obtain Scheduled Caste Certificate, which she now wants to place on record by way of additional evidence to prove that she belongs to a scheduled caste community.

Now it is to be seen whether such application can be allowed at this stage. Section 391 Cr.P.C. provides that the Appellate Court while dealing with any appeal, if it thinks additional evidence to be necessary shall record its reasons and may either take such evidence itself or direct it to be taken by a Magistrate and on receipt of such evidence, so recorded proceed to dispose of the appeal.

However, in this case the plea taken by the appellant is that she is not well-versed in legal matters. But then ignorance of law is no excuse. She had admittedly filed a petition in this Court on which a direction was issued to Senior Superintendent of Police, Amritsar to look after into the complaint and thereafter FIR was registered. She had legal advise available to her when she approached this Court. Interestingly, according to her, she had got the Scheduled Caste Certificate issued after evidence was led in the trial Court, that means she was not having Scheduled Caste Certificate available with her when her statement was recorded in the trial Court. The FIR in this case was registered on 27.11.2009. The trial in this case started in the year 2010 and ultimately concluded and case was decided on 10.10.2013. Now we are in the year 2018 to be precise in middle of August, 2018. Allowing

leading of additional evidence at this stage would not serve any useful purpose, rather prolong the matter. As has been observed by the trial Court offence under Sections 3(i)(x) of the Act is not made out, one of the reason given is that the complainant has not proved in evidence her scheduled caste certificate and second reason given is that the alleged offence was not committed in the public view. Even if the Scheduled Caste Certificate is allowed to be placed on record by way of additional evidence, the second ground would stand going to show that the other necessary ingredient was not established. Therefore, no ground is there to allow the application for additional evidence and the same stands dismissed accordingly.

I do not see any reason to upset the judgment of acquittal passed by the Court below. The State has not approached this Court challenging the judgment of acquittal passed by the trial Court.

The said judgment of acquittal is upheld whereas appeal is found to be without any merit and it is dismissed accordingly.

21.8.2018
Brij

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No