

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

CRM-A-336-MA-2016(O&M)

Date of decision:-16.8.2018

Sukhwinder Kaur

...Applicant

Versus

Sudagar Singh and others

...Respondents

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

Present : Mr.D.R. Punia, Advocate
for the applicant.

H.S. MADAAN, J.

Applicant – Sukhwinder Kaur has filed this application under Section 378(4) Cr.P.C. seeking special leave to appeal.

Briefly stated, facts of the case are that complainant – Sukhwinder Kaur had filed a complaint under Sections 406, 498-A IPC against her husband Sudagar Singh, father-in-law Darshan Singh, mother-in-law Surinder Kaur, brother-in-law Amrit Pal Singh, sisters-in-law Tajinder Kaur, Harvinderpal Kaur and one Ramji Dass on the allegations that she was married with Sudagar Singh on 12.12.1999; that after the marriage the spouses started residing together as husband and wife; that marriage was consummated; that the complainant gave birth to a female child from the loins of her husband Sudagar Singh, who is presently in custody of complainant, thereafter, the complainant had conceived thrice, however, first two foetus were got aborted prematurely being females after confirming their sex through scanning; that when

she was in family-way then she was turned out of the matrimonial home in three wearing clothes, resultantly, the foetus being carried by the complainant in her womb expired; that there being emergency, she was advised immediate admission as the dead foetus was to be taken out through operation to save the life of complainant. In the complaint, the complainant had levelled allegations of maltreatment, cruelty and torture at the hands of her husband and his family members, so as to force her to bring more dowry. According to the complainant, she was unable to get those demands fulfilled, as such her maltreatment continued; that her husband is serving as Constable in Punjab Police and is a daily drinker and he used to come late in the night under the influence of liquor along with a number of friends of loose character; that he used to compel the complainant to prepare meals for him and his friends during midnight when she was in the advanced stage of pregnancy. The complainant has also levelled allegations of accused refusing to return her ISTRIDHAN articles entrusted to them by her parents at the time of marriage, which were meant for the use of complainant.

After recording of preliminary evidence, accused Sudagar Singh, Darshan Singh, Surinder Kaur, Amrit Pal Singh, Tajinder Kaur and Harvinderpal Kaur had been summoned, whereas it was not so as regards Ramji Dass. They put in appearance in the Court and were admitted to bail.

The case was fixed for pre-charge evidence of complainant, during the course of which accused No.6 Harvinderpal Kaur had died. The complainant led pre charge evidence and she examined Sukhminder Singh as CW1, got her own statement recorded as CW2 besides

examining Hari Singh as CW3 and Harbans Singh as CW4.

Thereafter, finding a prima facie case, charge for the offences under Sections 406, 498-A IPC was framed against the accused No.1 to 5, to which, they pleaded not guilty and claimed trial.

After framing of charge, the accused had preferred a revision petition, which was accepted and impugned order dated 22.10.2011 framing charge against the accused was set aside and the case was remanded to the trial Court to re-consider the matter and for passing fresh order. The order was complied with. Finding a prima facie case for the offences under Sections 406/498-A IPC, accused were charge-sheeted accordingly. The accused subjected all the four PWs examined during the pre charge evidence to further cross-examination. Thereafter, evidence of the complainant was closed.

Statements of 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 they have been falsely implicated in the case.

In defence evidence, accused examined ten witnesses.

With that the defence evidence stood closed.

The trial Court had formulated the following points for determination:

1. Whether or not accused no.1 to 5 did not return the stridhan to the complainant for her use and enjoyment in matrimonial house and misappropriated against the wish and consent of complainant those

against the consent danger and thereby committed an offence punishable under Sections 406 IPC?

2. Whether or not complainant Sukhwinder Kaur after her marriage with accused Saudagar Singh maltreated physical and mental cruelty on the ground of bringing less dowry and under the demand of more dowry from her parents by the accused no.1 to 5 and thereby committed an offence punishable Under Section 498-A IPC?
3. Whether the evidence of the prosecution led on the file is sufficient to hold the accused guilty and to convict and sentence them?

After hearing arguments, learned trial Magistrate dismissed the complaint and acquitted the accused of the charge framed against him, which left the complainant aggrieved and she had knocked at the door of this Court by moving an application under Section 378 (4) Cr.P.C. for grant of special leave to appeal against the judgment of acquittal.

I have heard learned counsel for the applicant besides going through the record.

Learned trial Magistrate by detailed discussion of evidence brought on file by the complainant and contentions raised on behalf of the complainant as well as accused came to the conclusion that charge was not proved against the accused conclusively. While coming to the conclusion that the complainant had failed to prove that accused had committed any offence, learned trial Magistrate has considered various

factors, which are as under:

- (i) The complainant and her father had firstly approached the police authorities moving various complaints to them for registration of case against the accused but as a result of thorough inquiry, no truth was found in such complaints.
- (ii) Since the complainant and her husband Saudagar Singh – accused No.1 and their minor child had been residing separately as is evident from the ration card Ex.R2 from the other accused, therefore, question of possession of dowry articles and demand of Rs.50,000/- could not arise.
- (iii) Accused Saudagar Singh is employed in Punjab Police and at the time of marriage, he was posted at Bahadurgarh, Patiala and after marriage, he was transferred to Police District Khanna, whereas the complainant was employed in Punjab Agricultural Department. There was no occasion for the accused to harass the complainant for demand of dowry etc.
- (iv) Failure on the part of the complainant and her parents to place on record the bills of dowry articles and no shopkeeper etc. having been examined in that regard.
- (v) List of dowry articles not proved legally since it does not bear the signatures of complainant.
- (vi) Accused No.5 Tajinder Kaur and accused No.6

Harvinderpal Kaur (since dead) were unmarried at the time of marriage of complainant, so question of demand of dowry by them does not arise.

(vii) Since handing over the dowry articles to any of the accused is not proved, therefore, question of cruelty in connection with demand of dowry does not arise.

(viii) The complainant has failed to prove the entrustment of dowry articles to the accused.

(ix) Demand of dowry not proved specifically.

(x) The complainant has thrown a net wide to involve everybody in her in-laws family not even sparing the mediator.

(xi) The ingredients of Sections 406 and 498-A are not proved.

(xii) The allegations of abortion at the instance of accused Nos.1 to 5 for the purpose of cruelty are not corroborated by any documentary evidence and oral evidence does not support the case of the complainant.

(xiii) The complainant has failed to prove her case against the accused beyond a shadow of reasonable doubt.

The trial Court has taken into consideration the law on the subject and given valid and proper reasoning before coming to the conclusion that since the complainant had failed to prove her case

against the accused beyond a shadow of reasonable doubt, thereby giving benefit of doubt to the accused and acquitting them of the charge framed against them by dismissing the complaint.

Thus no ground is made out to grant special leave to appeal in this case. The application is, therefore dismissed accordingly.

16.8.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No